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

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

RECEIVER'S MOTION TO APPROVE PLAN OF DISTRIBUTION AND AUTHORIZE INTERIM DISTRIBUTION TO DEFRAUDED INVESTORS

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Thomas L. Taylor III ("Receiver"), Court-appointed receiver in the above-styled action (the "Enforcement Action"), moves this Court to approve a Plan of Distribution with respect to Receivership assets and authorize the Receiver to make an interim distribution of $1,500,000 (the "Interim Distribution") to defrauded investors pursuant to that Plan of Distribution.

The Receiver has discussed this Motion with counsel for Plaintiff Securities and Exchange Commission (the "Commission" or "SEC"), who do not oppose the relief sought herein.

I.
SUMMARY OF PROPOSED PLAN OF DISTRIBUTION AND INTERIM DISTRIBUTION

The Receiver proposes to effect the distribution of Receivership Estate assets to parties who have suffered a "net out-of-pocket loss" resulting from (1) their ownership of limited partnership interests in Receivership entities Vendetta Royalty Partners, Ltd. ("Vendetta") and Iron Rock Royalty Partners, Ltd. ("Iron Rock")[1]; and/or (2) their participation in "side deal" transactions in which Defendant Kaelin, acting as an agent/intermediary, induced payment purportedly for the purchase of real property or oil and gas-related assets, which transactions never took place (collectively the "Investors").[2] The Receiver proposes to distribute assets to

[1] Vendetta limited partners fall into two categories: (1) former limited partners of Robro Royalty Partners, Ltd. ("Robro"), Vendetta's predecessor entity, who exchanged their limited partnership interests in Robro for limited partnership interests in Vendetta upon the January 1, 2010 divisional merger -- the transaction from which Vendetta was created; and (2) investors who purchased limited partnership interests during Vendetta's public securities offering starting in July 2011. Only one investor purchased Iron Rock limited partnership interests prior to the commencement of the Enforcement Action and appointment of the Receiver.

[2] Throughout the time that Defendants Kaelin and Helms perpetrated the Ponzi scheme found by this Court, *SEC v. Helms*, 2015 U.S. Dist. LEXIS 110758, at *39-46 (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*"), Kaelin routinely offered these "side deals" (to Vendetta limited partners and others).

The cash inflows from (and outflows to) "side deal" Investors, and those from (and to) Vendetta and Iron Rock Investors, were treated consistently in the aggregate in the accounting books and records of the Receivership entities. **Exhibit A**, Declaration of Danielle Supkis Cheek, at ¶13. Accordingly, these claims would be permitted against the Receivership Estate. The funds from "side deal" transactions which were

these Investors on a *pro rata* basis based upon the "net out-of-pocket loss" of each as a percentage of the total "net out-of-pocket losses" of all Investors (the "Plan of Distribution").

The Receiver requests that the Court subordinate the claims of trade creditors and other unsecured creditors to the claims of Investors. *See, e.g.*, *CFTC v. PrivateFX Global One*, 778 F. Supp. 2d 775, 786-87 (S.D. Tex. 2011) (citing *Quilling v. Trade Partners, Inc.*, No. 1:03-CV-0236, 2006 WL 3694629, at *1-2 (W.D. Mich. Dec. 14, 2006) (finding that the equitable doctrine of constructive trust gave defrauded investors a "priority of right" over other claimants)).[3] In the unlikely event that distributions of Estate assets fully satisfy the Investors' claims -- which the Receiver estimates to be in excess of $25,000,000 -- the Receiver would move the Court to approve a Plan of Distribution to remaining trade and unsecured creditors upon the conclusion of the Receivership Estate.

The Receiver further seeks leave of this Court to commence a "Claims Confirmation Process" through which the Receiver and the forensic accounting firm D. Supkis Cheek, PLLC ("DSC PLLC") will calculate a notional claim amount for the Investors (a) who have asserted

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(1) legitimate, and (2) the transfer of title to the purchaser has been completed, will be excluded from the calculation of claim amounts.

[3] The Receiver has satisfied the asserted secured claims of: (1) Amegy Bank, N.A. ("Amegy") though full payment of $1,000,000 in a settlement (Dkt. 88-1) approved by this Court (Dkt. 147); and (2) Amegy Mortgage Company, LLC ("Amegy Mortgage") through the release of an "underwater" residence in Commerce, Texas (*see* Dkts. 92, 135). The Receiver also has executed -- and will soon move for approval of -- a settlement agreement with Environmental Audits and Consultants, Inc., which asserted a secured interest in an oil and gas lease in Shelby County, Illinois owned by Haley Oil Company, Inc. ("Haley Oil") (*see infra*, at §III(D)(3)). Vendetta limited partner Clovis Capital Ventures, LLC ("Clovis") previously asserted a secured interest in certain Vendetta assets (Dkt. 113), which asserted interest was held invalid by Order of this Court. *SEC v. Helms*, 2015 U.S. Dist. LEXIS 29149 (W.D. Tex. Mar. 10, 2015) ("*Helms I*").

Only two potential secured creditors of the Estate remain: purported lien holders on a residence jointly titled in the names of Defendant Helms and his deceased wife, Donna Pollard. The Internal Revenue Service ("IRS") also has filed tax liens on this residence. As discussed *infra*, at §III(D)(4), the Receiver has engaged in negotiations with the priority lien holder and the anticipated administrator of the Pollard estate, with respect to the sale of this residence and the satisfaction of any secured claims from those sale proceeds, the balance of which would be turned over to the Receivership Estate.

claims against the Receivership Estate in writing or (b) otherwise appear to hold claims against the Receivership Estate based upon the books and records of the Receivership entities. Each Investor's notional claim amount will be equal to the amount that each invested into any Receivership entity, and less any amounts that each was paid from any Receivership entity (the Investor's "net out-of-pocket loss"). As detailed below (*see* §IV(A)), Investors will be afforded an opportunity to review and dispute (upon proper documentation) the notional claim initially calculated by the Receiver and DSC PLLC -- after which the Receiver will finalize each Investors' final claim amount ("Claim").

The Receiver then proposes to effect the Interim Distribution of $1,500,000 on a *pro rata* basis to the Investors. The Receiver estimates that this distribution will equal approximately 6% of the Investors' Claims. A final distribution at the conclusion of the Receivership would be made by the same formula, following notice and approval by the Court at that time.

There is approximately $2,100,000 on hand in Receivership accounts as of the filing of this Motion.[4] Because the Receiver has not concluded his duties (including the preparation and filing of entity tax returns and the liquidation of Receivership assets) and is a party to pending litigation and bankruptcy claims, the Receiver proposes by this Motion to retain approximately $600,000 to continue administration of the remaining assets, to conduct the sale of the remaining assets, to protect the Receivership Estate's interests and to conclude the efforts of the Receiver.

[4] This amount includes approximately $80,000 which soon will be transferred to the Receivership Estate, upon the final transfer of the "Barefoot and Technicolor Assets" through EnergyNet. *See* Dkt. 319.

II.
BACKGROUND [5]

A. Procedural Posture of the Enforcement Action

The SEC commenced the above-styled Enforcement Action on December 3, 2013, alleging, *inter alia*, that Defendants Robert Helms and Janniece Kaelin violated the antifraud provisions of the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act") through the offer and sale of securities in the form of limited partnership interests issued by Defendants Vendetta Royalty Partners, Ltd. ("Vendetta"), Vesta Royalty Partners, Ltd. ("Vesta") and Iron Rock Royalty Partners, Ltd. ("Iron Rock"). Dkts. 1, 3, 4. The Commission further alleged that Helms and Kaelin implemented a Ponzi scheme through the entities under their control. *Id*.

The SEC sought and obtained preliminary equitable relief on an *ex parte* basis. This Court entered a Temporary Restraining Order (Dkt. 10, the "TRO") enjoining future violations of the federal securities laws by the Defendants and freezing their assets. *Id*.[6] The Court concurrently ordered the appointment of the Receiver to take control of, marshal and preserve the assets of the Defendants for the benefit of defrauded investors and other claimants. Dkt. 11 (the "Order Appointing Receiver).[7]

On August 21, 2015 the Court granted summary judgment against Defendants Helms, Kaelin, Sellers and Barrera, as requested by the Commission. *Helms II*, 2015 U.S. Dist. LEXIS

[5] The Receiver incorporates by reference herein his previously filed Quarterly Status Reports (Dkts. 40, 67, 87, 154, 159, 182, 198, 216, 272, 295, 302, 310, 312) and Quarterly Interim Applications to Pay Fees Incurred by Receiver and Other Professionals (Dkts. 41, 70, 89, 156, 205, 270, 276, 296, 304, 315).

[6] All parties subsequently stipulated to the entry of a preliminary injunction. Dkt. 37. The Receiver stipulated on behalf of the entities placed in Receivership.

[7] The Court entered its First Amended Order Appointing Receiver on May 27, 2014. Dkt. 76. Citations herein to the Order Appointing Receiver refer to pages and paragraphs in Dkt. 76.

110758, at *64-65.[8] In granting summary judgment, the Court held that "Helms and Kaelin operated a Ponzi scheme" through which they "repeatedly misappropriated investor funds to make Ponzi payments…." *Helms II*, at *39-42.[9] The Court further found that Helms and Kaelin obfuscated their fraudulent scheme through round-trip transactions and sham accounting entries with entities under their control -- including without limitation Haley Oil and Technicolor Minerals, GP ("Technicolor"). *Id*., at *19-21. The Court previously had amended the Order Appointing Receiver upon evidence that Helms and Kaelin had regularly comingled investor proceeds in accounts of other Receivership entities and conflated the accounting function of the Receivership entities. *See, e.g.*, Dkt. 60-2 (Cheek Declaration in support of Receiver's Motion to Amend Order Appointing Receiver [Granted at Dkt. 76]) at ¶¶6-9, Tables 1-5, Figure 1.

The Court entered final judgment against Helms, Kaelin, Sellers and Barrera on October 21, 2015. Dkt. 292. In addition to certain injunctive relief, Helms and Kaelin were ordered to disgorge $35,295,904, jointly and severally, and pay civil penalties of $4,221,058 each. Sellers and Barrera were ordered to disgorge $459,743.87, jointly and severally, and pay civil penalties of $150,000 each. *Id*.

On February 2, 2016, the United States Attorney for the Western District of Texas commenced the criminal action styled *USA v. Robert Allen Helms and Janniece S. Kaelin*, No. 1:16-cr-0023-SS (W.D. Tex. 2016), in the Court of Judge Sparks. Helms and Kaelin were

[8] In granting summary judgment, the Court relied upon the Declaration of Danielle Supkis Cheek ("Cheek") (Dkt. 259-1 at pp. 1-36), president of DSC PLLC, the forensic accounting firm engaged by the Receiver to preform forensic analysis of the Defendants' financial records and otherwise assist the Receiver in his investigation of the assets of the Receivership Estate. *See Helms II*, at *5-8. The relief sought by the Receiver in this Motion also is based upon the analysis and opinions of Cheek and DSC PLLC. *See* Cheek Declaration (attached hereto as **Exhibit A**).

[9] This Court had previously concluded that "Vendetta became a classic Ponzi scheme" in its determination that Helms and Kaelin had effected fraudulent transfers in November 2012 to Vendetta limited partner Clovis. *Helms I*, 2015 U.S. Dist. LEXIS 29149, at *20

indicted by a federal grand jury on one count each of wire fraud [in violation of 18 U.S.C. §1343], six counts each of securities fraud [in violation of 15 U.S.C. §§ 78j(b) and 78ff, and 15 C.F.R. § 240.10b-5] and one count each of conspiracy to commit wire and securities fraud [in violation of 18 U.S.C. §371]. Helms and Kaelin were arrested on February 3, 2016, and were released on $10,000 bond. The criminal case was transferred to Judge Yeakel's Court on March 21, 2016. A jury trial currently is set for November 7, 2016.

