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

THOMAS L. TAYLOR III, solely in his capacity as Court-appointed Receiver for Robert A. Helms, *et al.*, Plaintiff,	§ § § § §	
v.	§	Civil Action No. 15-cv-627-LY
MICHAEL SAMOUCE, MARK KYLE and APPLIED QUANTITATIVE SOLUTIONS, LLC, Defendants.	§ § § § § §	

RECEIVER'S MOTION FOR ENTRY OF DEFAULT JUDGMENTS AGAINST DEFENDANTS MARK KYLE AND APPLIED QUANTITATIVE SOLUTIONS, LLC

THE TAYLOR LAW OFFICES, P.C.

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

4550 Post Oak Place Drive, Suite 241
Houston, Texas 77027
Tel: 713.626.5300
Fax: 713.402.6154

COUNSEL FOR PLAINTIFF
THOMAS L. TAYLOR III, RECEIVER

Table of Contents

Table of Contents ii

Table of Authorities iii

I. Legal Authority 1

II. Argument 3

A. Summary of Claims and Damages for Which Receiver Seeks Entry of Default Judgments 3

B. Entry of Default Judgments Against Kyle and AQS is Procedurally Warranted 3

C. There is a Sufficient Basis for Judgment in the Pleadings 5

1. Count I: TUFTA §24.005(a)(1) 5

a. Transfers from the Vendetta Ponzi scheme were made with actual intent to defraud 6

b. Transfers were made from the Vendetta Ponzi scheme to Kyle and AQS, and for Kyle's Benefit 7

c. TUFTA Affirmative Defense is Not Available to Defendants 7

2. Unjust Enrichment 13

D. The Receiver is Entitled to Relief in the Form of Monetary Judgments Against Kyle and AQS 15

i. Damages from Fraudulent Transfers to (and for the benefit of) Kyle, and to AQS 15

ii. Pre- and Post-Judgment Interest 16

Table of Authorities

CASES

Applied Quantitative Solutions, LLC v. Vendetta Royalty Partners, Ltd., Case No. D-1-GN-13-001629 (353rd Judicial District Court for Travis County, Texas) ….………12

Arete Partners, L.P. v. Gunnerman, 643 F.3d 410 (5th Cir. 2011) ………………………..16, 17

Butler Aviation Int'l v. Whyte, 6 F.3d 1119 (5th Cir. 1993) …………………………….……..9

Canal Ins. Co. v. First. Gen. Ins. Co., 901 F.2d 45 (5th Cir. 1990) ……………………………..17

Cavnar v. Quality Control Parking, Inc., 696 S.W.2d 549 (Tex. 1985) ………………………..16

Dicello v. Jenkins (In re Int'l Loan Network, Inc.), 160 B.R. 1 (Bankr. D.D.C. 1993) …………..8

GE Capital Commer., Inc. v. Worthington Nat'l Bank, Case No. 3:09-cv-572-L, 2012 U.S. Dist. LEXIS 82631, 2012 WL 2159185 (N.D. Tex. June 13, 2012) ……..……..16, 17

GE Capital Commer., Inc. v. Wright & Wright, Inc., Case No. 3:09-cv-572-L, 2011 U.S. Dist. LEXIS 3962 (N.D. Tex. Jan. 13, 2011) ……………………………………..13

Geddes v. United Fin. Group, 559 F.2d 557 (9th Cir. 1977) …………………………..……..4

Heldenfels Bros. v. City of Corpus Christi, 832 S.W.2d 39, 41 (Tex. 1992) ……………….……..14

In re Hinsley, 201 F.3d 638 (5th Cir. 2000) ……………………………………………….……..9

In re IFS Fin. Corp., 417 B.R. 419 (Bankr. S.D. Tex. 2009) ……………………………………..5

In re Pace, 456 B.R. 253 (Bankr. W.D. Tex. 2011) ………………………………………………..10

Ins. Co. of the W. v. H&G Contrs., Inc., Case No. C-10-390, 2011 U.S. Dist. LEXIS 114940, 2011 WL 4738197 (S.D. Tex. Oct. 5, 2011) …………………………..……..4

J&J Sports Prods. v. Zeqiri, Case No. 3:14-cv-4216-B, 2015 U.S. Dist. LEXIS 137239 (N.D. Tex. Oct. 7, 2015) …………………………………..……..2, 3, 4, 5, 15

Jackson v. FIE Corp., 302 F.3d 515, 521, 524-25 (5th Cir. 2002) ……………………….……..15

James v. Frame (In re Frame), 6 F.3d 307 (5th Cir. 1993) …………………………………..2, 15

Janvey v. Alguire, 647 F.3d 585 (5th Cir. 2011) …………………………………………….……..6

Janvey v. Alguire, 846 F. Supp. 2d 662 (N.D. Tex. 2011) ………………………………..8, 13

Janvey v. Brown, 767 F.3d 430 (5th Cir. 2014) ……………………………………..……..6, 7

John Perez Graphics & Design, LLC v. Green Tree Inv. Grp., Inc., No. 12-cv-4194-M, 2013 U.S. Dist. LEXIS 61928, 2013 WL 1828671 (N.D. Tex. May 1, 2013) ………………………………………………………………………….……..4

Johnson & Higgins of Tex., Inc. v. Kenneco Energy, Inc., 962 S.W.2d 507 (Tex. 1998) ………………………………………………………………………….……..16, 17

Lindsey v. Prive Corp., 161 F.3d 886 (5th Cir. 1998) …………………………..……..2, 3, 4

Martino v. Edison Worldwide Capital (In re Randy), 189 B.R. 425 (Bankr. N.D. Ill. 1995) …………………………………………………………………………..……..8

Nishimatsu Const. Co., Ltd. v. Houston Nat'l Bank, 515 F.2d 1200 (5th Cir. 1975) …….3, 5, 6, 7

Perry Roofing Co. v. Olcott, 744 S.W.2d 929 (Tex. 1988) ………………………………..16

Primrose Operating Co. v. National Am. Ins. Co., 382 F.3d 546 (5th Cir. 2004) ……….……..17

Quilling v. Schonsky, 247 F. App'x 583 (5th Cir. 2007) ………………………………..……..6

Ramirez Rodriguez v. Dunson (In re Ramirez Rodriguez), 209 B.R. 424 (Bankr. S.D. Tex. 1997) …………………………………………………………………….……..8

SEC v. Cook, Case No. 3:00-cv-272-R, 2001 U.S. Dist. LEXIS 2601, 2001 WL 256172 (N.D. Tex. Mar. 8, 2001) ……………………………………………………..10

SEC v. Earthly Mineral Solutions, Inc., Case No. 2:07-cv-1057 JCM (LRL), 2011 U.S. Dist. LEXIS 36767, 2011 WL 1103349 (D. Nev. Mar. 23, 2011) ……………….……..11

SEC v. Hansen, Case No. 83-cv-3692, 1984 U.S. Dist. LEXIS 17835, 1984 WL 2413 (S.D.N.Y. Apr. 6, 1984) ……………………………………………………..……..11

SEC v. Helms, Case No. A-13-cv-1036-ML, 2015 U.S. Dist. LEXIS 110758 (W.D. Tex. Aug. 21, 2015) ……………………………………………………………..……..6

SEC v. Helms, Case No. A-13-cv-1036-ML, 2015 U.S. Dist. LEXIS 29149 (W.D. Tex. Mar. 10, 2015) ……………………………………………..……..6, 11, 12, 13

SEC v. Martino, 255 F.Supp. 2d 268 (S.D.N.Y. 2003) ………………………………..……..11

SEC v. Res. Dev. Int'l, LLC, 487 F.3d 295 (5th Cir. 2007) ……………………..……..5, 6, 9

SEC v. StratoComm Corp., 2 F.Supp. 3d 240 (N.D.N.Y. 2014) ……………………..……..11, 12

SEC v. U.S. Pension Trust Corp., Case No. 07-cv-22570, 2010 U.S. Dist. LEXIS 102938, 2010 WL 3894082 (S.D. Fla. Sept. 30, 2010) ………………………………..11

Tex. Integrated Conveyor Sys., Inc. v. Innovative Conveyor Concepts, Inc., 300 S.W.3d 348, 367 (Tex. App.—Dallas 2009, pet. denied) ………………………………..13

United Artists Corp. v. Freeman, 605 F.2d 854 (5th Cir. 1979) ………………………..……..2

Villarreal v. Grant Geophysical, Inc., 136 S.W.3d 265 (Tex.App.—San Antonio 2004) ………………………………………………………………………………..14

Warfield v. Byron, 436 F.3d 551 (5th Cir. 2006) ………………………………..5, 6, 8, 9, 10

Williams v. Trader Publ'g Co., 218 F.3d 481 (5th Cir. 2000) …………………………………..16

FEDERAL RULES AND STATUTES

Fed. R. Civ. P. 8 …..……………………………………………………………………..5

Fed. R. Civ. P. 55 …..…………………………………………………………………1, 2

15 U.S.C. § 78o …..…………………………………………………………..…………..11

28 U.S.C. § 1961 …..……………………………………………………………3, 17, 18

TEXAS RULES AND STATUTES

TEX. BUS. & COM. CODE §24.005 …….………………………………………………………..5

TEX. BUS. & COM. CODE §24.008 ……………………………………………….…………..5

TEX. BUS. & COM. CODE §24.009 ……………………………………………..…………..5, 8

TEX. FIN. CODE §304.003 ………………………………………………………………..17

Plaintiff Thomas L. Taylor III (the "Receiver"), solely in his capacity as Court-appointed Receiver in the civil action styled *SEC v. Helms, et al.*, Civil Action No. 1:13-cv-1036-ML (W.D. Tex. 2013) (the "Enforcement Action") ("EA Dkt. #_")[1], respectfully moves the Court pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure (the "Rules") to enter default judgments against Defendants Mark Kyle ("Kyle") and Applied Quantitative Solutions, LLC ("AQS" and together "Defendants") with respect to causes of action Counts I and II in his Complaint [Dkt. #1].[2] The Clerk of the Court for the Western District of Texas previously entered the defaults of the Defendants on September 23, 2015. Dkts. #13, 14.

