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

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, vs. ROBERT A. HELMS, JANNIECE S. KAELIN, DEVEN SELLERS, ROLAND BARRERA, VENDETTA ROYALTY PARTNERS, LTD., VENDETTA ROYALTY MANAGEMENT, LLC, VESTA ROYALTY PARTNERS, LP VESTA ROYALTY MANAGEMENT, LLC IRON ROCK ROYALTY PARTNERS, LP, IRON ROCK ROYALTY MANAGEMENT, LLC, ARCADY RESOURCES, LLC, BAREFOOT MINERALS, G.P., G3 MINERALS, LLC, HALEY OIL COMPANY, INC., LAKE ROCK, LLC , SEBUD MINERALS, LLC, and TECHNICOLOR MINERALS, G.P., Defendants, and WILLIAM L. BARLOW, and GLOBAL CAPITAL VENTURES, LLC, Relief Defendants, solely for the purposes of equitable relief.	§ §	A13CV1036 LY Civil Action No.:

FACT BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION, *EX PARTE* TEMPORARY RESTRAINING ORDER, ASSET FREEZE, APPOINTMENT OF A RECEIVER, AND OTHER EMERGENCY AND ANCILLARY RELIEF

Preliminary Statement

As reflected in the accompanying evidentiary Appendix[1], the Defendants have defrauded investors of at least $17.9 million in an egregious Ponzi scheme. Plaintiff Securities and Exchange Commission ("Commission") submits this Brief in Support of its Motion for Preliminary Injunction and *Ex Parte* Temporary Restraining Order, Asset Freeze, Appointment of a Receiver, and other Emergency and Ancillary Relief to halt ongoing violations of the law and to protect the Commission's ability to recover investor funds.

I. Summary of Relief Sought

The Commission seeks a preliminary injunction as to each Defendant, pending final judgment, and *ex parte* relief including orders: (1) temporarily restraining the Defendants from engaging in conduct violative of the federal securities laws; (2) freezing the Defendants' and Relief Defendants' assets; (3) appointing a Receiver to marshal, conserve, and hold the funds, assets, and property subject to the Defendants' and Relief Defendants' ownership, possession, or control; (4) prohibiting the Defendants and Relief Defendants from moving, altering, or destroying books, records, and accounts; (5), requiring each Defendant and Relief Defendant to provide a sworn, interim accounting; (6) authorizing expedited discovery; (7) requiring Helms, Kaelin, Sellers, and Barrera to turn over their passports to the Court; and (8) providing for alternative service of pleadings and other papers.

II. The Parties

A. Plaintiff Commission is an agency of the United States government responsible for enforcing the federal securities laws by, among other things, filing civil-injunctive actions in United States district courts.

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[1] The Statement of Fact section, below, reflects page-number citations to the Appendix. For example, "App. at 22" refers to Appendix, page 22.

B. Defendants Robert A. Helms and Janniece Kaelin are natural persons residing in Austin, Texas. From an office in Austin, Texas, they operate and control each entity Defendant, specifically Vendetta Partners, Vendetta Management, Vesta Partners, Vesta Management, Iron Rock Partners, Iron Rock Management, Arcady Resources, Barefoot Minerals, Haley Oil, G3 Minerals, Lake Rock, SeBud Minerals, and Technicolor Minerals.

C. Defendant Deven Sellers is a natural person residing in Arvada, Colorado. He brokered securities transactions between investors on the one hand and Vendetta Partners, Vesta Partners, and Iron Rock Partners on the other hand.

D. Roland Barrera is a natural person residing in Costa Mesa, California. He brokered securities transactions between investors on the one hand and Vendetta Partners on the other hand.