B. Formation of Vendetta and the Vendetta and Iron Rock Offerings

Vendetta was formed as of January 1, 2010 upon the divisional merger of Robro. At Vendetta's formation, Robro limited partners owning equity of approximately 43% became limited partners in Vendetta, and approximately 43% of Robro's assets and liabilities were transferred to Vendetta.

In 2011, Helms and Kaelin decided to raise additional proceeds from the public through a Regulation D private placement offering (the "Vendetta Offering"). The offer to public investors of securities in Vendetta commenced in or about May 2011, and the first proceeds from sales were received on or about July 29, 2011. The Vendetta Offering was effectuated through a private placement memorandum ("PPM").

The Defendants raised approximately $23,765,000 in cash proceeds from limited partners in the Vendetta Offering. Total cash distributions of approximately $6,680,000 were made to Vendetta limited partner-investors prior to the commencement of the Enforcement Action and the appointment of the Receiver.

Helms and Kaelin sought to continue their scheme through Iron Rock. In in January of 2013 Helms, Kaelin and others created Iron Rock and thereafter began to market the Iron Rock securities offering. At the commencement of the Enforcement Action and the appointment of the

Receiver, only one investor had subscribed to the Iron Rock offering, with an investment of $500,000. Helms and Kaelin misappropriated these proceeds, including by transferring approximately $277,000 in investor funds from Iron Rock to Barefoot [Dkt. 60-2 at 5], and using $100,000 of these Iron Rock offering proceeds to buy-out a Vendetta limited partner. *Helms II*, at *7. The Iron Rock limited partner had not received any partnership distributions from Iron Rock when the Receiver was appointed.

C. Fraudulent "Side Deals" and Comingling of Proceeds

Kaelin engaged in numerous "side deal" property transactions outside of the Vendetta Offering[10] in which she acted as an agent/intermediary for purchasers of real property and mineral interests. While some of these "side deals" were carried out legitimately[11], in other instances Kaelin acted fraudulently, failing to consummate the transaction and purchase any property with investor funds. The cash inflows from these Investors were deposited into bank accounts of Barefoot and Technicolor and were accounted for using irregular and improper accounting methodologies. Exh. A, Cheek Decl. ¶9(2). Cash outflows related to these "side deals" were accounted for using two irregular and improper accounting methodologies. *Id*. ¶9(4). The cash inflows and outflows related both to the Vendetta and Iron Rock offerings and these "side deals" were generally treated in an overall consistent manner regardless of the accounting methodology used or the type of investment -- all investor cash inflows and outflows were treated consistently in the aggregate. *Id*. ¶¶10-13, Table 1.

[10] However, the Receiver estimates that over 95% of the notional claims arising from these fraudulent "side deals" belong to Investors that also hold claims as Vendetta limited partners.

[11] Some "side deal" transactions were consummated as contemplated. In other instances, the subject properties were purchased, but title was transferred to Receivership entities and not to the purchasers. In these cases, the Receiver has completed the transfer of title for these properties to the purchaser(s). These transactions will be excluded from the calculation of notional claims.

Due to the consistent treatment of the "side deal" investors' funds with offering proceeds -- and the movement of "side deal" funds into and out of Barefoot and Technicolor accounts in which Vendetta Offering proceeds were comingled[12] -- the Receiver proposes to treat the claims arising from fraudulent "side deals" -- those not used by Kaelin to purchase any properties -- upon equal footing in the proposed Plan of Distribution with the investments made by Vendetta and Iron Rock limited partners.[13] Through the "Claims Confirmation Process" detailed below, the Receiver will provide a notional claim amount to these "side deal" Investors and permit them to review and dispute the Receiver's calculations upon proper documentation.

III.
ADMINISTRATION OF THE RECEIVERSHIP ESTATE

As mandated by the Order Appointing Receiver, the Receiver has undertaken to investigate the operations and analyze the financial books and records of the Receivership Entities, including the flow of funds between and among the various individual and entity Defendants and Relief Defendants. The Receiver has further investigated any potential liability to the Receivership Estate of non-parties to the Enforcement Action. In this regard, the Receiver issued numerous subpoenas to persons and entities and conducted interviews and depositions with respect to the operations of the Receivership Entities and the transfer of investor funds from Receivership accounts.

[12] *See Helms II*, at *19-21; *see also* Dkt. 60-2 (Cheek Decl.) ¶¶6-9, Tables 1-5, Figure 1.

[13] Based upon consultations with former Vendetta employees and review of the accounting records by DSC PLLC, the Receiver estimates that of the approximately $7,650,000 in "side deals" made with Kaelin, transactions of up to approximately $3,885,000 were not consummated -- *i.e.*, no properties were purchased with Investor funds.

A. Receivership Estate at Inception

1. Cash/Liquid Assets at Inception

Following entry, under seal, of this Court's Temporary Restraining Order and Order Appointing Receiver, Dkts. 10, 11, the Staff of the Commission served those Orders upon all financial institutions identified as maintaining accounts in the names of the Defendants. Although twenty-eight accounts were immediately frozen, cash balances in these accounts were *de minimis* in view of the size and scope of business operations and obligations of the entity Defendants. Frozen funds initially transferred to the Receivership Estate from Defendant accounts equaled $34,300.61.

Notwithstanding the imminent financial collapse and mismanagement of the Receivership entities prior to the inception of the Receivership, the underlying mineral interests which comprise the investment portfolio of Vendetta (and related entities) generated significant cash flow, albeit grossly insufficient to operate the entities on an ongoing basis as they previously had been operated. As described in the Receiver's incorporated Status Reports, Vendetta and related entities received royalty payments and other disbursements upon what is roughly estimated to be approximately 9,000 royalty interests arising from mineral leases in various counties of Texas and in other states.

2. Cash/Liquid Assets and Expenses through the 2nd Quarter of 2016

Through the second quarter of 2016, the Receivership entities have received (A) royalty and other payments in the amount of $1,808,742; (B) third party litigation income in the amount of $666,806; (C) income from the sale of business assets in the amount of $3,151,842; and (E) income from the sale of personal assets in the amount of $24,017.

Expenses to date largely represent (A) contract labor ($522,973); (B) costs required to lease, maintain and operate the Austin office and its functions including software required for

data entry and valuation, phone/internet, electricity and office rent ($157,304); (C) property insurance premiums and maintenance costs with respect to Haley Oil interests in Illinois ($104,956); and (D) additional payments related to the ownership of the oil and gas royalty interests, including property taxes and Joint Interest Billing (shared operating expenses associated with specific interests) ($292,728).

Following disbursements to date for ongoing business operations related to mineral and others interests, professional fees approved by the Court and paid to date and payments made in fulfillment of the Receiver's settlement agreement with Amegy[14], the Receivership Estate's cash on hand totals approximately $2,100,000.

B. Liquidation of the Mineral Interest Portfolio

On March 3, 2014 the Receiver filed with this Court his Proposed Liquidation Plan (Dkt. 50), detailing the steps which the Receiver would take to evaluate, value, market and liquidate the Vendetta Portfolio. On May 13, 2014, the Receiver moved the Court for an order authorizing the engagement of EnergyNet, a professional and reputable firm that specializes in oil and gas divestitures, and authorizing the sale of the oil and gas interests of the Receivership Estate and establishing detailed procedures pursuant to which such sales were to take place. Dkt. 69.

On May 27, 2014 this Court entered an Order (1) granting the Receiver authority to sell the oil and gas interests of the Receivership Estate; (2) approving the engagement of the sales and marketing firm EnergyNet; and (3) approving procedures for the sale of the oil and gas interests. Dkt. 77 (the "Sales Order"). The Sales Order authorized the Receiver to enter into a Marketing Agreement with EnergyNet through which EnergyNet would assist in the marketing

[14] *See infra*, §III(D)(1).

and sale of the oil and gas interests on behalf of the Receivership Estate. *Id*. ¶¶2-3. The Sales Order approved the sale of oil and gas interests "as is, where is." *Id*. ¶4.

The Sales Order further requires that the Receiver seek the confirmation by this Court of all sales of the oil and gas interests of the Receivership Estate. Notice of all motions to confirm the sale of oil and gas interests are required to be served on the parties to the Enforcement Action and any person or entity known by the Receiver to hold or putatively hold a security interest in the interests subject to sale confirmation. *Id*. ¶7. Any party objecting to the Receiver's proposed sale of any oil and gas interest would have fifteen days to seek leave of Court to intervene and oppose such sale. *Id*. ¶8. Once confirmed by the Court, the Receiver is authorized to effectuate the sales of oil and gas interests and any payment to EnergyNet pursuant to the Marketing Agreement. *Id*. ¶9. All sales confirmed by the Court shall be free and clear of all liens, claims and encumbrances. *Id*.

For each lot of properties in the Vendetta Portfolio placed for sale on EnergyNet, EnergyNet creates an online "data room" containing informational and due diligence materials compiled and organized by former employees of Vendetta and related entities retained by the Receiver. Once a data room is opened, EnergyNet markets the lot of Vendetta Portfolio properties to its buyer database of over 18,000 registered and qualified buyers.

1. Sales Conducted and Confirmed to Date

As previously reported to the Court, the engineering and title experts assisting the Receiver in preparing the portfolio for sale continue to encounter substantial difficulty in squaring both chain of title documentation and engineering/revenue reporting. Efforts are ongoing to prepare additional portfolio assets for sale. These efforts have been further complicated by the extreme volatility in the futures markets for West Texas Intermediate crude.

However, the Receiver has proceeded to list the assets of the Vendetta Portfolio as quickly as the title documentation and engineering/revenue reporting can be completed for the assets in the portfolio.

The Receiver has conducted, and the Court has confirmed, the auction and sale of 10 packages of Vendetta Portfolio assets through EnergyNet for gross proceeds of $3,325,700. *See* Dkts. 250, 251, 252, 280, 286, 290, 299, 308, 316, 319.

a. The Tuscaloosa Marine Shale Assets

The Receiver presented for auction on EnergyNet a package of term royalty acreage in twenty-six parcels in various Sections, Townships, and Ranges in the East Feliciana and St. Helena Parishes of Louisiana (the "Tuscaloosa Marine Shale Assets"). EnergyNet completed the preparation of the online "data room" for this group of properties on February 10, 2015 and the seven day auction bid window opened to potential buyers on February 24, 2015. A total of 227 unique EnergyNet users visited the "data room." During the auction, 11 bids were placed on the Tuscaloosa Marine Shale Assets by 9 unique bidders. However, at the close of the auction on March 3, 2015 the minimum bid reserve price recommended by EnergyNet personnel and Scott Marshall, the third-party oil and gas engineering analyst retained by the Receiver to perform economic valuation of the Receivership's oil and gas portfolio, was not met by a significant margin.

Following the unsuccessful initial auction, and upon the recommendation of EnergyNet personnel and Scott Marshall, the Receiver proceeded to re-auction the Tuscaloosa Marine Shale Assets, significantly lowering the minimum bid reserve price to reflect market realities. The "data-room" for this lot re-opened on April 29, 2015, and a second auction was held between May 13 and 20, 2015. The highest bid received in this second auction of the Tuscaloosa Marine Shale

Assets was again significantly lower than the adjusted minimum bid reserve price, although to a lesser degree than in the first auction. Following the close of the bidding window, EnergyNet personnel were able to continue to negotiate the sale price with auction participants, however, and ultimately were able to increase the offer of one such party -- Coal Creek Energy, LLC -- to $40,000, which offer was accepted by the Receiver.

