

**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, <i>et al.</i> ,	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 15-cv-627-LY
	§	
MICHAEL SAMOUCÉ, MARK KYLE and	§	
APPLIED QUANTITATIVE SOLUTIONS,	§	
LLC,	§	
Defendants.	§	

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**PLAINTIFF RECEIVER’S MOTION TO SEVER CLAIMS AGAINST  
DEFENDANT MICHAEL SAMOUCÉ**

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Plaintiff Thomas L. Taylor III, solely in his capacity as Court-appointed Receiver for Robert A. Helms, *et al.*, Case No. 1:13-cv-1036-ML (W.D. Tex. 2013) files this motion requesting that the Court sever the claims in this action against Defendant Michael Samoucé (“Samoucé”) into a separate action. Mr. Samoucé filed a voluntary Chapter 7 bankruptcy petition on October 30, 2015. The Receiver respectfully requests that the Court grant this motion in the interests of justice, efficiency, and judicial economy.

**SUMMARY**

On July 27, 2015, the Receiver filed this action against Defendants Samoucé, Mark Kyle (“Kyle”) and Applied Quantitative Solutions, LLC (“AQS”) requesting, *inter alia*, the avoidance of fraudulent transfers pursuant to the Texas Uniform Fraudulent Transfer Act, TEX. BUS. & COM. CODE §§24.001 *et seq.* (“TUFTA”). Dkt. 1. These alleged transfers were made from the Ponzi scheme held by this Court to have been perpetrated by Robert Helms and Janniece Kaelin through Vendetta Royalty Partners, Ltd. (“Vendetta”) and other entities under their control. See

*SEC v. Helms*, 2015 U.S. Dist. LEXIS 110758 (W.D. Tex. Aug. 21, 2015), reconsideration denied by *SEC v. Helms*, 2015 U.S. Dist. LEXIS 142704 (W.D. Tex. Oct. 20, 2015). The Complaint was served on Samouce, Kyle and AQS between August 5 and 12, 2015. Dkts. 5, 7, 10.

Defendants Kyle and AQS failed to file an answer or otherwise respond to, or defend themselves against, the Receiver's allegations. Accordingly, the Receiver requested the entry of defaults for Kyle and AQS (Dkts. 11, 12), which were entered by the Clerk on September 23, 2015. Dkts. 13, 14. On October 27, 2015 the Receiver filed a Motion for Entry of Default Judgments against Kyle and AQS with respect to the TUFTA and unjust enrichment causes of action in his Complaint. Dkt. 17. To date, neither Kyle nor AQS has appeared to oppose the Motion for Default Judgments or otherwise defend themselves in this action.

Samouce filed his Answer to the Receiver's Complaint on September 9, 2015. Dkt. 9. On October 22, 2015 counsel for the Receiver and Samouce, *pro se*, conducted their Rule 26(f) conference and Receiver's counsel proceeded to draft a joint discovery/case management plan and proposed scheduling order for Samouce's review. On October 21, 2015 the Receiver filed a Motion for Partial Summary Judgment against Samouce with respect to the TUFTA and unjust enrichment causes of action against him. Dkts. 15, 16.

On October 30, 2015 Samouce (jointly with his wife) filed a voluntary Chapter 7 bankruptcy petition<sup>1</sup>, at which time he became protected by the automatic stay (11 U.S.C. §362). Samouce has failed to notify this Court of his bankruptcy filing in the subsequent three weeks.

In light of Samouce's filing of the bankruptcy petition, and in the interests of justice, efficiency, and judicial economy, the Receiver respectfully requests that the Court exercise its

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<sup>1</sup> *In re Samouce*, Case No. 1:15-bk-11409-tmd (Bankr. W.D. Tex. 2015).

discretion to sever the claims against Samouce from this action, stay the severed action against Samouce pursuant to the Bankruptcy Code's automatic stay, and proceed in this action with respect to the Receiver's Motion to Enter Default Judgments against Defendants Kyle and AQS.