I. Legal Authority

The Court may enter a judgment against a defaulted party upon application of the Plaintiff. FED. R. CIV. P. 55(b)(2). In determining whether a default judgment should be entered against a defendant, courts undertake a three-part analysis: (1) whether the entry of a default

---

[1] The Receiver was appointed for defendants Robert Helms ("Helms"), Janniece Kaelin ("Kaelin"), Deven Sellers, Roland Barrera, Vendetta Royalty Partners, Ltd. ("Vendetta"), Vendetta Royalty Management, LLC ("Vendetta Management"), Vesta Royalty Partners, LP, Vesta Royalty Management, LLC, Iron Rock Royalty Partners, LP, Iron Rock Royalty Management, LLC, Arcady Resources, LLC, Barefoot Minerals, GP, G3 Minerals, LLC, Haley Oil Company, Inc. ("Haley Oil"), Lake Rock, LLC, SeBud Minerals, LLC, Technicolor Minerals, GP ("Technicolor"), and all entities they own or control (collectively the "Vendetta Defendants"). EA Dkts. #11, 76.

[2] The Receiver reserves all relief requested in the Complaint and not expressly sought herein, including without limitation Defendants' joint and several liability with other Defendants, costs and reasonable attorney's fees, and all liability and damages arising from causes of action Counts III – VI for, respectively, Aiding, Abetting or Participation in Breaches of Fiduciary Duties; Aiding, Abetting or Participation in Fraud; Aiding, Abetting or Participation in Conversion; and Civil Conspiracy. Compl. at ¶¶80, 88 – 102. The damages resulting from the above Counts cannot be calculated finally until near the conclusion of the Receivership, when assets have been liquidated, claims against the Estate have been determined, and the amount of distributions from the Estate on those claims are known.

judgment is procedurally warranted[3]; (2) whether there is a sufficient basis in the pleadings for the judgment based upon the substantive merits of the plaintiff's claims; and (3) what form of relief, if any, the plaintiff should receive. *J&J Sports Prods. v. Zeqiri*, 2015 U.S. Dist. LEXIS 137239, at *3-5 (N.D. Tex. Oct. 7, 2015) (citations omitted).

Upon such application, the Court "may conduct hearings or make referrals" in situations where it must conduct an accounting, determine the amount of damages, establish the truth of any allegation by evidence, or investigate any other matter. FED. R. CIV. P. 55(b)(2). However, the Court is not required to hold either an evidentiary hearing or oral argument on a motion for a default judgment when detailed affidavits establish the necessary facts. *Zeqiri*, at *4-5 (citing *United Artists Corp. v. Freeman*, 605 F.2d 854, 857 (5th Cir. 1979)). If the Court "can determine the amount of damages with mathematical calculation, by referencing the pleadings and supporting documents, a hearing is unnecessary." *Id.* at *5 (citing *James v. Frame (In re Frame)*, 6 F.3d 307, 310 (5th Cir. 1993)).

The Receiver submits that the judicially admitted allegations of fact in the Complaint [Dkt. #1] -- and the evidence submitted herewith -- establish sufficient basis for the calculation of damages without the need for a hearing, and for the entry of default judgments with respect to Receiver's causes of action Counts I and II -- for the avoidance of fraudulent transfers under the Texas Uniform Fraudulent Transfer Act, TEX. BUS. & COM. CODE §§24.001 *et seq.* ("TUFTA") and for unjust enrichment.

---

[3] Relevant factors include: [1] whether material issues of fact exist; [2] whether there has been substantial prejudice; [3] whether the grounds for default are clearly established; [4] whether the default was caused by a good faith mistake or excusable neglect; [5] the harshness of a default judgment; and [6] whether the court would think itself obliged to set aside the default on the defendant's motion. *Lindsey v. Prive Corp.*, 161 F.3d 886, 893 (5th Cir. 1998).

II. Argument

A. Summary of Claims and Damages for Which Receiver Seeks Entry of Default Judgments

As detailed herein, and established through the Defendants' judicial admissions and the evidence submitted herewith, Defendants are liable to the Receivership Estate with respect to Counts I and II for actual damages, pre-judgment interest and post-judgment interest as follows:

- Kyle:
  - Actual damages of $122,000 plus pre-judgment interest of $16.71 per day from September 23, 2014 until the date of default judgment; actual damages of $336,118.28 plus pre-judgment interest of $46.04 per day from November 15, 2014 until the date of default judgment; plus post-judgment interest pursuant to 28 U.S.C. § 1961.
- AQS:
  - Actual damages of $672,236.55 plus pre-judgment interest of $92.09 per day from November 15, 2014 until the date of default judgment; plus post-judgment interest pursuant to 28 U.S.C. § 1961.

B. Entry of Default Judgments Against Kyle and AQS is Procedurally Warranted

In determining whether entry of a default judgment is procedurally warranted, courts consider factors such as "[1] whether material issues of fact exist; [2] whether there has been substantial prejudice; [3] whether the grounds for default are clearly established; [4] whether the default was caused by a good faith mistake or excusable neglect; [5] the harshness of a default judgment; and [6] whether the court would think itself obliged to set aside the default on the defendant's motion." *Zeqiri*, *supra*, at *4 (citing *Prive Corp.*, 161 F.3d at 893). These factors weigh in favor of entry of default judgments against Defendants.

In the present case, no material issues of fact are in dispute, because Kyle and AQS have not filed any responsive pleadings. A defendant, "by his default, admits the plaintiff's well-pleaded allegations of fact." *Nishimatsu Const. Co., Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200,

1206 (5th Cir. 1975); *see also Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977) ("The general rule of law is that upon default the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true."). Moreover, the Defendants' "failure to respond threatens to bring the adversary process to a halt, effectively prejudicing Plaintiff's interests." *Zeqiri*, at *5 – 6 (quoting *Ins. Co. v. H&G Contrs., Inc.*, 2011 U.S. Dist. LEXIS 114940, 2011 WL 4738197, at *3 (S.D. Tex. Oct. 5, 2011); *Prive Corp.*, 161 F.3d at 893). Additionally, the Receiver "seeks only the relief the law provides [him], and [Defendants] [have] no applicable defense to [the Receiver's] claims, … which 'mitigat[es] the harshness of a default judgment.'" *Id.* at *6 (quoting *John Perez Graphics & Design, LLC v. Green Tree Inv. Grp., Inc.*, No. 12-CV-4194-M, 2013 U.S. Dist. LEXIS 61928, 2013 WL 1828671, at *3 (N.D. Tex. May 1, 2013)). In this regard, and notwithstanding the judicial admissions of Defendants, it cannot be disputed that the transfers at issue were made to (and for the benefit of) Defendants with actual intent to defraud, without the exchange of reasonably equivalent value, and without good faith, and are therefore avoidable by the Receiver under TUFTA.

The entry of default judgments against Defendants is procedurally warranted in this instance. Because the Defendants have failed to appear and defend themselves against the Receiver's claims, and because the causes of action upon which the Receiver seeks default judgments herein are established as a matter of law and cannot be disputed[4], the Court should enter default judgments against Defendants Kyle and AQS.

---

[4] The Receiver has moved for partial summary judgment against Defendant Michael Samouce ("Samouce") upon the same causes of action Counts I and II. Dkts. #15, 16. The Receiver's Motion against Samouce, although made pursuant to FED. R. CIV. P. 56, is predicated upon the same facts and legal principals as this Motion.

C. There is a Sufficient Basis for Judgment in the Pleadings

The Court next looks to the Plaintiff's pleadings to determine, under FED. R. CIV. P. 8(a), whether there is a sufficient basis for the entry of default judgments. *Zeqiri*, at *7. In light of the entry of defaults, Defendants are deemed to have admitted the well-pleaded allegations set forth in the Receiver's Complaint. *Id.* at *6; *Nishimatsu Const. Co.* 515 F.2d at 1206. As detailed below, the allegations in the Complaint conform with the requirements of Rule 8[5] and provide a sufficient basis upon which the Court may enter default judgments with respect to the Receiver's causes of action Counts I and II.

1. Count I: TUFTA §24.005(a)(1)

TUFTA provides that "a transfer made … by a debtor is fraudulent as to a creditor … if the debtor made the transfer … with actual intent to hinder, delay, or defraud any creditor of the debtor." TUFTA §24.005(a)(1). If the debtor's actual intent to defraud[6] is established, then the Receiver is entitled to "avoidance of the transfer" -- namely to "recover judgment for the value of the asset transferred." *Id.* §§24.008(a)(1), 24.009(b). Such "judgment may be entered against: (1) the first transferee of the asset or the person for whose benefit the transfer was made; or (2) any subsequent transferee…." *Id.* §24.009(b). The Receiver seeks judgment against Kyle and AQS as initial transferees, and against Kyle with respect to transfers made to AQS for Kyle's benefit. Compl. ¶82.

