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-648-LY
GRADY H. VAUGHN III, Defendant.	§	

RECEIVER'S REPLY IN SUPPORT OF HIS MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT GRADY H. VAUGHN III

Despite Vaughn's flagrant obfuscation of the Receiver's Motion and the summary judgment record, his liability is clear and indisputable: for each and every fraudulent transfer from (or obligation of) the Vendetta[1] Ponzi scheme to him (or for his benefit), he acted without "objective" good faith[2] or failed to exchange any value.[3] The single piece of evidence Vaughn submits in his defense -- his affidavit -- contains only self-serving, "conclusory allegations, speculation, and unsubstantiated assertions," which the Fifth Circuit regularly has held "'are

[1] Capitalized terms not defined herein are given the same meaning attributed to them in the Receiver's Motion for Partial Summary Judgment [Dkt. 7] ("Motion"). Citations to pages in the Motion refer to page numbers in the CM/ECF Header of that document.

[2] As of his receipt of an email from a potential investor on September 28, 2012 (at the latest) [APPX_000276], Vaughn was "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)). Vaughn's assertion that this email must "have caused him to figure out the entire alleged *Ponzi* scheme" to establish a lack of good faith, Resp. at 19, misstates the law, which requires only "enough knowledge of the actual facts to induce a reasonable person to inquire further." *In re Pace*, *supra*. Vaughn admits that he made no inquiry whatsoever when presented with numerous red flags about Vendetta, which were contrary to his representations to potential investors. Mot. at 20-22.

[3] By Vaughn's admission, the transfers he received prior to November 14, 2012 (at the earliest) were promotional expenses tied to investments made through Upland Partners by investors Vaughn recruited. *See infra*, at §C(2). Such payments provide no value as a matter of law. *Warfield v. Byron*, 436 F.3d 551, 560 (5th Cir. 2006) (citations omitted) ("It takes cheek to contend that in exchange for the payments he received, the RDI Ponzi scheme benefitted from his efforts to extend the fraud by securing new investments. This argument is unacceptable.").

inadequate to satisfy the nonmovant's burden' and defeat a motion for summary judgment."[4] Because Vaughn fails to meet his burden,[5] and because the Receiver's evidence is indisputable and admissible, the Court should enter summary judgment in the Receiver's favor.[6]

A. Vaughn Cannot Re-litigate the Existence of the Vendetta Ponzi Scheme

All four conditions necessary to apply offensive collateral estoppel[7] regarding the twice decided[8] issue of the Vendetta Ponzi scheme are present here. Vaughn does not (and cannot) dispute conditions (1) and (3). The Receiver alleges the identical Ponzi scheme proven by the SEC. Mot. at 8-11; EA Dkt. 258. Also, the Ponzi finding was necessary to support the Final

[4] *Mosley v. White*, 464 Fed. Appx. 206, 213 (5th Cir. 2010) (quoting *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1429 (5th Cir. 1996)) (internal citation omitted); see also *DIRECTV, Inc. v. Budden*, 420 F.3d 521, 531 (5th Cir. 2005); *United States v. Lawrence*, 276 F.3d 193, 197 (5th Cir. 2001) ("self-serving allegations are not the type of 'significant probative evidence' required to defeat summary judgment"); *BMG Music v. Martinez*, 74 F.3d 87, 91 (5th Cir. 1996) (affirming summary judgment where "the only evidence in support of the defendants' theory is a conclusory, self-serving statement by the defendant").

[5] Contrary to Vaughn's Response, at 14, it is the nonmovant who "bears the burden to 'come forward with summary judgment evidence sufficient to raise an issue of material fact on each element of the [affirmative] defense.'" Mot. at 7-8 (citing *Barrington Group, Ltd., Inc. v. Classic Cruise Holdings S. DE. R.L.*, 2010 U.S. Dist. LEXIS 3738, at *15, 2010 WL 184307 (N.D. Tex. Jan. 15, 2010); *Bassett v. Am. Nat'l Bank*, 145 S.W.3d 692, 696 (Tex. App.—Fort Worth, 2004, no pet.)).