On May 29, 2015, the Receiver moved the Court to confirm the sale of the Tuscaloosa Marine Shale Assets as set forth above (Dkt. 236). The Court entered its Confirmation Order on June 16, 2015 (Dkt. 250), and EnergyNet closed the sale shortly thereafter. Pursuant to the Receiver's settlement agreement with Amegy Bank, N.A. ("Amegy") (Dkt. 88-1), as approved by this Court (Dkt. 147), the Receiver transferred 50% of the net sales proceeds received from this sale (and less commissions paid to EnergyNet pursuant to the Sales Order) to Amegy.

b. **The Southern Louisiana Assets**

The Receiver also presented for auction on EnergyNet a package of overriding royalty interests in 14 Louisiana parishes located in the Texas and Louisiana Gulf Coast Basin (the "Southern Louisiana Assets"). The "data-room" for the Southern Louisiana Assets opened on April 23, 2015. A total of 208 unique EnergyNet users visited the "data room." EnergyNet personnel and Scott Marshall evaluated the Southern Louisiana Assets value and set a minimum auction bid reserve price of $40,315. The auction for the Southern Louisiana Assets began on May 7, 2015 and ended on May 14, 2015. During the auction, 73 bids were placed by 12 bidders, including the winning bid. At the close of the auction period, Regent Oil & Gas Company L.P. ("Regent") had placed the highest bid for the Southern Louisiana Assets, in the amount of $40,600, and was declared the winning bidder by EnergyNet.

On May 29, 2015, the Receiver moved the Court to confirm the sale of the South Louisiana Assets as set forth above (Dkt. 236). The Court entered its Confirmation Order on June 16, 2015 (Dkt. 251), and EnergyNet closed the sale shortly thereafter. Pursuant to the Receiver's settlement agreement with Amegy (Dkt. 88-1), as approved by this Court (Dkt. 147), the Receiver transferred 50% of the net sales proceeds received from this sale (and less commissions paid to EnergyNet pursuant to the Sales Order) to Amegy.

c. **The Vermillion Assets**

A third auction took place on EnergyNet for a package of non-producing overriding royalty interests in the Vermilion Block 179, Offshore Louisiana, in the Gulf of Mexico (the "Vermilion Assets"). The "data-room" for the Vermilion Assets opened on May 11, 2015. The auction for the Vermilion Assets began on May 11, 2015 and ended on May 14, 2015. A total of 98 unique EnergyNet users visited the Vermilion Assets "data room." During the auction, 8 bids were placed on by 2 unique bidders. At the close of the auction period, Beckham Holdings Trust had placed the highest bid for the Vermilion Assets, in the amount of $6,100, and was declared the winning bidder by EnergyNet.

On May 29, 2015, the Receiver moved the Court to confirm the sale of the Vermillion Assets as set forth above (Dkt. 236). The Court entered its Confirmation Order on June 16, 2015 (Dkt. 252), and EnergyNet closed the sale shortly thereafter. Pursuant to the Receiver's settlement agreement with Amegy (Dkt. 88-1), as approved by this Court (Dkt. 147), the Receiver transferred 50% of the net sales proceeds received from this sale (and less commissions paid to EnergyNet pursuant to the Sales Order) to Amegy.

d. **Sale of the Ozona Interests**

On September 11, 2014, JAL Interests, LLC ("JAL") made a winning bid of $1,210,000 at auction on EnergyNet for a package of overriding royalty interests in 258 wells in the Ozona NE Field located in Crockett and Schleicher Counties, Texas (the "Ozona Interests"). On September 18, 2014 the Receiver moved the Court for the entry of an order confirming the sale of the Ozona Interests. Dkt. 110.

This motion was opposed by Vendetta limited partner Clovis Capital Ventures, LLC ("Clovis"), which asserted a purported secured interest in the Ozona Interests arising from a "side letter" executed by it and Vendetta (through Defendant Helms). Dkt. 127. Following expedited discovery, an unsuccessful mediation[15] and an evidentiary hearing, Dkt. 201, the Court entered an Order on March 10, 2015 rejecting Clovis' secured claim pursuant to the Texas Uniform Fraudulent Transfer Act, TEX. BUS. & COM. CODE §§24.001 *et seq*. ("TUFTA"), and confirming the sale of the Ozona Interests to JAL. Dkt. 207. The Court further "directed [the Receiver] to take all further action necessary to complete the sale and transfer of the Ozona Interests to [JAL] pursuant to the Sales Order." *Id*. at 26.

During the time period in which the Court determined of the validity of Clovis' security interest in the Ozona Interests, JAL communicated to the Receiver first (a) that it wished to renegotiate the sale price of the Ozona Interests to $860,000 due to a precipitous drop in crude

[15] The Receiver, his counsel and counsel for Clovis attended a mediation in Houston on December 12, 2014. At that mediation, the parties reached an agreement with respect to permitting the sale of the Ozona Interests to close, with Clovis' purported security interest then attaching to the proceeds of the sale. On December 16, 2014, the Receiver transmitted to counsel for Clovis a draft stipulation and proposed order (the "stipulation") under which the Receiver and Clovis would so stipulate, with the net sale proceeds to be deposited into the registry of this Court pending the final determination of the validity of Clovis' purported security interest. On December 17, 2014 Clovis and its principals refused to execute the proposed stipulation, notwithstanding their agreement to do so at the mediation. *See, e.g.*, Dkt. 180.

oil prices following the auction; and, later (b) that it would not close the transaction at any price, for these same reasons.

Accordingly, on April 17, 2015 the Receiver filed a Motion for Entry of an Order Enforcing Sale of Receivership Assets (Dkt. 209) (the "Motion to Enforce"). Following the submission of responses and replies of JAL and the Receiver, Dkts. 222, 240, 247, the Court held a hearing on the Receiver's Motion to Enforce on June 16, 2015. On July 2, 2015 the Court entered an Order denying the Receiver's Motion to Enforce, voiding the sale of the Ozona Interests to JAL, and directing the Receiver to instruct EnergyNet to return to JAL its remaining earnest money on deposit. Dkt. 263 at 18. The remaining earnest money of JAL in escrow with EnergyNet was returned to JAL on or about July 6, 2015.

1) *The Final Sale of the Ozona Interests*

Following the entry of the Court's Order denying the Receiver's Motion to Enforce, the Receiver proceeded to relist the Ozona Interests for sale on EnergyNet. The data room for the auction opened for viewing by EnergyNet's users on or about July 13, 2015. A total of 419 unique EnergyNet users visited the Ozona Interests "data room" 2,513 times. The auction was held from July 30, 2015 through August 6, 2015. During the auction, 67 bids were placed on the Ozona Interests by 16 unique bidders.

At the close of the auction period, the highest bid placed was for $462,000, which amount was below the minimum bid reserve price set by EnergyNet personnel and Scott Marshall, the third-party oil and gas engineering analyst retained by the Receiver to perform economic valuation of the Receivership Estate's oil and gas portfolio. The Receiver declined to accept this final bid amount. However, following the close of the bidding window, EnergyNet personnel continued to negotiate the sale price with auction participants, and ultimately received an increased offer by one such party of $506,000, which offer -- subject to Court confirmation --

was accepted by the Receiver. The purchase price represented approximately 150 months of the average cash flow from the five months preceding the auction, an amount significantly higher than the average lot listed on EnergyNet. Dkt. 271-2 (Felton Declaration), at ¶3.

On August 13, 2015, the Receiver moved the Court to confirm the sale of the Ozona Interests as set forth above (Dkt. 271). No objections were filed, and the Court entered its Confirmation Order on August 31, 2015. Dkt. 280. EnergyNet closed the sale shortly thereafter and, pursuant to the Receiver's settlement agreement with Amegy (Dkt. 88-1), as approved by this Court (Dkt. 147), the Receiver transferred 50% of the net sales proceeds received from this sale (and less commissions paid to EnergyNet pursuant to the Sales Order) to Amegy.

e. **The Mississippi Assets**

The Receiver presented for auction on EnergyNet a package of royalty interests consisting of 220 wells located in nine counties in Mississippi (the "Mississippi Assets"). The "data-room" for the Mississippi Assets opened on or about August 18, 2015. A total of 247 unique EnergyNet users visited the "data room." The auction for the Mississippi Assets began on September 3, 2015 and ended on September 10, 2015. During the auction, 33 bids were placed by 14 bidders. At the close of the auction period, Icon Energy LLC ("Icon") had placed the highest bid for the Mississippi Assets, in the amount of $123,000, which amount was below the minimum bid reserve price set by EnergyNet personnel and Scott Marshall. The Receiver declined to accept this final bid amount. However, following the close of the bidding window, EnergyNet personnel continued to negotiate the sale price with auction participants, and ultimately were able to increase the offer of one such party (Icon) to $130,000, which offer was accepted -- subject to Court approval -- by the Receiver.

On September 16, 2015, the Receiver moved the Court to confirm the sale of the Mississippi Assets as set forth above (Dkt. 283). No objections were filed, and the Court entered its Confirmation Order on September 29, 2015. Dkt. 286. EnergyNet closed the sale shortly thereafter and, pursuant to the Receiver's settlement agreement with Amegy (Dkt. 88-1), as approved by this Court (Dkt. 147), the Receiver transferred 50% of the net sales proceeds received from this sale (and less commissions paid to EnergyNet pursuant to the Sales Order) to Amegy.

f. **The Florida Assets**

The Receiver presented for auction on EnergyNet a package of royalty interests in the Jay Unit/Field (an EOR Production Unit crossing multiple states and counties) in Escambia and Santa Rosa Counties, Florida (the "Florida Assets"). The "data-room" for the Florida Assets opened on or about August 27, 2015. A total of 223 unique EnergyNet users visited the "data room." The auction for the Florida Assets began on September 10, 2015 and ended on September 17, 2015. During the auction, 50 bids were placed by 16 bidders, including the winning bid. At the close of the auction period, the Kitchel Estate Non Exempt Trust f/b/o Ward N. Adkins, Jr. ("Kitchel Trust") had placed the highest bid for $25,400, which amount was below the minimum bid reserve price set by EnergyNet personnel and Scott Marshall. The Receiver declined to accept this final bid amount. However, following the close of the bidding window, EnergyNet personnel continued to negotiate the sale price with auction participants, and ultimately were able to increase the offer of one such party (Kitchel Trust) to $28,000 -- an amount above the minimum bid reserve price set for the auction -- which was accepted by the Receiver (subject to Court confirmation).

On September 28, 2015, the Receiver moved the Court to confirm the sale of the Florida Assets as set forth above (Dkt. 285). No objections were filed, and the Court entered its

Confirmation Order on October 19, 2015. Dkt. 290. EnergyNet closed the sale shortly thereafter and, pursuant to the Receiver's settlement agreement with Amegy (Dkt. 88-1), as approved by this Court (Dkt. 147), the Receiver transferred 50% of the net sales proceeds received from this sale (and less commissions paid to EnergyNet pursuant to the Sales Order) to Amegy.

g. **The Northern Louisiana Assets**

The Receiver also presented for auction on EnergyNet a package of royalty interests and overriding royalty interests in numerous properties located in Bossier, Caddo, Claiborne, DeSoto, Jackson, Natchitoches, Ouachita, Rapides and Webster Parishes, Louisiana (the "Northern Louisiana Assets"). The "data-room" for the Northern Louisiana Assets opened on or about October 22, 2015. A total of 259 unique EnergyNet users visited the "data room." The auction for the Northern Louisiana Assets began on November 5, 2015 and ended on November 12, 2015. During the auction, 36 bids were placed by 13 bidders, including the winning bid. At the close of the auction period, Caddo Minerals Inc. ("Caddo") had placed the highest bid for $166,000, which amount was above the minimum bid reserve price set by EnergyNet personnel and Scott Marshall -- Caddo was declared the winning bidder by EnergyNet (subject to Court confirmation).

On December 1, 2015 the Receiver moved the Court to confirm the sale of the Northern Louisiana Assets as set forth above. Dkt. 297. No objections were filed, and the Court entered its Confirmation Order on December 15, 2015. Dkt. 299. EnergyNet closed the sale shortly thereafter and, pursuant to the Receiver's settlement agreement with Amegy (Dkt. 88-1), as approved by this Court (Dkt. 147), the Receiver transferred 50% of the net sales proceeds received from this sale (and less commissions paid to EnergyNet pursuant to the Sales Order) to Amegy.

h. **The Portfolio Auction Package**

As previously reported to this Court, the Receiver determined, in consultation with Receivership and EnergyNet personnel, that it would be in the best interests of the Receivership Estate to sell the vast majority of the remaining assets in the Vendetta Portfolio -- namely royalty and overriding interests that are "in pay" and/or "non-producing" -- as a single auction package on EnergyNet (the "Portfolio Auction Package").