[5] "A pleading that states a claim for relief must contain: (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought, which may include relief in the alternative or different types of relief." FED. R. CIV. P. 8(a).

[6] The intent at issue in subsection 24.005(a)(1) "focuses on the intent of the transferor rather than the transferee." *In re IFS Fin. Corp.*, 417 B.R. 419, 438 (Bankr. S.D. Tex. 2009). In fact, "'the transferees' knowing participation is irrelevant under [TUFTA]' for purposes of establishing the [actual fraud] premise …." *SEC v. Res. Dev. Int'l, LLC*, 487 F.3d 295, 301 (5th Cir. 2007) (quoting *Warfield v. Byron*, 436 F.3d 551, 559 (5th Cir. 2006)).

a. **Transfers from the Vendetta Ponzi scheme were made with actual intent to defraud**

Pursuant to controlling decisions of the U.S. Court of Appeals for the Fifth Circuit, "proving that [a transferor] operated as a Ponzi scheme establishes the fraudulent intent behind the transfers it made." *Janvey v. Brown*, 767 F.3d 430, 439 (5th Cir. 2014) (quoting *Janvey v. Alguire*, 647 F.3d 585, 598 (5th Cir. 2011); *Res. Dev. Int'l*, 487 F.3d at 301). Transfers made from a Ponzi scheme "are presumptively made with intent to defraud, because a Ponzi scheme is, as a matter of law, insolvent from inception." *Quilling v. Schonsky*, 247 F. App'x 583, 586 (5th Cir. 2007) (affirming summary judgment in favor of receiver) (citing *Byron*, 436 F.3d at 558).

The Receiver alleges in detail in his Complaint that Enforcement Action Defendants Helms and Kaelin perpetrated a fraudulent Ponzi scheme through Vendetta, Vendetta Management, Technicolor, Haley Oil, and several other entities under their control. Compl. ¶¶3, 20 – 45; *see also* Dkt. 16-1 at 3 – 9, 17 – 24 (Declaration of Danielle Supkis Cheek in support of Motion for Partial Summary Judgment against Samouce). These Complaint allegations are judicially admitted by Defendants Kyle and AQS. *Nishimatsu Const. Co.* 515 F.2d at 1206. Furthermore, this Court twice previously has ruled that Helms and Kaelin operated a Ponzi scheme. *SEC v. Helms*, 2015 U.S. Dist. LEXIS 29149, at *19 – 22 (W.D. Tex. Mar. 10, 2015) ("*Helms I*"); *SEC v. Helms*, 2015 U.S. Dist. LEXIS 110758, at *39 – 42 (W.D. Tex. Aug. 21, 2015) ("*Helms II*"). Moreover, upon evidence of the extensive comingling and conflation of assets of the Vendetta Defendants, including the declaration of Danielle Supkis Cheek [EA Dkt. #60-2], the Court granted the Receiver's Motion to Amend the Order Appointing Receiver [EA Dkt. #60] through the First Amended Order Appointing Receiver. EA Dkt. #76. Accordingly, all transfers from the Vendetta Ponzi scheme, including the transfers at issue herein, were made

from the Vendetta Ponzi scheme, and therefore were presumptively made with fraudulent intent and are avoidable under TUFTA.

b. **Transfers were made from the Vendetta Ponzi scheme to Kyle and AQS, and for Kyle's Benefit**

The Receiver alleges that AQS received $672,236.55 in fraudulent transfers made directly to it by Vendetta (Compl. Exhibit A)[7], and that Kyle received $122,000 in fraudulent transfers made directly to him by Vendetta, Vendetta Management, Haley Oil and Technicolor. Compl. Exhibit A.[8] The Receiver further alleges that one-half of the $672,236.55 fraudulently transferred to AQS, equaling $336,118.28, was transferred for Kyle's benefit, as Samouce and Kyle agreed to divide the compensation they received from Vendetta (through AQS) on a 50% / 50% basis. Compl. ¶53, 82. These alleged transfers are judicially admitted by Defendants Kyle and AQS. *Nishimatsu Const. Co.* 515 F.2d at 1206. Moreover, these transfers have been verified and vouched to bank statements by DSC PLLC, the forensic accounting firm engaged by the Receiver. *See* Cheek Declaration, attached hereto.

Because these transfers were made from a Ponzi scheme, they were presumptively made with fraudulent intent and are avoidable by the Receiver under TUFTA. *Brown*, 767 F.3d at 439.

c. **TUFTA Affirmative Defense is Not Available to Defendants**

Defendants' judicial admissions establish that they are not entitled to the TUFTA affirmative defense with respect to transfers made to them and for their benefit. TUFTA offers

---

[7] The Receiver has discovered that certain of the transfers to AQS alleged in the Complaint (Exhibit A) were double-counted in Vendetta accounting records. Accordingly, the Receiver asserts that transfers of $672,236.55 were made to AQS as detailed in the attached Declaration of Danielle Supkis Cheek ("Cheek"), president of D. Supkis Cheek, PLLC ("DSC PLLC"), the forensic accounting firm engaged by the Receiver. *See also* Dkt. 16-1 at 24 – 26.

[8] The sum of the transfers to Kyle alleged in Exhibit A to the Complaint equals $122,000, notwithstanding that the allegations in the Complaint and in Exhibit A misstate the sum of these transfers as $104,000. *See also* Cheek Declaration, attached hereto.

transferees an affirmative defense if they *both* exchanged the transferred asset for reasonably equivalent value, *and* received the transfer with good faith. TUFTA §24.009(a). In other words, each prong of the affirmative defense must be established to avoid judgment, with the Defendants bearing the burden of doing so. See *Janvey v. Alguire*, 846 F. Supp. 2d 662, 672 (N.D. Tex. 2011) ("A transferee invoking [the affirmative defense in TUFT A §24.009(a)] has the burden to show *both* objective good faith *and* the exchange of reasonably equivalent value." (emphasis added)); *Byron*, 436 F.3d at 560 ("We need not draw a conclusion on good faith, however, as [defendant's] defense would still fail because he did not receive the transfers … in exchange for reasonably equivalent value.").

1) *AQS and Kyle did not exchange reasonably equivalent value for the transfers they received*

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

In this regard, the alleged transfers to AQS -- totaling $672,236.55 -- were sales commissions for Kyle's (and Defendant Samouce's) "broker services" recruiting victims into the Ponzi scheme. Compl. ¶¶22, 55, 63. These amounts were transferred pursuant to the "Proposal for raising equity for Vendetta Royalty Partners Ltd." [*see* Dkt. 16-13], executed by Kyle on behalf of AQS. Compl. ¶53. Of the $122,000 alleged to have been transferred to Kyle, $95,500 is alleged to have been transferred to him as sales commissions paid for "broker services". Compl. Exhibit A. Default judgment must be entered with respect to these transfers to AQS and Kyle (and to AQS for Kyle's benefit).

Additionally, Kyle cannot establish the exchange of reasonably equivalent value with respect to the $26,500 in transfers purportedly paid to him from Technicolor and Haley Oil as rent for Kaelin's daughter. *See* Compl. at Exhibit A (denoted with asterisks).

"Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied…." TUFTA §24.004(a). Consideration which has no utility from the creditor's perspective does not satisfy the statutory definition of 'value.'" *Res. Dev. Int'l,* 487 F.3d at 301; *In re Hinsley*, 201 F.3d 638, 644 (5th Cir. 2000). "The primary consideration in analyzing the exchange of value for any transfer is the degree to which the transferor's net worth is preserved." *Byron*, 436 F.3d at 560 (citing *Butler Aviation Int'l v. Whyte*, 6 F.3d 1119, 1127 (5th Cir. 1993)).

The transfers to Kyle purportedly made for the payment of rent on behalf of Kaelin's daughter had "no utility from the creditor's perspective," namely the Receivership Estate. *Res. Dev. Int'l*, *supra*, at 301. The degree to which the net worth of the transferors -- Technicolor and Haley Oil -- was preserved was none: these transferors did not receive anything for these transfers to Kyle, such as the use of the property for which rent purportedly was being paid. The

net worth of these transferors decreased, with no corresponding increase. Accordingly, the affirmative defense is not available because Kyle cannot establish the exchange of reasonably equivalent value as a matter of law for these transfers.

Because the fraudulent transfers made from the Vendetta Ponzi scheme to (and for the benefit of) Kyle and AQS are conclusively established, and the absence of any exchange of reasonably equivalent value also is established, the Court may enter default judgments against Defendants as requested herein -- without addressing the issue of good faith. *Byron*, 436 F.3d at 560 ("We need not draw a conclusion on good faith, however, as his defense would still fail because he did not receive the transfers … in exchange for reasonably equivalent value.").

2) *AQS and Kyle did not receive the transfers at issue with objective good faith*

Although the Court need not address whether Defendants acted with good faith, the judicially admitted facts nevertheless establish that Kyle and AQS lacked the "objective" good faith required under TUFTA in receipt of these transfers.