III. Statement of Facts

A. Background

Helms and Kaelin, through entities they control, have offered and sold and continue to offer and sell securities in the form of limited-partnership interests issued by Defendants Vendetta Partners, Vesta Partners, and Iron Rock Partners. App. at 1-2, 11, 12, 17, 88, 135, 151, 152, 210, 217, 226-227, 246-248, 251. Helms and Kaelin control each entity through its general partner—Defendants Vendetta Management, Vesta Management, and Iron Rock Management, respectively. App. at 135, 138, 151, 152, 172, 183, 226-227.

Helms and Kaelin operate each limited partnership from an office at 8101 Cameron Rd. Suite 109, in Austin, Texas. App. at 5, 12, 84, 165, 211, 246. They utilize a sales team, including Sellers and Barrera, to offer the securities for sale to investors by telephone, by email, and by in-person presentations. App. at 82, 135, 211, 239, 250. Helms and Kaelin also directly

offer and sell the securities to investors in person at the Austin office and through emails and phone calls. App. at 84, 135, 249.

B. The Vendetta Partners Offering

Helms and Kaelin formed Vendetta Partners in 2009. App. at 5, 172. At or about that time, Vendetta Partners acquired certain oil-and-gas royalty interests, along with limited partners, from another limited partnership associated with Helms and Kaelin. App. at 110. From January 1, 2011, through December 31, 2012, Vendetta Partners' royalty interests generated income totaling approximately $1.4 million. App. at 257.

1. Vendetta Partners filed a false Form D with the Commission.

On August 15, 2011, Vendetta Partners filed with the Commission a securities-offering notice on Form D, signed by Helms, stating that Vendetta Partners sought to raise $50 million by selling limited-partnership interests. App. at 1, 5, 9. The Form D falsely stated that Vendetta Partners had not yet sold any securities in the offering. App. at 9. In reality, Vendetta Partners sold securities to two investors on July 29 and 30, 2011, in exchange for $275,000 combined. App. at 259-260. Moreover, the Form D listed Vendetta Management, Helms, and Kaelin as the offering's only "promoters" and falsely stated that no promoter had received, or would receive, any offering proceeds. App. at 6, 10. In fact, at the time of filing Helms and Kaelin had already misappropriated nearly half of the $275,000 received on July 29 and 30, 2011. App. at 259-260. Upon receipt, they transferred $135,000 of these funds to Vendetta Management and, from there, withdrew $19,450 in cash and transferred an additional $18,000 to Helms. *Id.*

2. Vendetta Partners distributed a false private-placement memorandum.

In the Vendetta Partners offering, Helms and Kaelin distributed to prospective investors a private-placement memorandum ("PPM"), which purported to explain the Vendetta Partners

investment. App. at 85, 90, 121, 253. The PPM represented that Vendetta Partners had two "principal objectives": (1) to purchase oil-and-gas "Royalty Interests" and (2) "to generate Partnership income from such Royalty Interests." It also represented that the "Partnership will distribute Partnership income quarterly." App. at 97.

The PPM contained several false and misleading statements. It touted Helms' oil-and-gas experience, representing that he had "worked with various mineral companies over the last 10 years advising management on issues involving the acquisition and management of royalty interests, mineral properties and related legal and financial issues." App. at 110. This statement was misleading because it did not disclose that Helms the oil-and-gas experience came almost entirely from operating Vendetta Partners and its affiliated or predecessor companies. App. at 246. It falsely stated that Vendetta Management would furnish investors periodic reports on Vendetta Partners' property acquisitions and operational results. App. at 119. In fact, it never furnished investors such reports. App. at 86-87.

Finally, the PPM falsely stated, "There are no material pending legal proceedings against the Partnership, the General Partner or its Affiliates." App. at 119. In reality, Vendetta Partners, Vendetta Management, Technicolor Minerals, Helms, Kaelin, and other entities affiliated with them were engaged in material litigation during the Vendetta Partners offering. App. at 2-3. A private party sued them in December 2011, alleging that they committed fraud by purporting to sell mineral interests that they did not even own in exchange for $1.2 million. App. at 55-58. The Illinois EPA initiated action against Haley Oil in May 2012, alleging illegal "release incidents." App. at 2, 68-78. And the IRS initiated action against Kaelin in October 2012, relating to a tax liability. App. at 79-81.