The Receiver's determination to market and sell the Portfolio Auction Package in a single auction was based upon (A) the Receiver's and his engaged personnel's review of the due diligence information currently available for these assets, (B) an analysis of the costs associated with preparing these various assets for sale individually (or in smaller, but numerous, groups) and (C) recommendations of EnergyNet personnel with respect to the marketability of such a package of assets, particularly in light of current market conditions for West Texas Intermediate crude. In this regard, several of the royalty and overriding interests in the Portfolio Auction Package would not likely garner enough interest, or attract high enough bids at auction, to justify the costs associated with preparing individual data rooms. By placing numerous royalty and overriding interests into the single Portfolio Auction Package, the Receiver will be able to reduce preparation costs for the auction of these assets while still delivering to EnergyNet the necessary due diligence information necessary for potential buyers.[16]

The Portfolio Auction Package presented for auction on EnergyNet was comprised of royalty and overriding royalty interests in numerous properties located in 384 counties in 15

[16] In furtherance of this plan, the Receiver terminated certain contract employees of the Receivership Estate previously responsible for data entry related to the incoming royalty revenue checks from operators of the Receivership Estate's royalty and overriding interests and engaged an oil-and-gas data firm (PetroReports) to electronically process the aforementioned royalty revenue checks (which include approximately 19,000 lines of data each month). Engaging PetroReports to perform this data processing enables the Receiver to prepare the Portfolio Auction Package for sale in a single auction at reduced costs to the Receivership Estate.

states, primarily in Texas and Oklahoma, and also in Alabama, Arkansas, California, Colorado, Illinois, Kansas, Kentucky, Michigan, Montana, Nebraska, New Mexico, North Dakota and Wyoming. The EnergyNet "data room" for the Portfolio Auction Package opened on January 25, 2016; the auction for the Portfolio Auction Package commenced February 16, 2016 and, as prescribed in the Order, ran for seven days. During the auction, 51 bids were placed by 17 bidders. At the close of the auction period, Rusk Capital LLC ("Rusk") had placed the highest bid for the Portfolio Auction Package, in the amount of $2,125,000, which amount was below the minimum bid reserve price set by EnergyNet personnel and Scott Marshall. The Receiver declined to accept this final bid amount. However, following the close of the bidding window, EnergyNet personnel continued to negotiate the sale price with auction participants, and ultimately were able to increase the offer of one such party (Rusk) to $2,300,000, which offer was accepted -- subject to Court approval -- by the Receiver.

On March 4, 2016, the Receiver moved the Court to confirm the sale of the Portfolio Auction Package as set forth above (Dkt. 306). No objections were filed, and the Court entered its Confirmation Order on March 21, 2016. Dkt. 308. EnergyNet closed the sale shortly thereafter and, pursuant to the Receiver's settlement agreement with Amegy (Dkt. 88-1), as approved by this Court (Dkt. 147), the Receiver transferred the remaining balance of the Amegy Settlement to Amegy from these sale proceeds.

i. The Fisher and Nolan County Assets

The Receiver presented for auction on EnergyNet a package of overriding royalty interests in four wells located in Fisher County and Nolan County, Texas (the "Fisher and Nolan Assets"). The "data-room" for the Fisher and Nolan Assets opened on or about March 22, 2016. A total of 205 unique EnergyNet users visited the "data room." The auction for the Fisher and

Nolan Assets began on April 13 and ended on April 20, 12016. During the auction, 28 bids were placed by 8 bidders.

At the close of the auction period, Cullins Resources, Inc. ("Cullins") had placed the highest bid for $26,000, which amount was below the minimum bid reserve price set by EnergyNet personnel and Scott Marshall. However, following the close of the bidding window, EnergyNet personnel continued to negotiate the sale price with auction participants. EnergyNet ultimately was only able to increase the offer to $26,500, however. Following discussions with EnergyNet personnel and Scott Marshall regarding the auction activity and bids received, the Receiver determined that re-listing the property in several weeks would not likely materially increase the sale price, and risked receiving a lower final bid at auction. Accordingly, Cullins's offer of $26,500 was accepted by the Receiver (subject to Court confirmation).

On May 2, 2016, the Receiver moved the Court to confirm the sale of the Fisher and Nolan Assets. Dkt. 313. No objections were filed, and the Court entered its Confirmation Order on May 17, 2016. Dkt. 316. EnergyNet closed the sale shortly thereafter.

j. The Barefoot and Technicolor Assets

A number of properties held in Barefoot and Technicolor (the "Barefoot Technicolor Assets") were burdened by non-transparent -- sometimes inexplicable -- transfers between those entities. Approximately 200 conveyances were implicated. Most of these properties are non-producing. Many of these assets held on their face in Technicolor may have to be transferred to certain investors who funded these purchases (and to Barefoot as commissions on the transactions at issue) based upon proof of purchase. Following extensive work to untangle the title issues to these assets, the Receiver presented them for auction on EnergyNet. The "data-room" for the Barefoot Technicolor Assets opened on or about May 9, 2016. A total of 341 unique EnergyNet

users visited the Barefoot Technicolor Assets "data room" on 1,448 occasions. The auction bid window was open to potential buyers from May 26 through June 2, 2016. During the auction, 65 bids were placed on the Barefoot Technicolor Assets by 21 unique bidders.

At the close of the auction period, Relic Mineral Fund L.P. ("Relic") had placed the highest bid for $82,500, an amount greater than the minimum bid reserve price set based on the recommendations of EnergyNet personnel and Scott Marshall. Accordingly, EnergyNet declared Relic the winning bidder (subject to Court confirmation of the sale). The purchase price represents approximately 107 months of cash flow from the month preceding the auction, an amount consistent with the current market on EnergyNet for assets of this nature.

On June 8, 2016, the Receiver moved the Court to confirm the sale of the Barefoot Technicolor Assets. Dkt. 318. No objections were filed, and the Court entered its Confirmation Order on June 24, 2016. Dkt. 319. EnergyNet and the Receiver are currently completing all paperwork necessary to close the sale and transfer the Barefoot Technicolor Assets to Relic.

2. **Remaining Assets to Be Sold Pursuant to the Sales Order**

Certain "working interests" and other royalty and overriding royalty interests identified by Receivership and EnergyNet personnel as best suited for individual sale will be sold separately from the Portfolio Auction Package. The sales will, however, be conducted in the same manner as previous auctions conducted through EnergyNet pursuant to the Sales Order subjection to confirmation by this Court. The determination to sell certain assets separately from the Portfolio Auction Package is based upon (i) valuation of these assets, (ii) information available with respect to the production and revenues of these assets, and (iii) the scope of work necessary to populate the corresponding data room(s) on EnergyNet. Receivership personnel are evaluating the following remaining assets and preparing them for sale on EnergyNet:

a. Certain royalty interests in Karnes County, Texas that were purchased by Vendetta in December 2012 were transferred to the Receivership Estate in or about January 2016 (*see infra* at §III(E)(4)).[17] When sufficient due diligence-related data can be compiled, these assets will be presented for auction on EnergyNet.

b. Vendetta holds certain working interests in wells in Martin County, Texas. These assets are presently being evaluated and prepared for sale on EnergyNet.

c. Certain other miscellaneous working interests remain which are held by Vendetta and Barefoot. Personnel are compiling data with respect to these working interests which are expected to be offered for sale on EnergyNet during the second quarter.

d. Technicolor holds non-producing and small producing assets in Ohio. Personnel are researching (and, where necessary, attempting to correct) conveyances on these assets in order to render them saleable on EnergyNet.

e. Haley Oil assets in Illinois. Helms and Kaelin owned and operated Illinois corporation Haley Oil, through which they purchased working interests to operate oil and gas production leases in Illinois. The Receiver has made efforts to prepare the Haley Oil properties for sale, but the marketability of these assets was severely hindered by Helms and Kaelin, who transferred excessively high royalty interests in the revenue generated by Haley Oil's operations vis-à-vis its obligations as working interest holder. In this regard, through Haley Oil's working interests, it is 100% responsible for the operations of these oil and gas leases, including all expenses and liabilities arising from those operations; but Haley Oil is entitled to receive only approximately 42% of the revenues generated from the sale of oil from these properties.[18] The

[17] Also transferred to the Receivership Estate was $16,345.78 in satisfaction of the revenues generated and due to Vendetta subsequent to December 2012 from these Karnes County interests.

[18] This amount includes overriding royalty interests transferred by Helms and Kaelin to Receivership

balance of the revenues generated by Haley Oil's operations (if any) is required to be paid to the holders of the overriding royalty interests conveyed by Helms and Kaelin. Accordingly, as Haley Oil is currently configured, potential buyers would take on all risks and liability for operations, but would receive less than half of the revenues from those operations.

The Receiver has engaged in ongoing negotiations with the parties holding materially all of the Haley Oil overriding royalty interests with a view to the possible transfer of the Haley Oil assets to these interest holders. Because these parties hold, and would receive revenue through, the overriding royalty interests which would impede any sale to other buyers, the transfer of the Haley Oil assets to these parties would be a far less complex transaction to accomplish. Moreover, these are the same parties that funded the purchase the Haley Oil interests in the first instance through Helms and Kaelin. From the Receiver's perspective, the consideration for any such transaction would include the waiver of claims against the Receivership Estate associated with the funds paid to Helms and Kaelin for the Haley Oil asset purchase.

The Receiver has continued to compile and transmit due diligence materials in anticipation of the foregoing proposed transaction. Such a transfer of the Haley Oil assets to these overriding royalty interest holders through EnergyNet as detailed above (*see* §III(B)) could not be accomplished pursuant to the Sales Order (Dkt. 77). Accordingly, if the proposed sale agreement is concluded, the Receiver would move this Court to approve and confirm the transfer pursuant to 28 U.S.C. 2001, 2002, 2004, and other applicable law.

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entity Barefoot Minerals.

C. Sales of Other Assets

1. 2008 Mercedes-Benz S550

Upon the Receiver's appointment by the Court, the Receiver's representative took possession of a 2008 Mercedes-Benz S550, which was purchased by Kaelin in 2011 as a gift for Helms. This Mercedes was titled to Defendants Helms and Kaelin notwithstanding that it was purchased with Receivership entity funds. The Receiver obtained title to the vehicle from Helms and Kaelin and on March 6, 2014 sold the vehicle for $24,000.

2. Office Furniture and Equipment

In March 2014, the Receiver engaged Gaston & Sheehan Auctioneers in Pflugerville, Texas to conduct the auction of various items located in the Vendetta office suite and storage units. Between May 1 and June 23, 2016, Gaston & Sheehan Auctioneers sold approximately 50 items at auction for net proceeds of $4,478.65 (after commissions of $787.35). The remaining items that were not purchased at auction were donated to Goodwill. Certain items were pulled from their original auction because Chelsea Upshaw, daughter of Defendant Kaelin, provided an affidavit stating under penalty of perjury that they were her personal belongings.

D. Settlement of Secured Claims Against the Receivership Estate

1. Court-Approved Settlement with Amegy Bank, N.A.

On October 23, 2014, this Court entered an order approving a Settlement Agreement between the Receiver and Amegy. Dkt. 147. Amegy had asserted a secured claim against the Receivership Estate arising from a secured loan to Vendetta of approximately $5,400,000; the Receiver, in response, asserted certain defects in perfection of Amegy's purported security interest in all of Vendetta's assets. Following extensive negotiations, Amegy agreed to reduce its

claim to $1,000,000 from a purported minimum of $3,244,856.30. The settlement amount was to be paid from 50% of the net proceeds received by the Receivership Estate from the sales of the Receivership Estate's oil and gas interests through EnergyNet.