Objective good faith is "is determined by looking at what the transferee 'objectively knew or should have known instead of examining the transferee's actual knowledge from a subjective standpoint.'" *Byron*, 436 F.3d at 560 (quoting *In re Sherman*, 67 F.3d 1348, 1355 (8th Cir. 1995)). Put another way, "[o]ne lacks the good faith that is essential to the [TUFTA] defense to avoidability if possessed of enough knowledge of the actual facts to induce a reasonable person to inquire further about the transaction." *In re Pace*, 456 B.R. 253, 275 (Bankr. W.D. Tex. 2011) (quoting *SEC v. Cook*, 2001 U.S. Dist. LEXIS 2601, 2001 WL 256172, at *4 (N.D. Tex. Mar. 8, 2001)).

a) Kyle and AQS were not registered or otherwise licensed to offer Vendetta securities

Kyle has never ben licensed or otherwise registered for the offer or sale of securities. Compl. ¶¶7, 11, 46, 48. AQS was not registered as a broker dealer for the offer and sale of Vendetta securities by Kyle (or, for that matter, Samouce). *Id.*, ¶¶49, 51. Pursuant to the Exchange Act, a broker or dealer effecting transactions in, or inducing or attempting to induce the purchase or sale of, any security is acting unlawfully unless that broker or dealer is registered to do so. 15 U.S.C. § 78o(a)(1).[9]

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

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

and played a central role in securing a hefty investment of $3,050,000. *Id.*, at *53. These activities were held to be analogous to the conduct at issue in *StratoComm*, and thus violations of the Exchange Act. *Id.* at *51 – 53.

For the same reasons, Kyle and AQS unlawfully effected transactions in, or induced or attempted to induce the purchase or sale of, Vendetta securities. Like Sellers, Kyle was hired to solicit investors to purchase limited-partnership interests in Vendetta through AQS (Compl. ¶¶6 – 8, 22, 46); contacted and relayed the transaction terms to numerous investors (Compl. ¶¶54 – 57); and received large transaction-based commissions that depended on how much money he raised through AQS. Compl. ¶¶52 – 53, 55. Kyle (along with Samouce, each acting through AQS), raised over $10,000,000 for Vendetta (Compl. ¶57), compared to the $3,050,000 secured by Sellers and Barrera. *Helms II*, at *53.[10] Accordingly, Kyle was a broker not registered with the SEC to offer or sell Vendetta securities, and acted unlawfully through AQS. Therefore, Kyle and AQS did not receive the transfers at issue with objective good faith.

b) Kyle and AQS knew that the commissions they received were in excess of the limits disclosed to potential investors

Vendetta represented to potential investors through the PPM that "Promotional Expenses" were limited to 0.10% of investor proceeds raised. Compl. ¶¶53, 55, 63. With respect to the PPM, Kyle received, reviewed and transmitted it to potential investors in his promotion of the Vendetta Offering through AQS. Compl. ¶¶53 – 54.

[10] In fact, AQS sued Vendetta asserting damages for its failure to pay compensation upon the basis that Samouce and Kyle raised over $10,000,000 in the Vendetta Offering *See* Dkt. 16-15, Petition (*Applied Quantitative Solutions, LLC v. Vendetta Royalty Partners, Ltd.*, Case No. D-1-GN-13-001629 (353rd Judicial District Court for Travis County, Texas)).

Kyle, and therefore AQS, knew of the contents of the PPM, including the limits placed on promotional expenses. *Id.*; *see also Helms II*, at *49 ("The fact that Sellers and Barrera both admitted to receiving the PPM and providing [an investor] with the PPM charges them with knowing that their commissions were excessive.") (citations omitted). Notwithstanding this knowledge, Kyle promoted the Vendetta Offering through AQS in exchange for commissions of 6% and higher. Compl. ¶53. This contradiction "would excite the suspicions of a person of ordinary prudence and put him on inquiry of the fraudulent nature" of the Vendetta Offering. *GE Capital Commer., Inc. v. Wright & Wright, Inc.*, 2011 U.S. Dist. LEXIS 3962, at *16 (N.D. Tex. Jan. 13, 2011). Kyle, and therefore AQS, cannot establish objective good faith in light of such contrary conduct.

Because the fraudulent transfers made from the Vendetta Ponzi scheme to (and for the benefit of) Kyle and AQS are conclusively established, and the absence of any exchange of reasonably equivalent value or good faith also is established, the Court should enter default judgments against Defendants as requested herein.

2. Unjust Enrichment

The funds received by Kyle and AQS from the Vendetta Ponzi scheme also are subject to disgorgement under the equitable theory of unjust enrichment. "'Unjust enrichment is an equitable principle holding that one who receives benefits unjustly should make restitution for those benefits,' regardless of whether the defendant engaged in wrongdoing." *Janvey v. Alguire*, 846 F. Supp. 2d 662, 673 (N.D. Tex. 2011) (quoting *Tex. Integrated Conveyor Sys., Inc. v. Innovative Conveyor Concepts, Inc.*, 300 S.W.3d 348, 367 (Tex. App.—Dallas 2009, pet. denied)). "Unjust enrichment occurs when the person sought to be charged has wrongfully secured a benefit or has passively received one which it would be unconscionable to retain." *Id.*

"A party may recover under the unjust enrichment theory when one person has obtained a benefit from another by fraud, duress, or the taking of an undue advantage." *Heldenfels Bros. v. City of Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992) (citations omitted).

In this regard, it is indisputable that Vendetta received money from investors by fraud. *See supra* at §II(C)(1)(a). Kyle and AQS unlawfully promoted the Vendetta Ponzi scheme as an unregistered broker or dealer, causing investors to transfer their funds into the Vendetta fraudulent Ponzi scheme. *See supra* at §II(C)(1)(c)(2)(a). Kyle and AQS received a substantial benefit -- the commissions paid to them and for Kyle's benefit -- for recruiting victims into the Vendetta Ponzi scheme upon terms in conflict with representations made to investors. *See supra* at §II(C)(1)(c)(2)(b). Accordingly, Kyle and AQS either (a) wrongfully secured a benefit or (b) passively received one which it would be unconscionable to retain. *Villarreal v. Grant Geophysical, Inc.*, 136 S.W.3d 265, 270 (Tex.App.—San Antonio 2004). Upon either basis, Kyle and AQS must disgorge the benefits they obtained.

Moreover, if these transfers were received passively, it would be unconscionable for Kyle and AQS to retain these benefits from promoting the Vendetta Offering. The investors Kyle and AQS recruited into the Vendetta Offering were defrauded by Helms and Kaelin to the tune of over $10,000,000. Compl. ¶57; *see also* Dkt. 16-15. Kyle and AQS directly profited from Helms' and Kaelin's fraudulent conduct, to the detriment of these investors -- indeed with these investors' money. It would be unconscionable for Kyle and AQS to retain the benefits of Helms' and Kaelin's fraud, while the investors they recruited into the scheme can only make claims for their losses against the Receivership Estate. Indeed the disgorgement of these funds from Kyle and AQS would benefit these defrauded investors by increasing the assets available for the ultimate distribution to claimants by the Receiver.

The judicially admitted facts show that investors were defrauded through their subscriptions to the Vendetta Offering, and that Kyle and AQS -- whether wrongfully or passively -- received a benefit from this fraud which would be unconscionable for them to retain to the detriment of defrauded investors. Accordingly, the Receiver is entitled to default judgments upon his claim for unjust enrichment, and Kyle and AQS must disgorge the funds transferred from the Vendetta Ponzi scheme to them, or for their benefit.

D. <u>The Receiver is Entitled to Relief in the Form of Monetary Judgments Against Kyle and AQS</u>

"A defendant's default concedes the truth of the [Complaint's] allegations … concerning [his] liability, but not damages." *Ins. Co. of the W. v. H&G Contrs., Inc.*, Case No. C-10-390, 2011 U.S. Dist. LEXIS 114940, at *4, 2011 WL 4738197 (S.D. Tex. Oct. 5, 2011) (citing *Jackson v. FIE Corp.*, 302 F.3d 515, 521, 524-25 (5th Cir. 2002)). However, the pleadings, affidavits, and supporting documents allow the Court to determine damages by mathematical calculation. *Id.*; *In re Frame*, 6 F.3d at 310. Accordingly, a hearing is not necessary. *Id.*; *Zeqiri*, at *5.

i. <u>Damages from Fraudulent Transfers to (and for the benefit of) Kyle, and to AQS</u>

The Receiver alleges that the transfers made from the Vendetta Ponzi scheme to Kyle and AQS, and for Kyle's benefit, may be avoided. Compl. ¶¶46, 55, 57, 82, Exhibit A. The Receiver alleges that between July 30, 2011 and May 3, 2013, Kyle received transfers from Vendetta, Vendetta Management, Technicolor, and Haley Oil totaling $122,000. Compl. Exhibit A; Cheek Declaration, attached hereto. The Receiver further alleges that between August 2, 2011 and August 22, 2012, AQS received transfers from Vendetta totaling $672,236.55. *Id.* With respect to the transfers from Vendetta to AQS, one half of these amounts -- $336,118.27 -- were made to

AQS for Kyle's benefit. Compl. ¶53; *see also* Dkt. 16-3 (Kyle Deposition) at 31:18 – 24; Dkt. 16-2 (Samouce Deposition) at 36:14, 36:21 – 22, 105:18 – 24, 106:3 – 10, 113:16 – 114:22.