[6] Vaughn's request for deferral under Rule 56(d), Resp. at 8, is inadequate under the law. Vaughn must "give the district court some idea of how the sought-after discovery might reasonably be supposed to create a [material] factual dispute." *Enplanar, Inc. v. Marsh*, 11 F.3d 1284, 1292 (5th Cir. 1994). Permitting the requested discovery would be futile -- the discovery sought is not material because it has no bearing on the legally established existence of the Ponzi scheme, *see* §A *infra*, or the facts underlying Vaughn's lack of good faith as of September 28, 2012, and his failure to exchange reasonably equivalent value for transfers prior to November 14, 2012. *See* §C *infra*. Specifically, because Vaughn lacked objective good faith months prior to beginning his "consultant" work for Vendetta, facts regarding Vaughn's "consulting" work and any purported "value" derived from it are not material. "[D]ocuments demonstrating Mr. Vaughn's lack of knowledge concerning any alleged wrongdoing" also lack materiality because subjective knowledge of wrongdoing is not required to establish lack good faith. *In re Pace*, 456 B.R. at 275. Moreover, Rule 56(d) applies only to "When Facts Are Unavailable to the Nonmovant." *Id*. To the extent that "documents [exist] demonstrating that the alleged payments for which the Receiver seeks reimbursement were not made to Mr. Vaughn or for his benefit," they are in Vaughn's banking records and under his control, and not submitted by him in his Response to the Motion.

[7] "(1) the issue under consideration is identical to that litigated in the prior action; (2) the issue was fully and vigorously litigated in the prior action; (3) the issue was necessary to support the judgment in the prior case; and (4) there is no special circumstance that would make it unfair to apply the doctrine." *Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 391 (5th Cir. 1998) (citing *Copeland, et al. v. Merrill Lynch & Co., et al.*, 47 F.3d 1415, 1422 (5th Cir. 1995)).

[8] *SEC v. Helms*, 2015 U.S. Dist. LEXIS 29149 (W.D. Tex. Mar. 10, 2015) ("*Helms I*"); *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) ("*Helms II*").

Judgment entered against Helms and Kaelin for violating the antifraud provisions of the federal securities laws [EA Dkt. 292]. *Helms II*, at 39-43, 64-66.

Vaughn disputes only condition (2),[9] asserting that the Ponzi issue was not "fully and vigorously" litigated during the February 2015 "quasi-bench trial" (resulting in *Helms I*) and through the SEC's summary judgment motion (resulting in *Helms II* and the Final Judgment). Resp. at 11. However Supreme Court precedent directly on point holds that the "full and vigorous" litigation of an issue is premised upon the incentives of the defendants, and not tactics and strategy during discovery and at trial.

In *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (U.S. 1979), the Supreme Court held that the petitioners had "every incentive to litigate the SEC lawsuit fully and vigorously" due to "the serious allegations made in the SEC's complaint" and the "foreseeability of subsequent private suits that typically follow a successful Government judgment." *Id*. at 332. Helms and Kaelin had the same incentives as the petitioners in *Parklane*. Intervenor Clovis Capital Ventures, LLC ("Clovis") had strong incentive at the quasi-bench trial, since the *Helms I* opinion, at *39, invalidated a purported security interest which could have placed Clovis' notional $2.7 million claim against the Receivership Estate in priority to all others. Vaughn's reliance on *Universal Am. Barge Corp. v. J-Chem, Inc.*, 946 F.2d 1131 (5th Cir. 1991) is misplaced. Resp. at 11. The Fifth Circuit distinguished that action from *Parklane* based upon conflicts of interest which existed in the initial proceeding. *Id*. at 1140. No such conflicts existed in the Enforcement Action. The Vendetta Ponzi scheme has been established as a matter of law and cannot be re-

[9] Vaughn's (incorrect) assertion that the Final Judgment against Helms and Kaelin is interlocutory, Resp. at 11, arguably falls under condition (4). Not only is this October 21, 2015 judgment final, but Helms' and Kaelin's 60-day window to appeal it, FED. R. APP. P. 4(a)(1)(B)(ii), expired on December 20, 2015; they now lack standing to do so. Vaughn offers no other special circumstances which would make the application of collateral estoppel unfair to him.

litigated by Vaughn as a matter of law.[10]

B. Vaughn Has Not Raised a Triable Issue of Material Fact with Respect to the Transfers from and Obligations of the Vendetta Ponzi Scheme