3. Helms and Kaelin misappropriated investor funds to pay other entities they controlled and to make Ponzi payments to Vendetta

Partners investors.

The PPM further represented that Vendetta Partners would use the anticipated $50 million offering proceeds solely for three purposes: (i) to purchase royalty interests; (ii) to pay 10% of Vendetta Partners' $3,795,000 credit facility; and (iii) to pay promotional expenses. App. at 105-106. The PPM contained a summary of the "estimated application and use of the proceeds," which stated that Vendetta Partners would apply and use the $50 million as follows:

	Application of Maximum Proceeds	Percent of Subscriptions
Purchase Costs of Royalty Interests	$49,570,500	99.14%
Loan Repayment	$ 379,500	.76%
Promotional Expenses	$ 50,000	.10%

App. at 106.

From July 29, 2011, through December 31, 2012, Helms and Kaelin raised at least $17.9 million through the Vendetta Partners offering from at least 80 investors located in 13 states. *Id.* Apart from the offering proceeds and the $1.4 million in cash generated from legitimate royalty interests, which combined totaled approximately $19.3 million, Vendetta had no significant cash assets. App. at 257, 259-262. Rather than honor the PPM representations regarding the use of proceeds, Helms and Kaelin, through a number of entities under their control, misappropriated the vast majority of the funds. App. at 256.

Helms and Kaelin controlled and oversaw the use of all funds that came into Vendetta Partners. App. at 247. They shared signatory authority on its bank accounts and on the bank accounts of Vendetta Management. App. at 255. From January 1, 2011, through December 31, 2012, Vendetta Partners, at the direction of Helms and Kaelin, transferred approximately $4.4 million to Vendetta Management. App. at 256. Because this was far in excess of the $1.4

million generated from legitimate royalty-interest income, at least $3 million was misappropriated investor funds. Out of the $4.4 million transferred to Vendetta Management, they transferred approximately $1.4 million to Helms and an additional $102,000 to Barefoot Minerals. App. at 257.

In addition to the $4.4 million transferred to Vendetta Management, Helms and Kaelin transferred approximately $702,000 directly to Helms' bank account. App. at 256. They transferred an additional $193,000 to Technicolor Minerals. *Id.* They paid approximately $1.6 million to cover promotional expenses, approximately 32 times the amount promised in the PPM. *Id.* They used approximately $1.1 million for loan repayment, approximately four times the amount promised in the PPM. *Id.* And they spent approximately $1.6 million to purchase royalty interests, more than 90% less than promised in the PPM. *Id.*

Vendetta Partners, at the direction of Helms and Kaelin, also used approximately $5.9 million to make so-called partnership-income distributions to investors. *Id.* They used money from later investors to pay these distributions to earlier investors. App. at 260. In this fashion, Helms and Kaelin created the illusion that Vendetta Partners was a profitable enterprise when, in fact, it was a fraudulent Ponzi scheme.

4. Vendetta Partners used roundtrip transactions to artificially inflate its income.

Vendetta Partners, at the direction of Helms and Kaelin, transferred approximately $86,737 combined to Relief Defendant Barlow and his company, Relief Defendant Global Venture. App. at 259. Neither Barlow nor Global Venture had any legitimate claim to the proceeds. App. at 249-250, 257-259. Barlow and Global Venture acquired at least some of these proceeds in roundtrip transactions with companies that Helms and Kaelin controlled. *Id.* Helms orchestrated these transactions to create fictitious income to support the fraudulent partnership-