Accordingly, the Receiver is entitled to the entry of default judgment against Kyle in the amount of $458,118.27 ($122,000 + $336,118.27), and against AQS in the amount of $672,236.55.

ii. Pre- and Post-Judgment Interest

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

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

In calculating pre-judgment interest on state law claims, such as TUFTA, the Court looks to state law. *Canal Ins. Co. v. First. Gen. Ins. Co.*, 901 F.2d 45, 47 (5th Cir. 1990). In Texas, pre-judgment interest "accrues at the rate for postjudgment interest," *Johnson & Higgins*, 962 S.W.2d at 532, and is calculated as the greater of the prime rate published by the Board of Governors of the Federal Reserve System, or 5%, per year. See *Gunnerman*, 643 F.3d at 415 (citing TEX. FIN. CODE §304.003). The current prime rate published by the Board of Governors of the Federal Reserve System is 3.25%, and has been since 2009. Goforth Decl. ¶4. Accordingly, the Court should assess prejudgment interest at an annual rate of 5% a year. Such interest calculates to $16.71 per day with respect to the $122,000 transferred to Kyle, and $46.04 per day with respect to the $336,118.28 transferred for Kyle's benefit. Goforth Decl., ¶4. Such interest calculates to $92.09 per day with respect to the $672,236.55 transferred to AQS. *Id*.

Pre-judgment interest begins to accrue on the earlier of 180 days after the date the defendant receives written notice of a claim, or the day suit is filed. *Worthington Nat'l Bank*, at *56 (citing *Primrose Operating Co. v. National Am. Ins. Co.*, 382 F.3d 546, 564 (5th Cir. 2004)). The Receiver first made demand upon Kyle for the return of the fraudulent transfers made to him on March 27, 2014. Goforth Decl., ¶2. The Receiver first made demand upon AQS for the return of the fraudulent transfers made to it on May 19, 2014. Goforth Decl., ¶3. Accordingly, the Court should impose pre-judgment interest from September 23, 2014 with respect to the $122,000 transferred directly to Kyle, and from November 15, 2014 with respect to the $336,118.28 transferred for Kyle's benefit and the $672,236.55 transferred to AQS, respectively -- each above date being 180 days following each respective demand. Goforth Decl., ¶4, **Exhibit 3**. Such interest should accrue until the date preceding entry of default judgments.

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

WHEREFORE, premises considered, the Receiver requests that the Court enter default judgments (1) against Defendant Mark Kyle in the amount of $458,118.28 plus $16.71 per day from September 23, 2014 until the date of default judgment, plus $46.04 per day from November 15, 2014 until the date of default judgment; plus post-judgment interest pursuant to 28 U.S.C. § 1961; and (2) against Defendant Applied Quantitative Solutions, LLC in the amount of $672,236.55 plus $92.09 per day from November 15, 2014 until the date of default judgment; plus post-judgment interest pursuant to 28 U.S.C. § 1961. The Receiver further requests any and all such other and further relief, at law and in equity, as the Court deems proper under the circumstances.

Dated: October 27, 2015

Respectfully submitted,

THE TAYLOR LAW OFFICES, P.C.

By: /s/ Andrew M. Goforth

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

4550 Post Oak Place Drive, Suite 241
Houston, Texas 77027
Tel: (713) 626-5300
Fax: (713) 402-6154

COUNSEL FOR RECEIVER

CERTIFICATE OF SERVICE

On October 27, 2015, I served the foregoing document on all parties as listed below by U.S. Mail, Electronic Return Receipt Requested, pursuant to Federal Rule of Civil Procedure 5(b)(2)(C).

Via U.S. Certified Mail, Electronic Return Receipt Requested:

Michael Samouce
Mark Kyle
Applied Quantitative Solutions, LLC
2102 Alta Vista Avenue
Austin, TX 78704

/s/ Andrew M. Goforth
Andrew M. Goforth

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

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

DECLARATION OF DANIELLE SUPKIS CHEEK

---

1) I, Danielle Supkis Cheek, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the following is true and correct, and that I am competent to testify to the matters stated herein.

2) I am currently the President of D. Supkis Cheek, PLLC ("DSC PLLC") based in Houston, Texas. I have been the President of DSC PLLC since August, 2013. I am a Certified Public Accountant (CPA) in the State of Texas, a Certified Fraud Examiner, and a Certified Valuation Analyst.

3) As part of my duties with DSC PLLC, I regularly perform audits and forensic accounting investigations including analyzing the books and records of various companies and individuals in order to evaluate financial transactions to determine the source and use of funds as represented by those books and records. Such an analysis may include summarizing the information to produce assorted schedules, charts, and/or reports.

4) Thomas L. Taylor III, the Court-appointed Receiver in the above-styled action, has engaged DSC PLLC to provide accounting, forensic, and/or financial expertise as directed. Such tasks include assisting with the analysis of the books and records of the Defendants, and aiding with the tracing of the assets of each of the Defendants.

5) As part of my duties for the Receiver, I, along with other DSC PLLC employees, have reviewed certain QuickBooks accounting files that were located on various electronic media held by either the Defendants or related entities. In addition, we have reviewed bank statements and

other supporting documents that were located in the Defendants' offices and provided by the Receiver.

6) The following acronyms also are used in the tables and figure below: Vendetta Royalty Partners, Ltd. ("VRP"), Vendetta Royalty Management, LLC ("VRM"), Barefoot Minerals ("BFM"), Haley Oil Company, Inc. ("HOC"), Iron Rock Royalty Partners, LP ("IRRP"), Iron Rock Royalty Management, LLC ("IRRM"), Technicolor Minerals, GP ("TCM"), and Robert A. Helms and Janniece S. Kaelin ("RAH/JSK").

Kyle and AQS Transactions

7) Table 1 below lists transactions related to Mark Kyle and Applied Quantitative Solutions (AQS) found in the books and records of VRP and related entities that have been vouched to bank statements.

Table 1: Kyle and AQS Transactions

Person	Entity	Date	Name	Memo	Split	Amount
Kyle	VRM	07/30/2011	Mark Kyle	Commision - to be recoded PAID IN CASH	2030 · A/P - VRP	9,950.00
Kyle	TCM	7/30/2011	AUSTIN TELCO CHECKING	Mark A. Kyle - advance on commission VRP	MINERAL BUSINESS : Business Expenses	9,950.00
Kyle	TCM	7/30/2011	TechnicolorMinerals@Telco	Mark A. Kyle - advance on commission VRP	MINERAL BUSINESS : Business Expenses	9,950.00
Kyle	VRM	08/09/2011	Mark Kyle	Promotion	2030 · A/P - VRP	2,650.00
Kyle	HOC	01/04/2012	Mark Kyle	Returned Wire for VRP Promotion	1000- BOA Checking-	9,000.00
Kyle	HOC	01/04/2012	Mark Kyle	Pre-pay Chelsea Upshaw's rent Jan - June 2012	A/P Janniece Kaelin	9,000.00
Kyle	HOC	01/05/2012	Mark Kyle		A/P VRP	9,000.00
Kyle	VRP	03/07/2012	Mark Kyle		6740 · Promotion Expense	45,000.00
Kyle	TCM	9/5/2012	TechnicolorMinerals@Telco	JSK for September rent	MINERAL BUSINESS : Owner Draw	1,500.00
Kyle	TCM	10/2/2012	TechnicolorMinerals@Telco	JSK for October rent, confirm check # !!!!!!!!!!	MINERAL BUSINESS : Owner Draw	2,000.00
Kyle	TCM	11/7/2012	TechnicolorMinerals@Telco	JSK for November rent	MINERAL BUSINESS : Owner Draw	2,000.00
Kyle	TCM	12/1/2012	TechnicolorMinerals@Telco	JSK for December rent for Chelsea	MINERAL BUSINESS : Owner Draw	2,000.00
Kyle	TCM	1/6/2013	TechnicolorMinerals@Telco	JSK for January 2013 rent	MINERAL BUSINESS : Owner Draw	2,000.00
Kyle	TCM	2/2/2013	TechnicolorMinerals@Telco	JSK for Feb 2013 rent	MINERAL BUSINESS : Owner Draw	2,000.00
Kyle	TCM	3/1/2013	TechnicolorMinerals@Telco	JSK for March 2013 rent	MINERAL BUSINESS : Owner Draw	2,000.00
Kyle	TCM	4/1/2013	TechnicolorMinerals@Telco	JSK for April 2013 rent	MINERAL BUSINESS : Owner Draw	2,000.00
Kyle	TCM	5/3/2013	TechnicolorMinerals@Telco	JSK for Chelsea	MINERAL BUSINESS : Owner Draw	2,000.00
					Kyle Total:	**122,000.00**

AQS	VRP	08/02/2011	Applied Quatitative Solutions		6740 · Promotion Expense	19,500.00
AQS	VRP	8/16/2011	Applied Quatitative Solutions,	commission	6740 · Promotion Expense	18,000.00
AQS	VRP	8/19/2011	Applied Quatitative Solutions,	commission	6740 · Promotion Expense	12,000.00
AQS	VRP	8/25/2011	Applied Quatitative Solutions,	commission	6740 · Promotion Expense	69,000.00
AQS	VRP	10/14/2011	Applied Quatitative Solutions,	commission	6740 · Promotion Expense	60,000.00
AQS	VRP	10/17/2011	Applied Quatitative Solutions,	commission	6740 · Promotion Expense	60,000.00
AQS	VRP	11/14/2011	Applied Quatitative Solutions,		6740 · Promotion Expense	36,000.00
AQS	VRP	12/22/2011	Applied Quatitative Solutions	commission	6740 · Promotion Expense	18,000.00
AQS	VRP	12/28/2011	Applied Quatitative Solutions,	commission	6740 · Promotion Expense	18,000.00
AQS	VRP	01/12/2012	Applied Quatitative Solutions,		6740 · Promotion Expense	25,000.00
AQS	VRP	01/24/2012	Applied Quatitative Solutions		6740 · Promotion Expense	23,800.00
AQS	VRP	02/02/2012	Applied Quatitative Solutions,		6740 · Promotion Expense	62,980.00
AQS	VRP	05/01/2012	Applied Quatitative Solutions,		6740 · Promotion Expense	12,000.00
AQS	VRP	05/04/2012	Applied Quatitative Solutions,		6740 · Promotion Expense	12,000.00