### ARGUMENT AND AUTHORITIES

A district court has broad discretion to sever claims "for convenience, to avoid prejudice, or to expedite and economize." FED. R. CIV. P. 42(b); *see also* FED. R. CIV. P. 21 (empowering courts to "sever any claim against a party"); *Applewhite v. Reichhold Chemicals, Inc.*, 67 F.3d 571, 574 (5th Cir. 1995) (a district court has broad discretion to order a separate trial "in furtherance of convenience or economy"). Severing the claims against Samouce serves the Court's interest in efficient resolution of the Receiver's claims because the Receiver's claims against Samouce -- which are currently stayed pursuant to the Bankruptcy Code -- will be quarantined in a separate, stayed action from his live and actionable claims against the remaining, defaulted Defendants Kyle and AQS.

Severing the claims against Samouce into a separate action further promotes judicial economy in the event that the Receiver moves to withdraw the reference from the Bankruptcy Court with respect to his claims against Samouce and adjudicate those claims before the District Court. *See Holland Am. Ins. Co. v. Roy*, 777 F.2d 992, 999 (5th Cir. 1985). In this regard, the Receiver's Complaint includes causes of action against Samouce for (1) avoidance of fraudulent transfers; (2) unjust enrichment; (3) aiding, abetting and participating in (i) breach of fiduciary duty; (ii) fraud; and (iii) conversion; and (4) civil conspiracy. These causes of action consist of both "core" and "non-core" claims<sup>2</sup>, the latter of which arise under Texas state law, and are

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<sup>2</sup> See *In re Marr Broadcasting Co.*, 79 B.R. 673, 677-78 (Bankr. S.D. Tex. 1987)

independent of the voluntary bankruptcy proceedings initiated by Samouce. In this regard, withdrawal of the reference would promote uniformity in bankruptcy administration by permitting the District Court to adjudicate all of the Receiver's claims. It is far more efficient and less costly for a district court to provide a single, conclusive factual determination on all claims, than for a bankruptcy court to preside over the litigation to be followed by the district court's *de novo* review of the bankruptcy court's recommended findings and conclusions. *See Waldon v. Nat'l Fire Ins. Co. (In re EbaseOne Corp.)*, 2006 Bankr. LEXIS 1861, at \*16, 46 Bankr. Ct. Dec. 218 (Bankr. S.D. Tex. June 14, 2006).

### CONCLUSION

The Receiver respectfully requests that the Court enter an order severing the claims against Samouce into a separate action, staying that action pursuant to the Bankruptcy Code's automatic stay, and permitting this action to continue with respect to the Receiver's Motion for Entry of Default Judgments with respect to Defendants Kyle and AQS.

Dated: November 20, 2015

Respectfully submitted,

THE TAYLOR LAW OFFICES, P.C.

By: /s/ Andrew M. Goforth

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COUNSEL FOR RECEIVER  
THOMAS L. TAYLOR III

**CERTIFICATE OF CONFERENCE**

On November 20, 2015, I attempted to confer with Defendant Samouce regarding the relief sought in this Motion. As of the filing of this Motion, Samouce has not responded to my request.

/s/ Andrew M. Goforth  
Andrew M. Goforth

**CERTIFICATE OF SERVICE**

On November 20, 2015, I electronically submitted the foregoing document 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 and *pro se* parties have been served electronically via CM/ECF notice, or by other means as listed below and consistent with the Federal Rules of Civil Procedure.

***Via US Certified Mail, RRR:***

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

/s/ Andrew M. Goforth  
Andrew M. Goforth

**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,

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v.

Civil Action No. 15-cv-627-LY

MICHAEL SAMOUCÉ, MARK KYLE and  
APPLIED QUANTITATIVE SOLUTIONS,  
LLC,  
Defendants.

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**ORDER GRANTING  
PLAINTIFF RECEIVER’S MOTION TO SEVER CLAIMS AGAINST  
DEFENDANT MICHAEL SAMOUCÉ**

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Before the Court is the Receiver’s Motion to Sever Claims Against Defendant Michael Samouce. Having reviewed the motion, the Court is of the opinion that it has merit and that the requested relief should be granted. It is therefore

**ORDERED** that the claims, causes of action, and requests for relief asserted by Plaintiff Thomas L. Taylor III against Defendant Michael Samouce are **SEVERED** from this civil action and made the subject of a separate action styled *Thomas L. Taylor III, solely in his capacity as Court-appointed Receiver for Robert A. Helms, et al., Plaintiff v. Michael Samouce, Defendant*. The Clerk of the Court shall assign a separate cause number to the severed action.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2015.

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LEE YEAKEL  
UNITED STATES DISTRICT JUDGE