The Receiver fully satisfied the Amegy settlement amount as of April 4, 2016 and, accordingly, the Amegy Settlement is fully executed.

2. **Court-Approved Release of Commerce, Texas Residence to Amegy Mortgage Company, LLC**

When the Receiver was appointed, Kaelin owned a three bedroom, two bath residence located at 1405 Caddo Street, Commerce, Hunt County, Texas -- approximately 66 miles northeast of Dallas (the "Commerce Residence"). The Commerce Residence was subject to a secured lien in favor of Amegy Mortgage Company, LLC ("Amegy Mortgage") pursuant to a Promissory Note and Deed of Trust. According to Amegy Mortgage's Pay-off Statement, the amount owed to Amegy Mortgage under the Promissory Note on April 30, 2014 was $111,868.69.

On May 6, 2014, the Receiver engaged Richard M. Tharp of Tharp Appraisal Group, Inc. to perform a certified appraisal of the Commerce Residence. Mr. Tharp concluded that the Commerce Residence had a market value of $75,000.00. The 2014 real estate taxes owed on the home were $3,184.40.

Because the value of the Commerce Residence was less than the amount of the Amegy Mortgage lien, and the substantial ongoing tax obligations of the Receivership Estate for same, the Commerce Residence had no value to the Receivership. Accordingly, on August 28, 2014 the Receiver requested that the Court dissolve its asset freeze as to the Commerce Residence so that Amegy Mortgage could exercise any and all legal rights and remedies it may have to the

property. Dkt. 92. The Court granted the Receiver's Motion on October 8, 2014. Dkt. 135. The Receiver thereafter released the Commerce Residence to Amegy Mortgage for foreclosure.

3. **Settlement of Secured Claim Against Haley Oil Assets**

In June and July 2013, two entities -- Environmental Audits and Consultants, Inc. ("EAC") and Landfill 33, Ltd. ("Landfill 33") -- filed "oil and gas liens" under Illinois law against a well lease of Haley Oil, the "Hunter A&B" Lease (Illinois Lease No. 102493). Under Illinois law, "oil and gas liens" attach to the production of oil from the lease at issue, and give the lien holder one year to file a suit to foreclose on the lien in the county in which the property is located. 770 ILCS 70/12. When an "oil and gas lien" is filed, the purchaser of the oil and gas from that well holds all sales proceeds in suspense pending the outcome of such litigation. In this regard, in December 2012 Countrymark Refining and Logistics, LLC ("CountryMark") began to hold in suspense the sales proceeds payable to Haley Oil from oil sales on the Hunter lease.

EAC filed a lawsuit in Shelby County, Illinois to foreclose on its "oil and gas lien" on April 22, 2013. That case was stayed on or about January 6, 2014 pursuant to the Order Appointing Receiver entered by this Court. Dkt. 11 at ¶¶32-34. EAC named CountryMark as a defendant in that action pursuant to Illinois law. Landfill 33 did not file a suit to foreclose on its lien; instead, it filed a suit for money damages in Effingham County, Illinois. Accordingly, its "oil and gas lien" expired on or about July 3, 2013. Prior to the entry of the Order Appointing Receiver, Helms stipulated to an Agreed Final Judgment in the Landfill 33 Suit for $48,067.25 on November 14, 2013. Because the "oil and gas lien" filed by Landfill 33 expired, and it brought suit in a different county than that in which the lien was filed, however, the Landfill 33 judgment is an unsecured liability of the Receivership Estate.

The Receiver has negotiated a settlement agreement with EAC by which CountryMark will release to EAC approximately 83% of the $53,895.19 currently held in suspense, and remit the balance to the Receivership Estate. The Receiver and EAC have executed an agreement upon these terms, and will move the Court for approval of this agreement shortly.[19]

4. **Residence Titled to Helms and his Deceased Wife**

At the commencement of the Receivership, Defendant Helms was separated, but not divorced, from his wife Donna Pollard, and was living with Defendant Kaelin in the house owned by her and her husband. Helms and his wife held joint title in the property located at 8501 Abilene Cove, Austin, Texas, 78749 (the "Abilene Cove Residence"). Donna Pollard subsequently died intestate.

Ditech Financial, LLC ("Ditech") and Wells Fargo Bank Texas N.A. ("Wells Fargo") have purported secured interests the Abilene Cove Residence though Deeds of Trust. The IRS also has filed tax liens (with respect to liabilities of both Helms and Pollard) against the Abilene Cove Residence. The Receiver asserts that pursuant to the Order Appointing Receiver, the Receivership Estate holds -- at minimum -- a one-half interest in the Abilene Cove Residence. The Receiver and counsel for Ditech are unaware of any heirs to Mrs. Pollard's estate apart from Helms, her husband at the time of her death. The Receiver therefore contends that if Helms is Pollard's sole heir, the Pollard estate's interest in the Abilene Cove Residence is a Receivership asset.

[19] Because these liens only attached to production from the Hunter Lease, EAC and Landfill 33 never held secured claims with respect to the Interim Distribution funds generated through the sale of Vendetta, Barefoot and Technicolor oil-and-gas properties, or otherwise obtained through litigation and settlement of the legal claims of Vendetta, Iron Rock, Barefoot and Technicolor.

Counsel for the Receiver has worked with counsel for Ditech (the first priority lienholder) and the anticipated administrator appointed for the Pollard estate to negotiate the sale of the Abilene Cove Residence, the satisfaction of the tax liens and secured claims from the sale proceeds, and the subsequent transfer of the balance to the Receivership Estate.

E. Ancillary Litigation and Settlement of Claims of the Receivership Estate

Among the assets of the entity Defendants placed under the Receiver's control are the choses in action of those entities. Accordingly, the Receiver has undertaken to investigate the liability of third parties to the Receivership Estate and assert those claims against liable parties.

The Receiver has asserted claims against several parties that received fraudulent transfers from the Vendetta Ponzi scheme, which are avoidable under TUFTA and other applicable law. Pursuant to Fifth Circuit case law, transfers from a Ponzi scheme are presumptively made with actual intent to hinder, delay or defraud creditors. *Helms I*, at *18-19; *Warfield v. Byron*, 436 F.3d 551, 558 (5th Cir. 2006) ("The Receiver's proof that RDI operated as a Ponzi scheme established the fraudulent intent behind transfers made by RDI."). Accordingly, to avoid liability for transfers from the Vendetta Ponzi scheme, transferees must establish the two-prong TUFTA affirmative defense -- that they received the transfers ***both*** with objective good faith[20], ***and*** in

[20] Good faith under TUFTA "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 *Brown v. Third Nat'l Bank (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)). Knowledge of facts which "would excite the suspicions of a person of ordinary prudence and put him on inquiry of the fraudulent nature of an alleged transfer" defeats any assertion of good faith. *GE Capital Commer., Inc. v. Wright & Wright, Inc.*, 2011 U.S. Dist. LEXIS 3962, at *16 (N.D. Tex. Jan. 13, 2011).

exchange for reasonably equivalent value[21]. TUFTA §25.009(a). In addition to these "clawback" claims of the Receivership Estate, the Receiver has further asserted causes of action for conspiracy and aiding, abetting, and participating in Helms and Kaelin's fraudulent securities offerings.

As detailed below, with respect to these "clawback" claims the Court has entered final judgments totaling approximately $1,195,000, and the Receiver has executed settlements (approved by this Court) securing the payment to the Receivership Estate of approximately $537,000 and the waiver of notional claims against the Receivership Estate totaling approximately $570,000.

1. **Payments Received Voluntarily in Response to Demands of the Receiver**

The Receiver has made numerous demands for the return of funds fraudulently transferred from the Vendetta Ponzi scheme for commissions, reimbursed expenses and legal fees. A total of $113,523 has been returned voluntarily to the Receivership Estate as a result of these demands.

2. **Court-Approved Settlement with William Brock**

As previously reported to the Court, the Receiver determined through his investigation that William Brock ("Brock") was compensated from the Vendetta Ponzi scheme for, *inter alia*, locating new investors for Vendetta and Iron Rock. Brock was also a Vendetta limited partner. The Receiver entered into a Settlement Agreement with Brock through which, *inter alia*, Brock agreed to pay to the Receivership Estate $200,000 in twelve (12) equal monthly installments, and waive his right to participate in the claims process for the Receiver's ultimate plan of distribution

[21] How courts in the Fifth Circuit analyze the exchange of reasonably equivalent value is currently an open question. Compare *Janvey v. Golf Channel, Inc.*, 780 F.3d 641 (5th Cir. 2015) ("Golf Channel I"); *Janvey v. Golf Channel, Inc.*, 792 F.3d 539 (5th Cir. 2015) ("Golf Channel II"); *Janvey v. Golf Channel, Inc.*, No. 15-0489, 59 Tex. Sup. Ct. J. 587, 2016 Tex. LEXIS 241 (2016) ("Golf Channel III").

of Estate assets (notionally in the amount of $469,921.17). These terms were conditioned upon the entry by the Court of a litigation "Bar Order." Dkt. 172. On February 12, 2015 the Court approved the Brock settlement and entered the Bar Order.[22] Dkt. 199.

Brock fully satisfied the payment of the $200,000 settlement amount through his final installment payment as of February 29, 2016 and, accordingly, the Brock Settlement is fully executed.

3. **Taylor v. Gaucher**

On October 23, 2014, the Receiver commenced the action styled *Thomas L. Taylor III, solely in his capacity as Court-appointed receiver for Robert A. Helms, et al. v. Philip E. Gaucher*, No. 1:14-cv-00965-LY-ML (W.D. Tex. 2014). The Receiver asserted causes of action against Gaucher for the avoidance of $162,565 in fraudulent transfers made to Gaucher from the Vendetta Ponzi scheme and, alternatively, for disgorgement of those funds under the theory of unjust enrichment. All pretrial motions were referred to this Court by Judge Yeakel for determination or recommendation (*Gaucher* Dkt. 5).

Following extensive motion practice pursuant to FED. R. CIV. P. 12(b), see *Gaucher* Dkts. 12, 16, 17, 20 – 24, this Court entered a Report and Recommendation to Judge Yeakel on July 23, 2015 that Gaucher's Motions to Dismiss be denied (*Gaucher* Dkt. 25). On July 31, 2015 Gaucher substituted counsel, *Gaucher* Dkts. 26 – 33, and the Receiver and Gaucher's new counsel proceeded to engage in substantive settlement negotiations.

Soon thereafter the parties agreed to settlement terms under which Gaucher agreed to pay to the Estate 95% of the transfers alleged in the Receiver's First Amended Complaint, totaling $154,436.75. The Parties executed their settlement agreement on August 20, 2015 and the same

[22] The Bar Order, *inter alia*, enjoins all Vendetta and Iron Rock limited partners from commencing legal proceedings against Brock relating to Vendetta and Iron Rock.

day moved for Court approval. *Gaucher* Dkt. 274. No objections to the settlement were filed with the Court, which approved same by Order dated August 28, 2015. *Gaucher* Dkt. 279. Gaucher shortly thereafter satisfied the payment of the Settlement amount, and on September 28, 2015 the parties filed a Joint Stipulation of Dismissal with Prejudice. *Gaucher* Dkt. 40.

4. **Taylor v. Terri Randle and 2 Rivers**

The Receiver's investigation into the operations of the Receivership entities revealed that Terri Randle and 2 Rivers Royalty, LLC had been engaged by Kaelin to broker the purchase of mineral interests in late 2012, and that $110,000 had been transferred to them in the first half of 2013. The Receiver learned that these transfers were commissions or commission advances for mineral interest purchases which never closed, and therefore the underlying commissions were never earned. Accordingly, the Receiver demanded the return of these funds pursuant to TUFTA; Randle and 2 Rivers refused to voluntarily return these funds. The Receiver engaged in settlement negotiations with counsel for these parties for several months, with no success.