AQS	VRP	05/11/2012	Applied Quatitative Solutions,		6740 · Promotion Expense	4,200.00
AQS	VRP	05/23/2012	Applied Quatitative Solutions,		6740 · Promotion Expense	12,000.00
AQS	VRP	05/25/2012	Applied Quatitative Solutions,		6740 · Promotion Expense	4,500.00
AQS	VRP	6/11/2012	Applied Quatitative Solutions,	commission	6740 · Promotion Expense	2,256.55
AQS	VRP	6/16/2012	Applied Quantitative Solutions	Advance against VRP commission	6740 · Promotion Expense	20,000.00
AQS	VRP	06/16/2012	Applied Quantitative Solutions	Advance	6740 · Promotion Expense	15,000.00
AQS	VRP	06/16/2012	Applied Quantitative Solutions	Advance	6740 · Promotion Expense	5,000.00
AQS	VRP	6/19/2012	Applied Quantitative Solutions	Advance against VRP commission	6740 · Promotion Expense	50,000.00
AQS	VRP	06/19/2012	Applied Quantitative Solutions		6740 · Promotion Expense	15,000.00
AQS	VRP	06/21/2012	Applied Quantitative Solutions	Advance	6740 · Promotion Expense	10,100.00
AQS	VRP	06/21/2012	Applied Quantitative Solutions	Advance	6740 · Promotion Expense	9,900.00
AQS	VRP	7/2/2012	Applied Quantitative Solutions	Advance against VRP commission	6740 · Promotion Expense	10,000.00
AQS	VRP	07/23/2012	Applied Quantitative Solutions	Advance	6740 · Promotion Expense	2,000.00
AQS	VRP	07/23/2012	Applied Quantitative Solutions		6740 · Promotion Expense	2,000.00
AQS	VRP	08/03/2012	Applied Quantitative Solutions	Advance	6740 · Promotion Expense	4,000.00
AQS	VRP	08/22/2012	Applied Quantitative Solutions	Advance	6740 · Promotion Expense	60,000.00
					AQS Total:	**672,236.55**
					Combined Kyle & AQS Total:	**794,236.55**

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 21st day of October, 2015, in Houston, Texas.

Danielle Supkis Cheek, CPA, CFE, CVA

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,	§	Civil Action No. 15-cv-627-LY
v.	§	
MICHAEL SAMOUCE, MARK KYLE and APPLIED QUANTITATIVE SOLUTIONS, LLC, Defendants.	§	

DECLARATION OF ANDREW M. GOFORTH

I, Andrew M. Goforth, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the following is true and correct, that I am over the age of 18 and that I am competent to testify to the matters stated herein.

1. I am an attorney with the law firm The Taylor Law Offices, P.C., counsel for Court-appointed Receiver Thomas L. Taylor III ("Receiver") in the action styled *SEC v. Helms, et al.*, No. 1:13-cv-1036-ML (W.D. Tex. 2013) (the "Enforcement Action") ("EA Dkt. #_").

2. Attached hereto as **Exhibit 1** is a true and correct copy of a letter from the Receiver to Defendant Kyle dated March 27, 2014 asserting that Kyle had received fraudulent transfers from the Vendetta Ponzi scheme and demanding the return of those funds to the Receivership Estate.

3. Attached hereto as **Exhibit 2** is a true and correct copy of a letter from the Receiver to Defendant Samouce dated May 19, 2014 asserting that Samouce and AQS had received fraudulent transfers from the Vendetta Ponzi scheme and demanding the return of those funds to the Receivership Estate.

4. Attached hereto as **Exhibit 3** is a calculation of pre-judgment interest on the actual damages sought in the Receiver's Motion for Entry of Default Judgments.

a. With respect to Kyle, the Receiver seeks $458,118.27 in actual damages, pre-judgment interest on which equals $16.71 per day from September 23, 2014 through November 14, 2014 (solely with respect to the $122,000 transferred directly to Kyle) and $62.75 per day ($16.71 + $46.04) from November 15, 2014 through the date of judgment (with respect to the $122,000 transferred directly to Kyle and the $336,118.28 transferred to AQS for Kyle's benefit).

b. With respect to AQS, the Receiver seeks $672,236.55 in actual damages, pre-judgment interest on which equals $92.09 per day from November 15, 2014 through the date of judgment.

5. Attached hereto as **Exhibit 4** is a true and correct copy of a printout from the Board of Governors of the Federal Reserve System website showing historical prime rates published by the Board, which equal 3.25%, and have since 2009 (available at http://www.federalreserve.gov/datadownload/Output.aspx?rel=H15&series=8193c94824192497563a23e3787878ec&lastObs=&from=&to=&filetype=csv&label=include&layout=seriescolumn.

I state under penalty of perjury that the foregoing is true and correct.

Executed on October 27, 2015.

/s/ Andrew M. Goforth
Andrew M. Goforth

Exhibit 1

THE TAYLOR LAW OFFICES
A PROFESSIONAL CORPORATION

May 19, 2014

VIA EMAIL: msamouce@gmail.com
VIA USPS CM/RRR: 7012 2210 0001 6758 1957

Michael Samouce
Applied Quantitative Solutions
401 Congress Ave., Ste. 1650
Austin, TX 78701

Re: *SEC v. Robert A. Helms, Janniece S. Kaelin, Deven Sellers, Roland Barrera, Vendetta Royalty Partners, Ltd., Vendetta Royalty Management, LLC, Vesta Royalty Partners, LP, Vesta Royalty Management, LLC, Iron Rock Royalty Partners, LP, Iron Rock Royalty Management, LLC, Arcady Resources, LLC, Barefoot Minerals, G.P., G3 Minerals, LLC, Haley Oil Company, Inc., Lake Rock, LLC, SeBud Minerals, LLC and Technicolor Minerals, G.P., Defendants, and William L. Barlow and Global Capital Ventures, LLC, Relief Defendants*, Civil Action No. 1:13-cv-01036-LY, in the United States District Court for the Western District of Texas, Austin Division

Dear Mr. Samouce,

As you may be aware, on December 3, 2013 the Securities and Exchange Commission (the "Commission") commenced the above-referenced enforcement action in the United States District Court for the Western District of Texas, Austin Division, alleging, among other things, that Robert Helms, Janniece Kaelin and others operated a fraudulent scheme through the entities Vendetta Royalty Partners, Ltd., Vendetta Royalty Management, LLC, Vesta Royalty Partners, LP, Vesta Royalty Management, LLC, Iron Rock Royalty Partners, LP, Iron Rock Royalty Management, LLC, Arcady Resources, LLC, Barefoot Minerals, G.P., G3 Minerals, LLC, Haley Oil Company, Inc., Lake Rock, LLC, SeBud Minerals, LLC and Technicolor Minerals, G.P. (the "Receivership Entities").

The United States District Court granted the relief sought by the Commission, including the entry of an Order appointing Thomas L. Taylor III ("Receiver") as Receiver in the above-referenced case (Dkt. No. 11) (the "Order Appointing Receiver," available at http://www.vendettaroyaltyreceivership.com/courtfilings.html) for Robert A. Helms, Janniece S. Kaelin, Deven Sellers, Roland Barrera, the Receivership Entities, and all entities they own or control (collectively, the "Defendants"). Order Appointing Receiver, ¶2. The Receiver is empowered by the Order Appointing Receiver to marshal and preserve all assets that "(a) are attributable to funds derived from investors or clients of the Defendants; (b) are held in constructive trust for the Defendants; (c) were fraudulently transferred by the Defendants; or (d) may otherwise be includable as assets of the estates of the Defendants." Order Appointing Receiver, p. 2.

4550 POST OAK PLACE, SUITE 241
HOUSTON, TEXAS 77027
TELEPHONE: 713.626.5300
FACSIMILE: 713.402.6154
WWW.TLTAYLORLAW.COM

You are receiving this letter because Receivership records indicate that you received compensation and/or reimbursed expenses for introducing investors into the investment programs sponsored by the Receivership Entities. Specifically, Receivership records indicate that you received commissions, fees and/or payments in the amount of $722,236.55.

Pursuant to the Texas Uniform Fraudulent Transfer Act ("TUFTA"), TEX. BUS. & COM. CODE §§24.001 *et seq.*, when a debtor transfers assets "with actual intent to hinder, delay, or defraud any creditor of the debtor," the creditor may avoid the transfer. TUFTA §§24.005(a)(1), 24.008(a)(1). Applicable decisions of the United States Court of Appeals for the Fifth Circuit make clear that "proving that [a transferor] operated as a Ponzi scheme establishes the fraudulent intent behind the transfers it made." *Janvey v. Alguire*, 647 F.3d 585, 598 (5th Cir. 2011) (quoting *SEC v. Res. Dev. Int'l, LLC*, 487 F.3d 295, 301 (5th Cir. 2007)); see also *Warfield v. Byron*, 436 F.3d 551, 558-59 (5th Cir. 2006) (citing *Scholes v. Lehmann*, 56 F.3d 750 (7th Cir. 1995)).