income distributions. *Id.*

For example, on November 17, 2011, Helms and Kaelin transferred $2,208,800 from Vendetta Partners to Barlow. App. at 257-258. The next day, Barlow transferred $2,200,300 to Defendant Haley Oil, a company that Helms controlled, retaining $8,500. *Id.* On December 5, 2011, Helms transferred $1.4 million from Haley Oil to Vendetta Partners and falsely recorded it as royalty income in Vendetta Partners' accounting system. *Id.* On February 1, 2012, Helms transferred $550,000 from Haley Oil to Vendetta Partners and falsely recorded it as "lease bonus" income on Vendetta Partners' accounting system. *Id.* Helms and Kaelin distributed the nearly $2 million from the roundtrip transactions to Vendetta Partners investors, falsely characterizing these payments as partnership-income distributions. *Id.* Haley Oil retained investor funds totaling $245,300 that it received in the roundtrip transactions. *Id.*

5. Helms and Kaelin lied to investors about Vendetta Partners in face-to-face meetings.

On several occasions, Helms and Kaelin provided investors tours of their Austin office to promote their securities offerings. App. 249. On at least one such tour in August 2012, they falsely represented to two investors that Vendetta Partners paid its operating expenses, including Helms and Kaelin's salaries, from the ongoing revenue stream generated by Vendetta Partners' royalty interest portfolio. App. at 84. They falsely represented that the investors would earn a return of 150% to 200% on the investment within several months. App. at 85. And they represented that they would use the proceeds from the investors' limited-partnership purchase—$3,050,000—to buy out another investor's limited-partnership interest. App. at 83. In reality, Helms and Kaelin misappropriated part of the investors' money, using it to cover undisclosed expenses and to pay commissions to Sellers and Barrera, rather than buying out another investor. App. at 250, 256-257.

During the office tours, Helms and Kaelin also introduced potential investors to Vendetta Management's financial analyst, who was a student at the University of Texas and who had not yet attained a degree. App. at 84, 249. Helms and Kaelin falsely stated to potential investors that the financial analyst had a degree from the University of Texas. App. at 249. Helms and Kaelin prohibited the financial analyst, under threat of demotion, from telling investors that he did not actually have a degree. *Id.*

6. Sellers and Barrera lied to investors about the commission's they earned selling Vendetta Partners securities.

Vendetta Partners, at the direction of Helms and Kaelin, paid Defendants Sellers and Barrera approximately $400,000 in commissions, which they split almost evenly, for the $3,050,000 investment described above. App. at 250. When offering the investment, Sellers and Barrera represented to the investors that they would split a "small" commission. App. at 82-83. In reality, their combined commission was more than 13% of the investment and more than eight times the PPM's $50,000 limit for promotional expenses. App. at 106. Because they did not disclose the actual size of their commission, their statement that it would be "small" was misleading. Sellers and Barrera never corrected this misstatement, even as they continued to promote other offerings—including Vesta Partners and Iron Rock partners—to the same investors.

C. The Vesta Partners Offering

Since at least, July 2012, Helms, Kaelin, Sellers, and Barrera have offered to sell investors securities issued by Defendant Vesta Partners. App. at 88, 135, 151-152. At Helms and Kaelin's direction through Vesta Management, Defendants Sellers and Barrera emailed two prospective investors a Vesta Partners presentation, describing the company and its offering. App. at 135, 136-155. According to the presentation, Vesta Partners would provide investors

"predictable quarterly cash distributions with attractive yields (targeted 15% - 20% gross annual yields)" and a 300% to 500% return within five to seven years. App. at 138, 140. It described Vesta Partners management—including Helms and Kaelin—as having a "Proven track record of consistent investor cash-flows and overall market performance." App. at 140. And it said that Helms and Kaelin had experience "managing and successfully exiting royalty . . . interest investments, including . . . Vendetta Royalty Partners, Ltd." App. at 138.