Vaughn cannot dispute the transfers from and obligations of the Vendetta Ponzi scheme, so he instead attacks the admissibility of the summary judgment record. Tellingly, Vaughn offers no evidence of his own regarding his receipt of the transfers and obligations at issue.[11]

1. The $292,254.35 Transferred from Receivership Entity Accounts to Vaughn (or Third Parties for his benefit)

The summary judgment record establishes the transfers made from Receivership entity accounts to Vaughn, and to third parties for his benefit.[12] Mot at 11-13.[13] Vaughn does not present a single financial record showing that the payments at issue were not received by him -- if he did not receive a transfer, bank records in his possession would reflect that. *See, e.g.*, APPX_000720-758 (Vaughn bank statement production). Vaughn has not done so because those records support the relief requested by the Receiver.

With respect to the Cheek Declaration, it is admissible, satisfies the requirements of FED. R. CIV. P. 56(c)(4)[14], and further establishes the transfers made from the Vendetta Ponzi scheme to Vaughn, or to third parties for his benefit. Ms. Cheek, a highly qualified forensic accountant,

[10] Accordingly, each transfer from, and obligation of, the Vendetta Ponzi scheme to Vaughn (or for his benefit) was made with actual intent to hinder, delay or defraud creditors pursuant to TUFTA §24.005(a)(1). *Janvey v. Brown*, 767 F.3d 430, 439 (5th Cir. 2014) (quoting *Janvey v. Alguire*, 647 F.3d 585, 598 (5th Cir. 2011)) ("proving that [a transferor] operated as a Ponzi scheme establishes the fraudulent intent behind the transfers it made.").

[11] Vaughn does not dispute that he controlled Upland Resources. Nor does he dispute that he and his assistant directed Vendetta personnel to make payments to him through accounts in the name of Upland Resources, and that those transfers were made for his benefit. *See* Mot. at 12-13, n.14.

[12] Vaughn's only retort to evidence that rent, cleaning and IPAA fees were paid by Vendetta for his benefit is a self-serving, "unsubstantiated assertion" that such payments "were for Vendetta's [benefit]." Resp. at 14 n.1. Such statements "'are inadequate to satisfy the nonmovant's burden'". *Mosley v. White*, 464 Fed. Appx. at 213.

[13] Bank statements and check copies/wire transfer requests supporting ¶47 of the Cheek Declaration are filed concurrently herewith at APPX_000619-719; bank statements produced by Vaughn regarding same are filed concurrently herewith at APPX_000720-758.

[14] Rule 56(c)(4) requires a declaration "be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated."

Cheek Decl., ¶2, is competent to testify as to the matters in her declaration. See *Helms I* at 12; *Helms II* at 6-7, 8. And notwithstanding Vaughn's unsubstantiated claims to the contrary, Resp. at 8-9, Ms. Cheek clearly states that the content of her Declaration is based upon the review of "QuickBooks accounting files that were located on various electronic media held by either the Defendants or related entities… [and] bank statements and other supporting documents that were located in the Defendants' offices and provided by the Receiver." Cheek Decl. ¶5.[15] There is no requirement for the use of the specific phrase "personal knowledge," and it is self-evident that her declaration is based upon her knowledge of the books and records which she and her staff have reviewed.[16] Moreover, these books and records are business records of the Receivership Entities, which were located in the Vendetta offices of which possession was taken by the Receiver upon his appointment, and in coordination with the FBI and SEC, or otherwise produced by Austin Telco Federal Credit Union, Amegy Bank and Whitney Bank. APPX_000619-719, 770 (Goforth Decl. ¶4).

2. The $150,000 Retained by Vaughn in Satisfaction of Vendetta Obligations

Vaughn admits that he retained $150,000 of Upland Partners investor funds from investment in Vendetta. Resp. at 3. The summary judgment evidence establishes that Vaughn retained these funds in satisfaction of Vendetta's promotional compensation obligations.

[15] Vaughn's assertion that the Cheek Declaration fails to "describes her review of the alleged records, her methodology used to determine the alleged payments, or any other facts that would support her description of the alleged amounts" is without merit. Ms. Cheek and her staff "found [transactions] in the books and records of VRP and related entities [and] vouched [them] to bank statements." *Id*. ¶47. Bank statements and other supporting documents are attached hereto. APPX_000619-758.