TUFTA does afford a transferee the affirmative defense that the transfer was both (1) received in good faith, and (2) made for an exchange of reasonably equivalent value. TUFTA §24.009(a). However, under Fifth Circuit case law, providing services in furtherance of a Ponzi scheme, such as introducing new investors into the scheme, does not confer reasonably equivalent value. See *Warfield*, 436 F.3d at 555, 560 ("It takes cheek to contend that in exchange for the payments he received, the … Ponzi scheme benefitted from his efforts to extend the fraud by securing new investments."). Furthermore, consideration which has no utility from the creditor's perspective does not satisfy the statutory definition of "value." *SEC v. Res. Dev. Int'l, LLC*, 487 F.3d at 301; *In re Hinsley*, 201 F.3d 638, 644 (5th Cir. 2000). "The primary consideration in analyzing the exchange of value for any transfer is the degree to which the transferor's net worth is preserved." *Warfield*, 436 F.3d at 560.

Pursuant to applicable Texas statutes and decisions of the U.S. Court of Appeals for the Fifth Circuit, it is clear that any commissions, fees or other assets you received for introducing investors into the Vendetta investment program were fraudulently transferred from Receivership Entities, which made these transfers "with actual intent to hinder, delay or defraud" those Entities' investors and creditors. Furthermore, such transfers lacked the required exchange of reasonably equivalent value to the transferor Receivership Entity.

As the Receiver, I am "authorized, empowered and directed to … institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate" seeking, *inter alia*, the "avoidance of fraudulent transfers." Order Appointing Receiver, ¶43. Accordingly, demand is hereby made that you remit payment of the commissions, fees or other payments you received from Receivership Entities in the amount of $722,236.55 within 15 days of the date hereof to:

4550 POST OAK PLACE, SUITE 241
HOUSTON, TEXAS 77027
TELEPHONE: 713.626.5300
FACSIMILE: 713.402.6154
WWW.TLTAYLORLAW.COM

THE TAYLOR LAW OFFICES
A PROFESSIONAL CORPORATION

Thomas L. Taylor III, Receiver for Vendetta Royalty Partners, LP, *et al*.
The Taylor Law Offices, P.C.
4550 Post Oak Place Dr., Suite 241
Houston, Texas 77027

Or by wire to:

BBVA Compass Bank
Houston, Texas
ABA 113010547
For credit to Account #6720463618
I/n/o Receiver's Account, Estate of Vendetta Royalty Partners, Ltd., SEC v. Helms

If within 15 days we do not receive re-payment of the transfers representing commissions, fees or expense reimbursements in the above-stated amount, it will be necessary to commence a civil action against you in the United States District Court for the Western District of Texas in Austin, where all litigation related to the Receivership must be commenced. All persons who received transfers of commissions, fees or other payments for recruiting investors into the Vendetta investment program, and who refuse to return those funds voluntarily, will be named in that lawsuit. Should litigation be necessary, the Receiver would seek not only those commissions, fees and/or other payments that have not been returned voluntarily, but also interest, costs of suit and attorney's fees in accordance with TUFTA §24.013.

Should you wish to discuss the foregoing please contact the undersigned. Nothing herein may be deemed to be a waiver of any and all other rights, causes of action, or theories of liability which the Receiver may have against you, all of which are expressly reserved.

Very truly yours,

Thomas L. Taylor III
RECEIVER

TLT/kac

Enclosure

CC: Timothy S. McCole (mccolet@sec.gov)
Christopher A. Davis (davisca@sec.gov)

Exhibit 2

THE TAYLOR LAW OFFICES
A PROFESSIONAL CORPORATION

March 27, 2014

VIA USPS CM/RRR: 7012 2210 0001 6758 1872

Mark Kyle
2009 River Hills Road
Austin, Texas 78733

Re: *SEC v. Robert A. Helms, Janniece S. Kaelin, Deven Sellers, Roland Barrera, Vendetta Royalty Partners, Ltd., Vendetta Royalty Management, LLC, Vesta Royalty Partners, LP, Vesta Royalty Management, LLC, Iron Rock Royalty Partners, LP, Iron Rock Royalty Management, LLC, Arcady Resources, LLC, Barefoot Minerals, G.P., G3 Minerals, LLC, Haley Oil Company, Inc., Lake Rock, LLC, SeBud Minerals, LLC and Technicolor Minerals, G.P., Defendants, and William L. Barlow and Global Capital Ventures, LLC, Relief Defendants*, Civil Action No. 1:13-cv-01036-LY, in the United States District Court for the Western District of Texas, Austin Division

Dear Mr. Kyle,

As you are aware, on December 3, 2013 the Securities and Exchange Commission (the "Commission") commenced the above-referenced enforcement action in the United States District Court for the Western District of Texas, Austin Division, alleging, among other things, that Robert Helms, Janniece Kaelin and others operated a fraudulent scheme through the entities Vendetta Royalty Partners, Ltd., Vendetta Royalty Management, LLC, Vesta Royalty Partners, LP, Vesta Royalty Management, LLC, Iron Rock Royalty Partners, LP, Iron Rock Royalty Management, LLC, Arcady Resources, LLC, Barefoot Minerals, G.P., G3 Minerals, LLC, Haley Oil Company, Inc., Lake Rock, LLC, SeBud Minerals, LLC and Technicolor Minerals, G.P. (the "Receivership Entities").

The United States District Court granted the relief sought by the Commission, including the entry of an Order appointing Thomas L. Taylor III ("Receiver") as Receiver in the above-referenced case (Dkt. No. 11) (the "Order Appointing Receiver," available at http://www.vendettaroyaltyreceivership.com/courtfilings.html) for Robert A. Helms, Janniece S. Kaelin, Deven Sellers, Roland Barrera, the Receivership Entities, and all entities they own or control (collectively, the "Defendants"). Order Appointing Receiver, ¶2. The Receiver is empowered by the Order Appointing Receiver to marshal and preserve all assets that "(a) are attributable to funds derived from investors or clients of the Defendants; (b) are held in constructive trust for the Defendants; (c) were fraudulently transferred by the Defendants; or (d) may otherwise be includable as assets of the estates of the Defendants." Order Appointing Receiver, p. 2.

You are receiving this letter because Receivership records establish that you received compensation and/or reimbursed expenses for introducing investors into the investment

4550 POST OAK PLACE, SUITE 241
HOUSTON, TEXAS 77027
TELEPHONE: 713.626.5300
FACSIMILE: 713.402.6154
WWW.TLTAYLORLAW.COM

programs sponsored by the Receivership Entities. Specifically, Receivership records indicate that you received commissions, fees and/or payments in the amount of $84,600.00.

Pursuant to the Texas Uniform Fraudulent Transfer Act ("TUFTA"), TEX. BUS. & COM. CODE §§24.001 *et seq.*, when a debtor transfers assets "with actual intent to hinder, delay, or defraud any creditor of the debtor," the creditor may avoid the transfer. TUFTA §§24.005(a)(1), 24.008(a)(1). Applicable decisions of the United States Court of Appeals for the Fifth Circuit make clear that "proving that [a transferor] operated as a Ponzi scheme establishes the fraudulent intent behind the transfers it made." *Janvey v. Alguire*, 647 F.3d 585, 598 (5th Cir. 2011) (quoting *SEC v. Res. Dev. Int'l, LLC*, 487 F.3d 295, 301 (5th Cir. 2007)); see also *Warfield v. Byron*, 436 F.3d 551, 558-59 (5th Cir. 2006) (citing *Scholes v. Lehmann*, 56 F.3d 750 (7th Cir. 1995)).

TUFTA does afford a transferee the affirmative defense that the transfer was both (1) received in good faith, and (2) made for an exchange of reasonably equivalent value. TUFTA §24.009(a). However, under Fifth Circuit case law, providing services in furtherance of a Ponzi scheme, such as introducing new investors into the scheme, does not confer reasonably equivalent value. See *Warfield*, 436 F.3d at 555, 560 ("It takes cheek to contend that in exchange for the payments he received, the … Ponzi scheme benefitted from his efforts to extend the fraud by securing new investments."). Furthermore, consideration which has no utility from the creditor's perspective does not satisfy the statutory definition of "value." *SEC v. Res. Dev. Int'l, LLC*, 487 F.3d at 301; *In re Hinsley*, 201 F.3d 638, 644 (5th Cir. 2000). "The primary consideration in analyzing the exchange of value for any transfer is the degree to which the transferor's net worth is preserved." *Warfield*, 436 F.3d at 560.

Pursuant to applicable Texas statutes and decisions of the U.S. Court of Appeals for the Fifth Circuit, it is clear that any commissions, fees or other assets you received for introducing investors into the Vendetta investment program were fraudulently transferred from Receivership Entities, which made these transfers "with actual intent to hinder, delay or defraud" those Entities' investors and creditors. Furthermore, such transfers lacked the required exchange of reasonably equivalent value to the transferor Receivership Entity.