These statements in the Vesta Partners presentation were false. Helms and Kaelin had no reasonable basis to expect that Vesta Partners would provide attractive cash-distribution yields or a 300% to 500% return within seven years. Indeed, their track record included the Vendetta Partners Ponzi scheme—promoted as a business model virtually identical to that of Vesta Partners—in which they had never earned a legitimate profit for investors. And Vendetta Partners was not a successful investment by any reasonable standard.

D. The Iron Rock Partners Offering

On April 25, 2013, Iron Rock Partners filed with the Commission a Form D, signed by Helms as manager for Iron Rock Partners' general partner, Iron Rock Management. App. at 1, 12, 17. The Form D indicates that Iron Rock Partners seeks to raise $300 million over a period not to exceed one year. App. at 15-16. In addition to Helms, it lists the following affiliate entities as the offering promoters: Defendants Iron Rock Management, SeBud Minerals, Lake Rock, G3 Minerals, and Arcady Resources. App. at12 -14. It further says that the offering will only be solicited in Florida, New York, North Carolina, and Pennsylvania. App. at 16.

The Iron Rock Form D is false and misleading. Kaelin and Sellers have actively promoted the Iron Rock Partners offering, but they are not disclosed as promoters on the Form D. App. at 211, 251, 239, 245. And Iron Rock Partners, through Helms, Kaelin, Sellers, and

other affiliated promoters is offering the securities in states beyond the four states listed—including in California. App. at 162, 217.

On March 1, 2013, Sellers emailed an investor located in California, attaching a "Proposal" in which Sellers offered for sale Iron Rock Partners securities. App. at 210, 217. The Proposal falsely stated that investors could expect a 300% to 500% return in five to seven years. App. at 217. As is evident in Helms and Kaelin's disastrous Vendetta Partners oil-and-gas project, these earnings projections were baseless. The Proposal further said that the Iron Rock Partners management team—including Helms anjd Kaelin—has an "industry reputation of honesty and trustworthiness." App. at 232, 239. In fact, Helms and Kaelin were dishonest and untrustworthy, a fact their industry reputation reflected. Indeed others in the industry sued them for fraud and conspiracy. App. at 41, 46-47.

IV. Memorandum of Law and Argument

A. The limited-partnership interests are securities.

The limited-partnership interests offered by the Defendants are securities. The Fifth Circuit has observed that a "limited partner's position is analogous to that of a stockholder in a corporation." *Youmans v. Simon*, 791 F.2d 341, 346 (5th Cir. 1986). And it has recognized that limited-partnership interests are securities. *Siebel v. Scott*, 725 F.2d 995, 998 (5th Cir. 1984).

B. Anti-Fraud Provisions: Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5.

Securities Act Section 17(a) makes it unlawful for any person, in the offer or sale of a security: (1) to employ any device, scheme, or artifice to defraud; (2) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) to engage in any transaction, practice, or course of business

which operates or would operate as a fraud or deceit upon the purchaser. 15 U.S.C. § 77q(a)(1), (2), and (3).

Similarly, Exchange Act Section 10(b) and Rule 10b-5 make it unlawful for any person, in connection with the purchase or sale of a security: (a) to employ any device, scheme, or artifice to defraud; (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5(a), (b), and (c).

Courts construe these anti-fraud provisions broadly to effectuate their remedial purpose. *SEC v. Zandford*, 535 U.S. 813, 819 (U.S. 2002). Thus, scheme liability attaches to deceptive conduct that coincides with securities transactions, such as when a broker accepts payment for securities the broker does not intend to deliver or sells a customer's securities with intent to misappropriate the proceeds. *Id.* at 819-20. The Supreme Court has found that using deceit to induce securities a transaction and then misappropriating or diverting the proceeds for undisclosed purposes constitutes a fraudulent device and an act or practice which operates as a fraud or deceit within the meaning of the anti-fraud provisions. S*uperintendent of Ins. of New York v. Bankers Life and Casualty Co.*, 404 U.S. 6, 7-10 (1971).