[16] Vaughn's claim that he has not been granted access to these books and records is untrue. The Receiver served his Rule 26(a)(1)(A) Initial Disclosures on Vaughn on September 29, 2015. APPX_000764-769. Therein, the Receiver disclosed (by category and location) and made available for inspection and copying "all documents, electronically stored information, and tangible things that the [Receiver] has in [his] possession, custody, or control and may use to support [his] claims." *Id*. This disclosure included "Books and records of the Vendetta Defendants obtained on or after December 3, 2013, including accounting and other banking / financial records; limited partner files; [and] email files…." *Id*. Vaughn has not sought access to any of these documents and information in the intervening three months.

APPX_000584-597. Vaughn objects that this evidence is inadmissible hearsay. Resp. at 17. However, the statements within the documents at issue are not hearsay because they were "made by the party's coconspirator during and in furtherance of the conspiracy." FED. R. EVID. 801(d)(2)(e).

As alleged in the Receiver's Complaint, Vaughn "conspired with Helms and Kaelin to effect the offering of [Vendetta] securities by unlawful means" [Dkt. 1 ¶13] -- namely through the "unlawful offer and sale of securities through unlicensed 'brokers' and the undisclosed compensation of those 'brokers' through the misappropriation and conversion of assets of the Vendetta Entities." *Id*. ¶96; *see generally id*. ¶¶96-99; *see also infra* at §C(3). The statements at issue were made by Helms, Vaughn's coconspirator, and were made after Vaughn joined the conspiracy in "the late Spring or early Summer of 2012," Dkt. 15-1 ¶4, when he began to recruit investors. Moreover, the statements were made in furtherance of the conspiracy, namely in furtherance of compensating Vaughn, an unlicensed "broker," for his recruitment of investors into Vendetta. "'Statements regarding the payment of money for services rendered in accomplishing the illegal goals of a conspiracy can be considered to be 'in the course and in furtherance of the conspiracy.'" *United States v. Grant*, 683 F.3d 639, 648 (5th Cir. 2012) (quoting *United States v. Garcia*, 995 F.2d 556, 561 (5th Cir. 1993)).[17] Accordingly APPX_000584-597 are admissible, and establish Vaughn's liability for the investor proceeds he retained.[18]

[17] While the conspiracy at issue here is unlawful, it needn't be for the hearsay exclusion to apply. *United States v. Nelson*, 732 F.3d 504, 516 (5th Cir. 2013) (citing *United States v. El-Mezain*, 664 F.3d 467, 502 (5th Cir. 2011)) (citations omitted) ("A conspiracy for the purpose of the hearsay exclusion need not be unlawful; the statement may be made in furtherance of a 'lawful joint undertaking.' A conspiracy may be shown 'merely by engaging in a joint plan[] . . . that was non-criminal in nature.' Thus, 'a statement is not hearsay if it was made during the course and in furtherance of a common plan or endeavor with a party.'").

[18] This exclusion also applies to APPX_000281-84 (Email from Kaelin to Vaughn in furtherance of the conspiracy to unlawfully effect the Vendetta Offering). Additionally, APPX_000488-514, 565-567, 569-572 are not hearsay

C. Vaughn Cannot Establish the TUFTA Affirmative Defense as a Matter of Law

Vaughn must raise a triable issue of material fact with respect to both his objective good faith and the exchange of reasonably equivalent value for every transfer in order to escape liability. TUFTA §24.009(a). However, it is indisputable that Vaughn lacked objective good faith as of September 28, 2012 (at the latest), and that all transfers prior to November 14, 2012 were in payment for recruiting investors into the Ponzi scheme, which provides no value as a matter of law. Vaughn's unsupported assertions to the contrary are belied by the chronology of events established in the summary judgment record.