Accordingly, on January 20, 2015, the Receiver commenced the action styled *Thomas L. Taylor III, solely in his capacity as Court-appointed receiver for Robert A. Helms, et al. v. Terri Randle f/k/a Terri Wilmoth and 2-Rivers Royalty, LLC*, Case No. 1:16-cv-0042-LY (W.D. Tex. 2016). The Receiver asserted causes of action under TUFTA and the equitable doctrine of unjust enrichment for the avoidance and disgorgement, respectively, of fraudulent transfers made to these defendants from the Vendetta Ponzi scheme totaling $110,000.

Following the commencement of litigation, the parties were able to agree to terms of settlement. On or about February 4, 2016, the parties executed a Compromise Settlement and Release Agreement under which Randle and 2 Rivers agreed to pay to the Estate 75% of the transfers alleged in the Receiver's Complaint, totaling $82,500. The Receiver moved for Court approval of his settlement with Randle and 2 Rivers on the same day. Dkt. 301, *Randle* Dkt. 5.

Approval of this settlement agreement is currently pending. The terms of the settlement agreement dictate that the settlement payment will be made to the Receivership Estate within 14 days of Court approval.[23]

5. **Taylor v. Samouce, Kyle and Applied Quantitative Solutions, LLC**

On July 27, 2015 the Receiver commenced the action styled *Thomas L. Taylor III, solely in his capacity as Court-appointed receiver for Robert A. Helms, et al. v. Michael Samouce, Mark Kyle and Applied Quantitative Solutions, LLC,* No. 1:15-cv-00627-LY (W.D. Tex. 2015) against defendants Samouce, Kyle and AQS. The Receiver asserted causes of action under TUFTA and the equitable doctrine of unjust enrichment for the avoidance and disgorgement, respectively, of the approximately $850,000 in Vendetta sales commissions fraudulently transferred to Samouce, Kyle and AQS from the Vendetta Ponzi scheme. The Receiver further asserted causes of action for aiding, abetting and participating in Helms' and Kaelin's unlawful Vendetta securities offering, which was fraudulent and in breach of their fiduciary duties, and Helms' and Kaelin's conversion of Receivership entity funds through the illegal misappropriation of millions of dollars.[24]

1) *Defaults of Kyle and AQS*

The Complaint was served on Samouce, Kyle and AQS between August 5 and 12, 2015. Kyle and AQS failed to file an answer or otherwise respond to or defend themselves against the

[23] In January 2016, the Receiver and 2 Rivers finalized the transfer of certain oil and gas royalty interests in Karnes County, Texas that were purchased with Vendetta funds in December 2012 but placed in the name of 2 Rivers. 2 Rivers conveyed these mineral interests to the Receivership Estate, and paid $16,345.78 to the Receivership Estate in satisfaction of all revenues generated by these Vendetta interests since December 2012. The Receiver executed a Limited Release solely with respect to any claims arising from these Karnes County interests.

[24] The Receiver also sought to pierce the corporate veil of AQS and hold Samouce and Kyle jointly and severally liable for the liability of AQS to the Receivership Estate.

Receiver's allegations. Accordingly, the Receiver sought the entry of defaults for Kyle and AQS (*AQS* Dkts. 11, 12), which were entered by the Clerk on September 23, 2015. *AQS* Dkts. 13, 14.

The Receiver filed a Motion for Entry of Default Judgments against Kyle and AQS on October 27, 2015 with respect to certain of the fraudulent transfers paid to them, or for their benefit. *AQS* Dkt. 17. Neither Kyle nor AQS ever appeared to oppose the Motion for Default Judgments or otherwise defend themselves in this action. Accordingly, this Court entered Default Judgments against Kyle and AQS on December 23, 2015. *AQS* Dkts. 20, 21. Kyle is liable to the Receivership Estate for $510,167.98 in damages and pre-judgment interest, and AQS is liable to the Receivership Estate for $746,645.27 in damages and pre-judgment interest. *Id*. The District Court entered a Final Judgment with respect to Kyle and AQS on December 28, 2015. *AQS* Dkt. 23. The Receiver currently is pursuing collection of these Judgments.

2) *Bankruptcy of Samouce*

Samouce filed his Answer to the Receiver's Complaint on September 9, 2015. *AQS* Dkt. 9. 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. *AQS* Dkts. 15, 16. On October 30, 2015, and prior to filing his Response to the Receiver's Motion, Samouce (jointly with his wife) filed a voluntary Chapter 7 bankruptcy petition in the United Stated Bankruptcy Court for the Western District of Texas, Austin Division (*In re Samouce*, Case No. 1:15-bk-11409-tmd) ("Samouce Bankruptcy"). Upon motion by the Receiver, *AQS* Dkt. 18, on December 23, 2015 the Court severed the Receiver's claims against Samouce into a new case styled *Taylor v. Samouce*, Civil Action No. 1:15-cv-1223-LY (W.D. Tex. 2015). *AQS* Dkt. 19. Samouce filed a Suggestion of Bankruptcy in the newly severed case on January 20, 2016, which case is currently stayed subject to the automatic stay arising from Samouce's filing

of the voluntary bankruptcy petition. The Receiver's counsel attended the Meeting of Creditors in the Samouce Bankruptcy on December 3, 2015.

On February 1, 2016, the Receiver commenced an adversary proceeding in the Samouce Bankruptcy, styled *Taylor v. Samouce*, Case No. 16-ap-01015-tmd (Bankr. W.D. Tex. 2016). The Receiver sought a determination of Samouce's liability to the Receivership Estate, and asked the Court to determine that such debts are not dischargeable in bankruptcy because they were obtained (a) by false pretenses, false representations and/or actual fraud (11 U.S.C. §523(a)(2)); and (b) are the result of willful and malicious injury by Samouce to the Receivership entities or their property (11 U.S.C. §523(a)(6)). The Receiver alleged that Samouce made misrepresentations of material fact with respect to his securities licensure and registration, and his ability lawfully to participate in and promote the Vendetta securities offering. Discovery in the case concluded in June 2016, and docket call is currently set for August 10, 2016.

In early July 2016, the parties engaged in meaningful settlement negotiations and agreed in principal to settlement terms in the adversary proceeding. Counsel have commenced the drafting of a settlement agreement. Once completed and executed by the parties, the Receiver will move this Court for approval of same.

6. **Taylor v. Grady H. Vaughn III**

On July 30, 2015, the Receiver commenced the action styled *Thomas L. Taylor III, solely in his capacity as Court-appointed receiver for Robert A. Helms, et al. v. Grady H. Vaughn III*, Case No. 1:15-cv-00648-LY (W.D. Tex. 2015). The Receiver asserts causes of action under TUFTA and the equitable doctrine of unjust enrichment for the avoidance and disgorgement, respectively, of the over $440,000 in fraudulent transfers and obligations made to Vaughn, or for his benefit, from the Vendetta Ponzi scheme. Additionally, because Vaughn's work as an insider and Chief Operating Officer of Receivership entities furthered Helms and Kaelin's fraudulent

scheme, the Receiver has also asserted causes of action for aiding, abetting and participating in Helms' and Kaelin's unlawful Vendetta securities offering, which was in breach of Helms and Kaelin's fiduciary duties, and their conversion of Receivership entity funds through the illegal misappropriation of millions of dollars. Accordingly, Vaughn is jointly and severally liable for the damages to the Receivership Estate arising from the conduct of their co-conspirators and the primary perpetrators of the Ponzi scheme, Helms and Kaelin.

The Complaint was served on Vaughn on August 17, 2015. *Vaughn* Dkt. 4. Vaughn filed his Answer to the Receiver's Complaint on September 8, 2015. *Vaughn* Dkt. 5. On October 27, 2015 counsel for Vaughn and the Receiver conducted their Rule 26(f) conference and filed a joint discovery/case management plan and proposed scheduling order on December 18, 2015. *Vaughn* Dkt. 16. A scheduling order was entered on March 2, 2016.

On November 12, 2015 the Receiver filed a Motion for Partial Summary Judgment with respect to the TUFTA and unjust enrichment causes of action. *Vaughn* Dkts. 7, 8, 12. The Receiver seeks a summary judgment holding that transfers made to Vaughn (or for his benefit) from the Vendetta Ponzi scheme, and investor funds he retained in satisfaction of obligations of the Vendetta Ponzi scheme, are avoidable as a matter of law. Vaughn filed his Response on December 15, 2015 (*Vaughn* Dkt. 15), and the Receiver filed his Reply on January 8, 2016 (*Vaughn* Dkt. 20, 21). On January 20, 2016 Judge Yeakel referred the determination of the Receiver's Motion for Partial Summary Judgment to Judge Lane. *Vaughn* Dkt. 22. The motion is currently pending.

As previously reported to the *Vaughn* Court (Dkt. 26 therein), in June 2016 counsel for the parties engaged in settlement discussions, and the Receiver is cautiously optimistic that there

is potential for the parties to reach an agreement on settlement terms. Should the parties do so, the Receiver would move this Court to approve their agreement.

7. Court-Approved Settlement of Receiver's Claims Against the Hunter Parties

The Receiver's investigation into the operations of the Receivership entities revealed that MGHJR, Ltd. and Malcolm Hunter Investments (the "Hunter Entities") had received distributions from the Vendetta Ponzi scheme with respect to certain Class A limited partnership interests in Vendetta (the "Class A" interests).[25] The Receiver also learned that Malcolm G. Hunter, Jr. and his wife (the "Hunters") had received distributions from the Vendetta Ponzi scheme with respect to certain Class B limited partnership interests in Vendetta (the "Class B" interests).[26]

After conducting document discovery and depositions pursuant to the Order Appointing Receiver, in September 2015 the Receiver made demand upon the Hunters for the return of approximately $230,000 in distributions they had received from the Vendetta Ponzi scheme with respect to (1) the Class B interests, and (2) certain other expense reimbursements they had received from Vendetta in repayment for expenditures which they had made on behalf of Grady and Mrs. Vaughn (Mrs. Hunter's daughter). The Hunters rejected the Receiver's demand, asserting not only that had they at all times acted in good faith, but that they had provided significantly more value for the transfers they had received than credited in the Receiver's

[25] The Hunter Entities had initially acquired the Class A interests in or about October 2007 from Robro for $300,000. These interests were transferred to Vendetta upon its January 1, 2010 formation as part of the divisional merger with Robro.

[26] The Hunters acquired the Class B interests in or about June 2010 from the entity Hall-Hamilton, LLC ("Hall-Hamilton"), which was owned and controlled by Vendetta insider Grady Hamilton Vaughn and his wife, who is Mrs. Hunter's daughter. Hall-Hamilton had obtained these Class B interests in Robro in or about 2007 (they were transferred to Vendetta upon its formation and the divisional merger with Robro). In acquiring the Class B interests, the Hunters paid Vendetta $10,000 in satisfaction of debts owed by Hall-Hamilton.

calculations. The Hunters asserted that their claims against the Receivership Estate through the Hunter Entities[27] reduced significantly the amounts for which they could be held liable under TUFTA with respect to the Class B interests.

The Receiver rejected the Hunter Parties' position, but the parties continued to negotiate terms of settlement over the next several months. In early March 2016, the parties agreed upon terms for settlement and executed a settlement agreement (conditioned on Court approval), the essential terms of which were:

(1) the Hunter Parties would pay $100,000 to the Receivership Estate;

(2) the Hunter Parties would waive any and all claims against the Receivership Estate, including their right to participate in the claims process for the Receiver's ultimate plan of distribution of the assets of the Receivership Estate;

(3) The Receiver would fully release the Hunter Parties from any and all claims which could be asserted on behalf of the Receiver, the Receivership Estate or the Receivership Entities against them; and

(4) the Hunter Parties would fully release the Receiver, the Receivership Estate, and the Receivership Entities from any and all claims which could be asserted by them.