All scheme participants are subject to primary liability. *SEC v. U.S. Environmental, Inc.*,155 F.3d 107,112 (2d Cir. 1998) (holding registered representative who entered trades on promoter's instruction primarily liable for Section 10(b) violations because he "participated in the fraudulent scheme"), *cert. denied sub nom. Romano v. SEC*, 526 U.S. 1111(1999); *see also SEC v. First Jersey Securities, Inc.*, 101 F.3d 1450, 1471 (2d Cir.1996) (finding defendant liable

as a primary violator of the antifraud provisions because he knew of the fraud and participated in the fraudulent scheme).

Violations of Sections 17(a)(1) and 10(b) and Rule 10b-5 require a showing of *scienter*, the mental state embracing intent to deceive, manipulate, or defraud. *Aaron v. SEC*, 446 U.S. 680, 691 (1980). But such a showing is not required for Sections 17(a)(2) and (3). *Id.* at 696-97. *Scienter* is established by showing that the defendants acted intentionally or with severe recklessness. *See Broad v. Rockwell Int'l Corp.*, 642 F.2d 929, 961 (5th Cir. 1981). A corporate defendant is deemed to possess the same *scienter* level as that possessed by an officer acting on the corporate defendant's behalf. *Southland Sec. Corp. v. INSpire Ins. Solutions Inc.*, 365 F.3d 353, 366 (5th Cir. 2004).

Information is material if there is a substantial likelihood that the omitted facts would have assumed significance in the investment deliberations of a reasonable investor. *Basic, Inc. v. Levinson*, 485 U.S. 224, 240 (1988); *U.S. v. Bruteyn*, 686 F. 3d 318, 323 (5th Cir. 2012). Finally, both anti-fraud provisions require a showing that the defendant used means or instruments of interstate commerce or the mails. 15 U.S.C. §§ 77q(a) and 78j(b); 17 C.F.R. § 240.10b-5.

1. The Vendetta Partners Ponzi Scheme

a. Violations of Securities Act Section 17(a)(1) and (3) and Exchange Act Section 10(b) and Rule 10b-5(a) and (c)

Defendants Helms, Kaelin, Vendetta Partners, Vendetta Management, Barefoot Minerals, Technicolor Minerals, and Haley Oil violated Securities Act Section 17(a)(1) and (3) and Exchange Act Section 10(b) and Rule 10b-5(a) and (c) by participating in a Ponzi scheme. The Fifth Circuit defines Ponzi scheme broadly. Relying on the definition found in Black's Law Dictionary 1198 (8th ed. 2004), it defines Ponzi scheme as a "fraudulent investment scheme in

which money contributed by later investors generates artificially high dividends or returns for the original investors, whose example attracts even larger investments." *Janvey v. Alguire*, 647 F.3d 585, 597 (5th Cir. 2011). It also includes within the definition:

> a scheme whereby a corporation operates and continues to operate at a loss. The corporation gives the appearance of being profitable by obtaining new investors and using those investments to pay for the high premiums promised to earlier investors. The effect of such a scheme is to put the corporation farther and farther into debt by incurring more and more liability and to give the corporation the false appearance of profitability in order to obtain new investors.

Id. (quoting *Hirsch v. Arthur* Andersen *&* *Co.*, 72 F.3d 1085, 1088 n.3 (2d Cir. 1995)).

Helms and Kaelin aggressively promoted the scheme, paying large sales commissions to promoters to solicit investors by email and telephone. They controlled and oversaw the use of all investor funds. Out of these funds, they paid earlier investors with later investors' funds. To conceal this fact, Helms used investor funds in roundtrip transactions through Haley Oil, falsely accounting for the returned funds on Vendetta Partners' books as asset-generated income.