1. Vaughn Lacked Objective Good Faith as of September 28, 2012 at the Latest

Vaughn recruited investors into the Vendetta Offering through Upland Partners. Mot. at 11-13. In doing so, Vendetta provided due diligence information, including company financials, to these potential investors (whether provided directly or through Vaughn is not material to determining the issue of Vaughn's good faith).[19] One investor who received and reviewed this financial information wrote to Vaughn on September 28, 2012. APPX_000276. He outlined several red flags raised by the financials he received, and specifically regarding inconsistencies between the them (showing losses of nearly $900,000 in Vendetta's first 21 months of operation) and the representations made to him by Vaughn ("You have indicated this is a very profitable venture"). *Id*.

Given the extreme nature of these inconsistencies, Vaughn was thereafter "possessed of

---

because they are not offered to prove the truth of the matters asserted in the statements, but to show that Vaughn was regularly involved with others in placating increasingly frustrated investors in the Ponzi scheme, and marketing the Ponzi scheme to new investors (specifically the group from Louisiana). APPX_000515 is relevant in that it establishes that Vaughn received the Vendetta offering documents. APPX_000573 is not hearsay because it was made by a person whom Vaughn authorized to make a statement on the subject, FED. R. EVID. 801(d)(2)(c); it also establishes Vaughn's regular practice of directing transfers for himself to the Upland Resources bank account.

[19] Vaughn's self serving, unsubstantiated assertion that he "was not given access to the Vendetta accounting books and records," Resp. at 2, is directly contradicted by the email from his potential investor discussing the Vendetta "financials" and red flags associated with them. APPX_000276.

enough knowledge of the actual facts to induce a reasonable person to inquire further about the transaction." *In re Pace*, 456 B.R. at 275. If Vendetta was operating at substantial losses, and was not "a very profitable venture" as Vaughn represented, then it could not have made legitimate partnership equity distributions from (non-existent) profits. This, in fact, was the case -- the distributions were Ponzi payments made from new investor proceeds. *Helms II*, at 6-7.[20]

Notwithstanding this knowledge, Vaughn made no further inquiry; never reviewed the purported losses for the time period at issue; "didn't speak with [the investor] about [the profitability issue] when [he] got the … letter" and "didn't respond" to the investor at all. APPX_000069-70 (Vaughn Depo. 159:18 – 161:2). When shown facts that the "very profitable" company he was promoting was operating at substantial loss, Vaughn "frankly, didn't focus on it." *Id*.

In addition to unreasonably failing to inquire about the red flags presented to him, Vaughn effected the unregistered sale of Vendetta securities[21] without being disclosed to the SEC as a promoter, Mot. at 11 n.19, and knowingly received excessive (patently and by definition) compensation for doing so. In this regard, Vaughn received and reviewed the Vendetta PPM, APPX_000396, the terms of which limited promotional expenses for the entire $50,000,000 Vendetta Offering to $50,000. Mot. at 18 n.24.[22] Yet Vaughn agreed to promote the

[20] Because Vendetta was operated as a Ponzi scheme as of the commencement of the Vendetta Offering, *Helms II* at 6-8, it was insolvent from that point forward. *Janvey v. Alguire*, 647 F.3d 585, 597 (5th Cir. 2011) ("a Ponzi scheme 'is, as a matter of law, insolvent from its inception.'") (citing *Byron*, 436 F.3d at 558).

[21] Vaughn fails to refute any of the Receiver's facts or legal analysis regarding his unregistered sale of securities. Mot. at 19-20. His assertion that these allegations "are unfounded and irrelevant," Resp. at 18-19, is fatally flawed. As an initial matter, Vaughn's unlawful activity is highly relevant to the good faith inquiry -- one cannot act reasonably when breaking the law in this manner. Moreover, the *Helms II* opinion did not "[come] about because the specified defendants did not respond to the motion for summary judgment." *Id*. It was based on evidence that Sellers and Barrera effected transactions in the sale of Vendetta securities without registration, just as Vaughn has admitted he did with Upland Partners' investors. Resp. at 1-2. Additionally, Barrera challenged the SEC's Motion, without success. See *SEC v. Helms*, 2015 U.S. Dist. LEXIS 142704 (W.D. Tex. Oct. 20, 2015).

[22] Vaughn's focus on what he transmitted to potential investors is misplaced. Resp. at 17-18. Vaughn's acceptance of the excessive compensation with knowledge of the PPM's limits on promotional expenses establish that he acted

Vendetta Offering to investors for far more compensation, receiving payments from Vendetta exceeding the maximum offering limit (1) before Upland Partners' investment was made on October 5, 2012 (APPX_000204); and (2) before his retention of $150,000 raised from Upland Partners investors in satisfaction of Vendetta obligations.