The Receiver moved for Court approval of his settlement with the Hunter Parties on April 5, 2016. Dkt. 309. The Court entered its Order approving the settlement on April 14, 2016. Dkt. 311. The payment of the settlement amount was made by the Hunter Parties on or about April 25, 2016.

[27] The Hunter Entities held notional claims of approximately $100,000 against the Receivership Estate.

IV.
PROPOSED PLAN OF DISTRIBUTION AND INTERIM DISTRIBUTION

A. Plan of Distribution and Claims Confirmation Process

The Receiver proposes to effect the distribution of Receivership Estate assets to the Investors on a *pro rata* basis based upon each Investor's "net out-of-pocket loss" as a percentage of the total "net out-of-pocket losses" of all Investors.

As the initial step in the Receiver's proposed Plan of Distribution, the Receiver and DSC PLLC will initiate the "Claims Confirmation Process" by calculating a notional claim amount for all Investors (1) who have asserted a claim against the Receivership Estate; or (2) otherwise appear to hold a claim against the Receivership Estate based upon the books and records of the Receivership entities. The Receiver will undertake the following process to give notice of, and finally determine, the claims of the Investors (the "Claims Confirmation Process"):

1. For each Investor, the Receiver will calculate -- based upon Receivership Records -- a notional claim amount of that Investor's net out-of-pocket loss from (a) investments in Vendetta and Iron Rock; and/or (b) participation in "side deal" transactions in which Defendant Kaelin, acting as an agent/intermediary, induced payment purportedly for the purchase of real property or oil and gas-related assets, which transactions never took place. This notional claim amount will be calculated by taking the total funds paid to any Receivership entity, directly or indirectly, and subtracting all amounts received in payment from any Receivership entity, with respect to those investments and transactions.

2. The Receiver will transmit claim letters to each identified Investor notifying them of their notional claim amount, and instruct them that any objection to that amount must be made to the Receiver in writing within 30 days, or their notional claim amount will become final. The Receiver will require that any objection to a notional claim amount contain an asserted claim amount which is supported by proper documentation accompanying the objection;

3. To the extent any timely objections are received, the Receiver will review each objection and the accompanying documentation, compare it to the Receivership Records from which the notional claim amount was calculated, and modify the

previous notional claim amount, if supported by the evidence. The Receiver will respond to each objecting Investor with a final notional claim amount;

4. If the Investor disputes the Receiver's final notional claim calculation, it shall have thirty (30) days to move the Court to determine a final Claim amount.

Upon the successful conclusion to the Claims Confirmation Process, the Receiver will effect the $1,500,000 Interim Distribution on a *pro rata* basis vis-à-vis the final Claims of the Investors. A final distribution at the conclusion of the Receivership would be made by the same formula, following notice and approval by the Court at that time.

B. Legal Authority

A *pro rata* distribution to Investors in this case is supported by the applicable case law. The Fifth Circuit has consistently approved receivership plans of distribution that rejected the tracing of funds and/or priority claims in favor of *pro rata* distributions. *U.S. v. Durham*, 86 F.3d 70 (5th Cir. 1999); *SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325 (5th Cir. 2001); see also *U.S. CFTC v. PrivateFX Global One*, 778 F. Supp. 2d 775 (S.D. Tex. 2011). In this case, a *pro rata* distribution will result in the most equitable treatment of all Investors to the various Receivership entities.

"The fundamental principle … is that any distribution should be done equitably and fairly, with similarly-situated investors or customers treated alike." *SEC v. Credit Bancorp, Ltd.*, 2000 U.S. Dist. LEXIS 17171, at *42 (S.D.N.Y. Nov. 29, 2000) (emphasis added) (citing *Cunningham v. Brown*, 265 U.S. 1, 13 (1924))[28]; *SEC v. Elliot*, 953 F.2d 1560, 1569 (11th Cir. 1992); *Durham*, *supra*, 86 F.3d at 73.

[28] *Cunningham v. Brown* arose from the fraud from which the Ponzi scheme received its name. *See id.* at 7.

Since any one group of investors in a Ponzi scheme generally occupies the same legal position as other investors, equity should not permit one group a preference over another because "equality is equity" as among "equally innocent victims." *Cunningham v. Brown*, 265 U.S. at 13; accord *Durham*, 86 F.3d at 73; *Forex Asset Mgmt.*, 242 F.3d at 331 – 32; *SEC v. Homeland Communs. Corp.*, 2010 WL 2035326, at *2 (S.D. Fla. May 24, 2010); *Quilling v. Trade Partners, Inc.*, 2007 WL 107669, at *1 (W.D. Mich. Jan. 9, 2007) (citing *SEC v. Basic Energy & Affiliated Resources, Inc.*, 273 F.3d 657, 668 (6th Cir. 2001)).

Whether at any given moment a particular investor's assets are still traceable (or "identifiable") is a "result of the merely fortuitous fact that the defrauders spent the money of the other victims first." *Durham*, 86 F.3d at 72. Under such circumstances:

> To allow any individual to elevate his position over that of other investors similarly victimized by asserting claims for restitution and/or reclamation of specific assets based upon equitable theories of relief such as fraud, misrepresentation, theft, etc. would create inequitable results, in that certain investors would recoup 100% of their investment while others would receive substantially less.

Elliot, 953 F.2d at 1569; see also *Forex Asset Mgmt.*, 242 F.3d at 331 – 32; *Durham*, 86 F.3d at 73. In this case, a pooling of all collected cash and a *pro rata* distribution of the Receivership Estate's assets is the fairest and most equitable manner of distribution. *PrivateFX Global One*, *supra*, 778 F.Supp. 2d at 775 (S.D. Tex. 2011).

The fraudulent conduct undertaken by the Defendants in this case was perpetrated through an ongoing scheme in which Investor funds were regularly conflated and comingled in accounts of numerous entities which were inextricably intertwined. "Helms and Kaelin orchestrated what are called 'round-trip transactions' [through Haley Oil and Vendetta accounts] … [which] had the effect of creating fictitious income to support 'partnership income' distributions—which were actually [Ponzi payments] funded by later partners' investments."

Helms II, at *19. They "falsified documents [related to property owned by them through Technicolor] in order to make the round-trip transactions seem legitimate." *Id*. Moreover, Helms and Kaelin regularly comingled Vendetta and Iron Rock investor funds in Receivership entity accounts, including Barefoot and Technicolor, among others. *See, e.g.*, Dkt. 60-2 at ¶¶6-9, Tables 1-5, Figure 1 (Cheek Decl. in Support of Receiver's Motion to Amend Order Appointing Receiver [Granted at Dkt. 76]).

The cash inflows from and outflows to both Vendetta/Iron Rock Investors and fraudulent "side deal" Investors "were treated consistently in the aggregate." Exh. A, Cheek Decl. at ¶13. Defrauded limited partners of Vendetta and Iron Rock and those parties defrauded by Kaelin through "side deal" transactions should be treated similarly in the distribution of assets on claims against the Receivership Estate. Each were defrauded by Helms and Kaelin with respect to the funds which they deposited into the fraudulent scheme, and those funds were used in furtherance of that scheme. Under the circumstances, to the extent that it can be achieved, a *pro rata* distribution method is the fairest to all Investors. *U.S. CFTC v. PrivateFX Global One*, 778 F. Supp. 2d 775 (S.D. Tex 2011).

As previously reported to this Court, the entities through which Helms and Kaelin perpetrated their fraud owe approximately $1,650,000 in liabilities to general unsecured creditors, including trade creditors and judgment creditors. *See, e.g.*, Dkt. 312-2. It is appropriate to subordinate the claims of these general, trade and unsecured creditors to the claims of the Investors. *PrivateFX Global One*, 778 F.Supp. 2d at 786 (citing *Quilling v. Trade Partners, Inc.*, No. 1:03-CV-0236, 2006 U.S. Dist. LEXIS 99730, 2006 WL 3694629 (W.D. Mich. Dec. 14, 2006)) (finding that the equitable doctrine of constructive trust gave defrauded investors priority over general creditors). In the unlikely event that the Investors receive distributions of 100% of

their claims, the Receiver will move the Court at that time to approve a distribution plan with respect to general, trade and unsecured creditors.

Additionally, it should be noted that no secured creditors remain who's priority claims would attach to the proceeds from which the Interim Distribution will be made. The claims of lienholders with respect to the Abilene Cove Residence attach, if at all, to that asset -- which the Receiver has not yet liquidated. *See supra*, at §III(D)(4). Therefore, these claimants should be excluded from the Interim Distribution, and their claims should be determined at a future date and with respect to the proceeds from the liquidation of the asset securing those claims.

C. Notice to Potentially Interested Parties

Concurrently with the filing of this Motion, the Receiver has sent a notice in the form attached hereto as **Exhibit B** to all known claimants of the Receivership Estate. The Notice directs recipients to the Receiver's website located at www.vendettaroyaltyreceivership.com where a copy of this Motion and all exhibits may be downloaded at no cost, and instructes them that they may also request a paper copy of the Motion and all exhibits by written request, mailed to Thomas L. Taylor III, Vendetta Receiver; The Taylor Law Offices; 4550 Post Oak Place Dr., Ste. 241; Houston, TX 77027. Recipients also are notified of their potential right to file an objection to the Receiver's proposed Plan of Distribution by August 11, 2016.

The parties receiving these notices include all known Investors and any potential claimants and creditors located in the books and records of the Receivership Estate, in addition to any party which has contacted the Receiver after his appointment and asserted liability against a Defendant.

D. Interim Distribution

Once the Claims Confirmation Process has been completed, the Receiver then proposes to effect the Interim Distribution of $1,500,000 on a *pro rata* basis to the Investors. The Receiver estimates that this distribution will equal approximately 6% of the Claims of Investors.

As detailed above, there is approximately $2.1 million on hand in Receivership accounts as of the filing of this Motion. Because the Receiver has not concluded his duties (including the preparation and filing of entity tax returns and the liquidation of Receivership Assets) and is a party to pending litigation and bankruptcy claims, the Receiver proposes by this Motion to retain approximately $600,000 to continue administration of the remaining assets, to conduct the sale of the remaining assets, to protect the Receivership Estate's interests and to conclude the efforts of the Receiver.

Specifically, the Receiver believes it necessary to reserve sufficient cash to ensure that adequate resources exist to satisfy current and future obligations of the Receivership Estate (including, most notably, any potential tax liabilities), to pursue litigation and claims that will benefit the Receivership Estate, and to administer and wind down the Receivership Estate. The Receiver expects to marshal additional assets for the benefit of the Estate through pending and anticipated asset sales and pending litigation, and will make a second and final distribution to qualifying claimants -- subject to approval of this Court -- at the conclusion of the Receivership.

V.
CONCLUSION AND REQUEST FOR RELIEF

The Receiver respectfully requests that the Court approve the Plan of Distribution proposed herein, and authorize the Receiver to effect the Interim Distribution of Receivership

assets in accordance with that Plan of Distribution following the completion of the Claims Confirmation Process.

Dated: July 21, 2016

Respectfully submitted,

THE TAYLOR LAW OFFICES, P.C.

By: /s/ Andrew M. Goforth

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COUNSEL FOR RECEIVER

CERTIFICATE OF CONFERENCE

I certify that I have conferred with counsel for Plaintiff Securities and Exchange Commission, who do not oppose the relief sought herein.

/s/ Andrew M. Goforth
Andrew M. Goforth

CERTIFICATE OF SERVICE

On July 21, 2016 I electronically submitted the foregoing document with the clerk of court for the U.S. District Court for the Western District of Texas using the CM/ECF electronic filing system. I hereby certify that I have provided copies to all *pro se* parties and counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

I further certify that on July 21, 2016, I served Notice of this Motion (in the form of **Exhibit B**) on all known potential Investors and claimants to the Receivership Estate by U.S. Mail, either directly or indirectly through counsel, if known.

/s/ Andrew M. Goforth
Andrew M. Goforth

EXHIBIT A

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

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

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").