As the Receiver, I am "authorized, empowered and directed to … institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate" seeking, *inter alia*, the "avoidance of fraudulent transfers." Order Appointing Receiver, ¶43. Accordingly, demand is hereby made that you remit payment of the commissions, fees or other payments you received from Receivership Entities in the amount of $84,600 within 30 days of the date hereof to:

Thomas L. Taylor III, Receiver for Vendetta Royalty Partners, LP, *et al*.
The Taylor Law Offices, P.C.
4550 Post Oak Place Dr., Suite 241
Houston, Texas 77027

If within 30 days we do not receive re-payment of the transfers representing commissions, fees or expense reimbursements in the above-stated amount, it will be necessary to commence a civil action against you in the United States District Court for the Western District of Texas in Austin, where all litigation related to the Receivership must be commenced. All persons who received transfers of commissions, fees or other payments for recruiting investors into the Vendetta investment program, and who refuse to return those funds voluntarily, will be named in that lawsuit. Should litigation be necessary, the Receiver would seek not only those commissions, fees and/or other payments that have not been returned voluntarily, but also interest, costs of suit and attorney's fees in accordance with TUFTA §24.013.

Should you wish to discuss the foregoing please contact the undersigned. Nothing herein may be deemed to be a waiver of any and all other rights, causes of action, or theories of liability which the Receiver may have against you, all of which are expressly reserved.

Very truly yours,

Andrew M. Goforth
COUNSEL FOR RECEIVER

CC: Timothy S. McCole (mccolet@sec.gov)
Christopher A. Davis (davisca@sec.gov)

Exhibit 3

Defendant	Date of Demand	Plus 180 Days	Amount of Damages	Annual Interest Rate	Daily Interest Rate (Annual / 365)	Daily Interest Amount (Principal * Daily Rate)
Kyle	3/27/2014	9/23/2014	$ 122,000.00	5.00%	0.013699%	$ 16.71
AQS	5/19/2014	11/15/2014	$ 672,236.55	5.00%	0.013699%	$ 92.09
			$ 336,118.28	5.00%	0.013699%	$ 46.04

Exhibit 4

Series Description	Average majority prime rate charged by banks on short-term loans to business, quoted on an investment basis
Unit:	Percent:_Per_Year
Multiplier:	1
Currency:	NA
Unique Identifier:	H15/H15/RIFSPBLP_N.A
Time Period	RIFSPBLP_N.A
1956	3.77
1957	4.2
1958	3.83
1959	4.48
1960	4.82
1961	4.5
1962	4.5
1963	4.5
1964	4.5
1965	4.54
1966	5.63
1967	5.63
1968	6.31
1969	7.96
1970	7.91
1971	5.73
1972	5.25
1973	8.03
1974	10.81
1975	7.86
1976	6.84
1977	6.83
1978	9.06
1979	12.67
1980	15.26
1981	18.87
1982	14.85
1983	10.79

1984	12.04
1985	9.93
1986	8.33
1987	8.21
1988	9.32
1989	10.87
1990	10.01
1991	8.46
1992	6.25
1993	6
1994	7.15
1995	8.83
1996	8.27
1997	8.44
1998	8.35
1999	8
2000	9.23
2001	6.91
2002	4.67
2003	4.12
2004	4.34
2005	6.19
2006	7.96
2007	8.05
2008	5.09
2009	3.25
2010	3.25
2011	3.25
2012	3.25
2013	3.25
2014	3.25

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

THOMAS L. TAYLOR III, solely in his capacity as Court-appointed Receiver for Robert A. Helms, *et al.*, Plaintiff,	§ § § § §	
v.	§	Civil Action No. 15-cv-627-LY
MICHAEL SAMOUCE, MARK KYLE and APPLIED QUANTITATIVE SOLUTIONS, LLC, Defendants.	§ § § § § §	

DEFAULT JUDGMENT
AGAINST DEFENDANT MARK KYLE

This case is before the Court on Plaintiff and Court-appointed Receiver Thomas L. Taylor III's (the "Receiver")[1] Motion for Entry of Default Judgments ("Motion") [Dkt. # _____], seeking default judgments against Defendants Mark Kyle ("Kyle") and Applied Quantitative Solutions, LLC ("AQS"). The Clerk of the Court for the Western District of Texas entered the defaults of Defendants Kyle and AQS on September 23, 2015. Dkts. #13, 14.

At this time, the Receiver seeks default judgment against Defendant Kyle in the amount of $458,118.28 plus pre-judgment interest of $16.71 per day from September 23, 2014 until the date of this default judgment; plus pre-judgment interest of $46.04 per day from November 15,

[1] Taylor was appointed as receiver for Robert Helms, Janniece Kaelin, Deven Sellers, Roland Barrera, Vendetta Royalty Partners, Ltd., Vendetta Royalty Management, LLC, Vesta Royalty Partners, LP, Vesta Royalty Management, LLC, Iron Rock Royalty Partners, LP, Iron Rock Royalty Management, LLC, Arcady Resources, LLC, Barefoot Minerals, GP, G3 Minerals, LLC, Haley Oil Company, Inc., Lake Rock, LLC, SeBud Minerals, LLC, Technicolor Minerals GP, and any entities they own or control by Order of this Court in the related action styled *SEC v. Helms, et al.*, No. 1:13-cv-1036-ML (W.D. Tex. 2013) [Enforcement Action Dkts. # 11, 76].

2014 until the date of this default judgment; plus post-judgment interest pursuant to 28 U.S.C. § 1961.

The Receiver's Motion was properly served on Kyle on October 27, 2015. Having considered all matters of record, the arguments of counsel, all responses and replies, if any, and the applicable legal authorities, it is hereby

ORDERED, ADJUDGED, and DECREED that the Receiver's Motion [Doc. # ______] is **GRANTED** in all respects. It is further

ORDERED, ADJUDGED, and DECREED that default judgment is hereby rendered in favor of the Receiver and against Defendant Kyle in the amount of $__________ (the "Judgment Amount"), consisting of $458,118.28, plus $__________ in accrued pre-judgment interest through the date of this Default Judgment. It is further

ORDERED, ADJUDGED, and DECREED that post-judgment interest shall accrue at the rate of ______% per annum, in accordance with 28 U.S.C. § 1961, from the date of entry of this Default Judgment until the Judgment Amount and all accrued interest are paid in full by Defendant Kyle to the Receiver. It is further

ORDERED, ADJUDGED, and DECREED that the Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Default Judgment.

There being no just reason for delay in the entry of this Default Judgment, the Court hereby directs the clerk to enter judgment as to Defendant Kyle pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

SIGNED at Austin, Texas this _____ day of _________, 20______.

____
LEE YEAKEL
UNITED STATES DISTRICT JUDGE

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

THOMAS L. TAYLOR III, solely in his capacity as Court-appointed Receiver for Robert A. Helms, *et al.*, Plaintiff,	§	
v.	§	Civil Action No. 15-cv-627-LY
MICHAEL SAMOUCE, MARK KYLE and APPLIED QUANTITATIVE SOLUTIONS, LLC, Defendants.	§	

DEFAULT JUDGMENT
AGAINST DEFENDANT APPLIED QUANTITATIVE SOLUTIONS, LLC

This case is before the Court on Plaintiff and Court-appointed Receiver Thomas L. Taylor III's (the "Receiver")[1] Motion for Entry of Default Judgments ("Motion") [Dkt. #_____], seeking default judgments against Defendants Mark Kyle ("Kyle") and Applied Quantitative Solutions, LLC ("AQS"). The Clerk of the Court for the Western District of Texas entered the defaults of Defendants Kyle and AQS on September 23, 2015. Dkts. #13, 14.

At this time, the Receiver seeks default judgment against Defendant AQS in the amount of $672,236.55 plus pre-judgment interest of $92.09 per day from November 15, 2014 until the date of this default judgment; plus post-judgment interest pursuant to 28 U.S.C. § 1961.

[1] Taylor was appointed as receiver for Robert Helms, Janniece Kaelin, Deven Sellers, Roland Barrera, Vendetta Royalty Partners, Ltd., Vendetta Royalty Management, LLC, Vesta Royalty Partners, LP, Vesta Royalty Management, LLC, Iron Rock Royalty Partners, LP, Iron Rock Royalty Management, LLC, Arcady Resources, LLC, Barefoot Minerals, GP, G3 Minerals, LLC, Haley Oil Company, Inc., Lake Rock, LLC, SeBud Minerals, LLC, Technicolor Minerals GP, and any entities they own or control by Order of this Court in the related action styled *SEC v. Helms, et al.*, No. 1:13-cv-1036-ML (W.D. Tex. 2013) [Enforcement Action Dkts. # 11, 76].

The Receiver's Motion was properly served on AQS on October 27, 2015. Having considered all matters of record, the arguments of counsel, all responses and replies, if any, and the applicable legal authorities, it is hereby

ORDERED, ADJUDGED, and DECREED that the Receiver's Motion [Doc. # ______] is **GRANTED** in all respects. It is further

ORDERED, ADJUDGED, and DECREED that default judgment is hereby rendered in favor of the Receiver and against Defendant AQS in the amount of $__________ (the "Judgment Amount"), consisting of $672,236.55, plus $__________ in accrued pre-judgment interest through the date of this Default Judgment. It is further

ORDERED, ADJUDGED, and DECREED that post-judgment interest shall accrue at the rate of ______% per annum, in accordance with 28 U.S.C. § 1961, from the date of entry of this Default Judgment until the Judgment Amount and all accrued interest are paid in full by Defendant AQS to the Receiver. It is further

ORDERED, ADJUDGED, and DECREED that the Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Default Judgment.

There being no just reason for delay in the entry of this Default Judgment, the Court hereby directs the clerk to enter judgment as to Defendant AQS pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

SIGNED at Austin, Texas this _____ day of _________, 20______.

____
LEE YEAKEL
UNITED STATES DISTRICT JUDGE