Vaughn has not, and cannot, raise a triable issue of fact with respect to his lack of good faith as of September 28, 2012, given his knowledge of red flags and promotion activities in total contravention of the terms of the Vendetta Offering documents.

2. Transfers to Vaughn Before November 14, 2012 were Promotional Expenses

Vaughn's unsubstantiated assertion that all transfers to him from the Ponzi scheme ("the purported $292,254.35 payment") were "for non-promotional items such as earned wages and business reimbursements," Resp. at 18, is both unsupported by any evidence and contradicted by Vaughn himself. Vaughn asserts that he began raising funds for Vendetta "in the late Spring or early Summer of 2012," Dkt. 15-1 ¶4, and admits that he was compensated for "bringing in … Upland Energy Partners." Resp. at 15[23]; *see also* APPX_000156-157 (Vaughn Depo. 100:3-13, 102:4-6); APPX_000759-763. Yet by Vaughn's own admission, he did not begin to work for Vendetta as a "consultant" contractor until "the Fall of 2012," at which time he began to receive payments pf "$10,000 per month" (in addition to rent, cleaning, and other expenses paid on his behalf). Resp. at 5, Dkt. 15-1 ¶12; APPX_000191-192 (Vaughn Depo. 240:15-241:4). The earliest such payment occurred on November 14, 2012. APPX_000024.

Accordingly, Vaughn cannot dispute that all transfers to him (and satisfied obligations of

---

unreasonably, and without objective good faith. *Helms II* at 49.

[23] Vaughn's assertion that the Upland investment was his "own investment" and that he "is as much a victim … as any investor," Resp. at 14-15, is an affront to the real victims of this Ponzi scheme. Vaughn did not contribute a penny of his own funds to the Upland investment. APPX_000584. Rather, after taking $150,000 in Upland investor proceeds as payment in satisfaction of Vendetta's fraudulent commission obligation, Vaughn took an 11% carried interest in the Vendetta investment funded by Upland's partners. APPX_000602. Vaughn has only profited from the massive Ponzi scheme perpetrated by Helms and Kaelin, without ever putting any "skin in the game."

Vendetta) prior to the November 14, 2012 $10,000 transfer were payments for recruiting investors into the Vendetta Ponzi, including (but not limited to) those who ultimately invested through Upland Partners. Such services do not confer value as a matter of law. *Byron*, 436 F.3d at 560.

D. The Receiver Has Established His Cause of Action for Unjust Enrichment

The Receiver has established that Vaughn has been enriched by the Vendetta Ponzi scheme both through the $292,254.35 transferred to him or for his benefit, and through the $150,000 which he retained from the Upland Partners investors in satisfaction of compensation for promoting the Vendetta Ponzi scheme. As stated in the Motion, 22-24, Vaughn either (a) wrongfully secured a benefit from the Ponzi scheme, or (b) passively received the benefits which it would be unconscionable to retain. *Villarreal v. Grant Geophysical, Inc.*, 136 S.W.3d 265, 270 (Tex.App.—San Antonio 2004). Vaughn has presented no evidence and cited no legal authority to the contrary. Resp. at 20-21. The Receiver is entitled to summary judgment as a matter of law.

E. Conclusion

All transfers and obligations of the Vendetta Ponzi scheme are avoidable or disgorgeable as a matter of law. Because Vaughn lacked objective good faith as of September 28, 2012 (at the latest), and all transfers to him prior to that date were, by Vaughn's admission, promotional compensation which conferred no value as a matter of law, Vaughn can raise no triable issue of material fact with respect to the TUFTA affirmative defense. Moreover, Vaughn was unjustly enriched to the detriment of the defrauded investors in the Vendetta Ponzi scheme. Accordingly, the Court should enter summary judgment in favor of the Receiver as requested.

Dated: January 8, 2016

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 January 8, 2016, I filed the foregoing document with the Clerk of the Court for the Western District of Texas using the CM/ECF electronic filing system, through which all counsel of record were served electronically.

/s/ Andrew M. Goforth
Andrew M. Goforth