7) In the books and records of VRP and related entities, DSC PLLC noted that a number of irregular transactions related to inflows and outflows from potential investors were not accounted for in a manner consistent with U.S. generally accepted accounting practices. Accordingly, in our analysis to date, we have treated all inflows and outflows from potential investors consistently regardless of the manner in which VRP and related entities recorded the cash inflow(outflow) activity from an accounting perspective.

8) There are anywhere between 98 and 129 investors. The range is due to potential similar investor names or related investor persons and business entities.

9) Figure 1 below displays the cumulative and individual cash inflows and outflows of all investors over time.
   1. Equity Inflow:
      - These data points are only cash contributions by investors to VRP and related entities that were accounted for using the expected methodology of creating an accounting journal entry that increases cash and increases the equity investment account for that investor. Equity in lieu of commissions, other non-cash payments for equity, and the irregular accounting methodology in #2 below were excluded.
   2. 'Fixed Asset' (FA) Inflow:
      - These data points are only cash contributions by investors to VRP and related entities that were accounted for using the irregular methodology of creating an accounting journal entry that increases cash but decreases a fixed asset account such as mineral interest, etc. This irregular methodology creates a negative asset (negative balance sheet balance) and turns the asset account effectively into either a liability or equity account. As this is not a proper accounting methodology, we treated these cash inflows the same as those cash flows noted in #1 above. These inflows were only present on the books of BFM and TCM.
   3. Equity Outflow:
      - These data points are only cash outflows for distributions to investors by VRP and related entities that were accounted for in the expected manner of an accounting journal entry that decreases cash and decreases the net equity investment account for that investor. These amounts do not include 'business' expenses that were expended that benefited a particular investor. These exclusions include items such as commission payments. In addition, this column does not include those disbursements identified in #4 below.

EXHIBIT A

4. 'Fixed Asset' (FA) Outflow:
    - These data points are only cash outflows for distributions to investors by VRP and related entities that were accounted for in an irregular manner. For the cash outflows to investors in this section, there were two methodologies of recording the transaction. The first irregular methodology was the reverse of the transaction described in #2 above. The second methodology appears to be a remittance of a royalty payment received into income by VRP or related entities that was then later remitted to the investor. The accounting methodology for recording and disbursing funds for these potential remittances was inconsistent. Because the investor cash inflows were treated similarly by VRP and related entities from an operational standpoint (even though the accounting was treated incorrectly in some instances), we considered these payments to be distributions to the particular investors. Therefore, we treated these cash outflows in the same manner as those cash flows noted in #3.

10) The analysis summarized below in Figure 1 that indicates the investors' cash inflows were generally treated in an overall consistent manner regardless of the accounting methodology used to record their investment. This overall consistency in treatment of the investors' funds further leads us to conclude that all investor outflows, regardless of accounting treatment, should be handled in a consistent manner.

11) This figure suggests that the primary factor in how a cash inflow was recorded was based on which accounting methodology was prevalent during that time period. The square markings on Figure 1 represent the discrete investor cash inflows that were accounted for under the irregular accounting methodology. The solid circles are those that were accounted for under the expected accounting methodology. The clustering of the types of markings on the graph into three distinct groups along the timeline indicate that the manner in which an investment was recorded to the books of VRP and related entities was likely based on the time period in which the funds were received and likely not a separate class of investment.

12) Further, this figure shows that over time the investors generally were being treated similarly for the purposes of total cash disbursements regardless of VRP's accounting designation of the cash distribution to the investor. Figure 1 indicates this as the Cumulative Total Outflow, Equity Outflow, and FA Outflow lines mirror the trend of their respective Cumulative Total Inflow, Equity Inflow, and FA Inflow lines. This mirroring trend indicates that the investors within each accounting methodology group were treated consistently.

13) Overall, even with the few outlying individual investor transactions, the general trends observed imply that all investor cash inflows and outflows were treated consistently in the aggregate.

EXHIBIT A

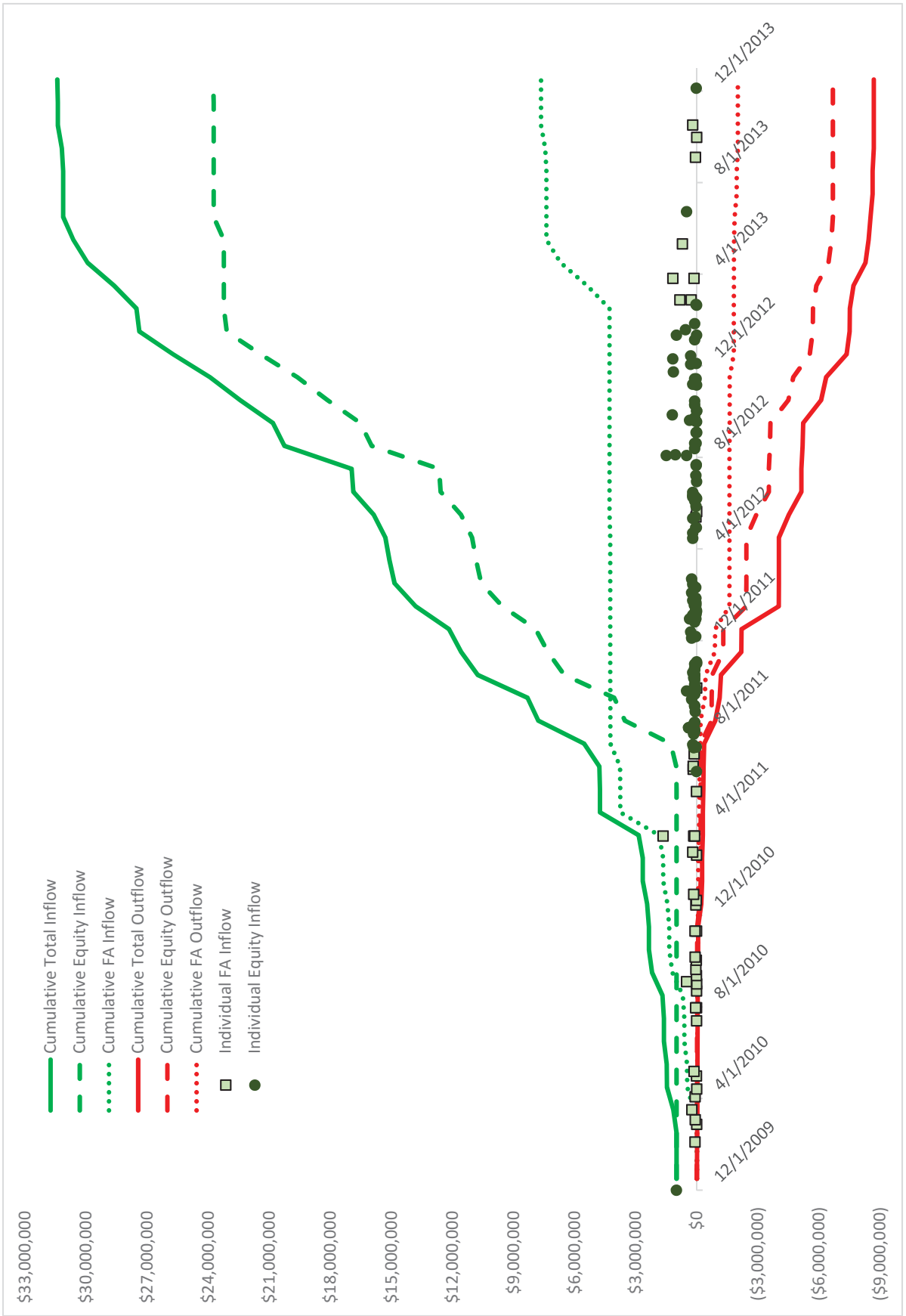

Figure 1: Cumulative and Individual Investor Cash Inflows and Outflows

14) DSC PLLC's work, analysis, and discovery in this matter are still ongoing. The potential exists for additional information or transactions to be identified and classified among the Defendants, the entities noted above, and other organizations as such work continues.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 19th day of July, 2016, in Houston, Texas.

Danielle Supkis Cheek, CPA, CFE, CVA

EXHIBIT B

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

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

NOTICE OF RECEIVER'S MOTION TO APPROVE PLAN OF DISTRIBUTION AND AUTHORIZE INTERIM DISTRIBUTION TO DEFRAUDED INVESTORS

To: Investors and Creditors of 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. and all entities they own or control

Please take notice that on July 21, 2016 Receiver Thomas L. Taylor III filed a Motion to Approve a Plan of Distribution and Authorize an Interim Distribution to defrauded investors (the "Motion") (Dkt. ____) in the above-styled Civil Action. A copy of the Motion and all exhibits may be downloaded at no cost on the Receivership Estate's website, vendettaroyaltyreceivership.com. You may also request a paper copy of the Motion and all exhibits by written request, mailed to Thomas L. Taylor III, Vendetta Receiver; The Taylor Law Offices; 4550 Post Oak Place Dr., Ste. 241; Houston, TX 77027.

EXHIBIT B

Any objection to the Motion must be filed on or before August 11, 2016, in writing, and identifying the above-styled case name and number, with the United States District Court for the Western District of Texas, Austin Division, located at 501 W. 5th St., Austin, TX 78701.

Dated: July 21, 2016

THE TAYLOR LAW OFFICES, P.C.

By: _____

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COUNSEL FOR RECEIVER

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

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

ORDER GRANTING RECEIVER'S MOTION TO APPROVE PLAN OF DISTRIBUTION AND AUTHORIZE INTERIM DISTRIBUTION TO DEFRAUDED INVESTORS

This Court has considered Court-appointed Receiver Thomas L. Taylor III's (the "Receiver") Motion to Approve Plan of Distribution and Authorize Interim Distribution to Defrauded Investors (the "Motion") (Dkt. ____); and all opposition, responses or objections thereto, if any; and having determined that the Motion is fully supported by the written submissions, the Motion is hereby **GRANTED** in all respects.

IT IS THEREFORE ORDERED that Receivership Estate assets shall be distributed, on equal footing, to those parties that have suffered a "net out-of-pocket loss" resulting from (1) their ownership of limited partnership interests in Receivership entities Vendetta Royalty Partners, Ltd. ("Vendetta") and Iron Rock Royalty Partners, Ltd. ("Iron Rock"); and/or (2) their participation in "side deal" transactions in which Defendant Kaelin, acting as an agent/intermediary, induced payment purportedly for the purchase of real property or oil and gas-

related assets, which transactions never took place (collectively the "Investors"). Receivership Assets shall be distributed to the Investors on a *pro rata* basis based upon the "net out-of-pocket loss" of each as a percentage of the total "net out-of-pocket losses" of all Investors (the "Plan of Distribution").[1]

IT IS FURTHER ORDERED that unsecured claims against the Receivership Estate not arising from (i) the ownership of limited partnership interests in Vendetta or Iron Rock, or (ii) participation in the aforementioned "side deal" transactions, are subordinated to the claims of the Investors.

IT IS FURTHER ORDERED that the Receiver shall commence the Claims Confirmation Process and send each Investor their notional claim amount against the Receivership Estate in writing, as calculated by the Receiver and D. Supkis Cheek PLLC. Each Investor shall have thirty (30) days to inform the Receiver that it disputes its notional claim amount, which dispute must be made in writing and include the claim amount asserted by that Investor and supporting documentation for same. The Receiver shall respond in writing to any Investor that timely and properly disputes its notional claim amount with a final notional claim calculation. If the Investor disputes the Receiver's final notional claim calculation, it shall have thirty (30) days to move the Court to determine a final claim amount.

IT IS FURTHER ORDERED that upon the completion of the Claims Confirmation Process, the Receiver is authorized to effect the Interim Distribution of $1,500,000 to Investors pursuant to the Plan of Distribution.

[1] An Investor's "net out-of-pocket loss" is equal to the amount that each invested into any Receivership entity, less any amount that each was paid from any Receivership entity.

Signed at Houston, Texas this _____ day of _____, 2016.

_____
Mark Lane
United States Magistrate Judge