Helms and Kaelin acted with *scienter*. They knew, or were severely reckless in not knowing, that they used later investor funds to pay earlier investors fake income distributions. Helms and Kaelin's *scienter* imputes to: (1) Vendetta Partners, which participated in the scheme by issuing the securities and receiving investor funds; (2) to Vendetta Management, which managed Vendetta Partners and , through its agents—Helms and Kaelin—took investor funds; (3) to Haley Oil, which, through Helms, took investor funds and participated in bogus roundtrip transactions to conceal the scheme; and (4) to Barefoot Minerals and Technicolor Minerals, which through its agents—Helms and Kaelin—took investor funds.

b. Violations of Securities Act Section 17(a)(2) and Exchange Act Section 10(b) and Rule 10b-5(b).

Defendants Helms, Kaelin, Sellers, Barrera, Vendetta Partners, and Vendetta

Management violated Securities Act Section 17(a)(2) and Exchange Act Section 10(b) and Rule 10b-5(b) by obtaining money by making misleading statements in the Vendetta Partners offering. On behalf of Vendetta Partners and Vendetta Management, Helms and Kaelin use the telephone, paid solicitors, and email to offer Vendetta Partners securities. In the offering, they distributed the PPM to investors. The PPM contained false and misleading representations regarding the use of proceeds, management's oil-and-gas experience, the distributions of periodic reports on acquisitions and operational results, and pending litigation. In face-to-face meetings, they falsely stated to investors that a key employee had a university degree and that they expected a Vendetta Partners investment to return 150% to 200% within several months. Finally, they filed a Form D, falsely stating that no promoter had received or would receive any proceeds from the offering.

Each of these misleading statements was material. In making an investment decision, a reasonable investor would have wanted to know that Helms and Kaelin had not and would not use the investment proceeds as represented, that Helms' only oil-and-gas experience was that which he gained from Vendetta Partners and its affiliates, that Vendetta Partners had not and would not distribute periodic reports, that Helms and Kaelin and their affiliates were embroiled in significant litigation, that a key employee did not have a university degree as represented, that, as a Ponzi scheme, Vendetta Partners could pay no real returns, and that promoters had received and would receive large amounts of the offering proceeds.

Helms and Kaelin made these misleading statements knowingly or severely recklessly. Their state of mind when making the statements imputes to Vendetta Partners and Vendetta Management, which they controlled.

Sellers and Barrera represented to investors that their $400,000 commission was "small." Under the circumstances in which the statement was made, it was misleading. Sellers and

Barrera acted with *scienter*. They knew, or were severely reckless in not knowing, that the PPM limited promotional expenses to $50,000. By calling their commission "small," they conveyed the misleading impression that their commission would be under $50,000.

This misrepresentation was material. A reasonable investor would want to know that the persons offering a security stood to make more than 13% in commissions. And Sellers and Barrera used interstate commerce—email—in the offer. Therefore, they violated Securities Act Section 17(a)(2) and Exchange Act Section 10(b) and Rule 10b-5(b).

2. The Vesta Partners Scheme: Violations of Securities Act Section 17(a)(1) and (3) and Exchange Act Section 10(b) and Rule 10b-5(a) and (c)

Defendants Helms, Kaelin, Vesta Partners, and Vesta Management, violated Securities Act Section 17(a)(1) and (3) and Exchange Act Section 10(b) and Rule 10b-5(a) and (c) by participating in a fraudulent scheme or practice or both. Through promoters, they emailed at least one investor, offering to sell Vesta Partners securities. The email included baseless claims of predictable cash distributions and a 300% to 500%, false claims regarding management's experience. These statements were misleading because they omitted that the same management team had engaged in Ponzi scheme using a virtually identical business model. Helms and Kaelin, through Vesta Partners and Vesta Management sent the email as part of a larger scheme to induce investments and misappropriate the proceeds. Helms and Kaelin acted with *scienter*, which imputes to Vesta Partners and Vesta Management.

3. The Iron Rock Partners Scheme: Violations of Securities Act Section 17(a)(1) and (3) and Exchange Act Section 10(b) and Rule 10b-5(a) and (c)

Defendants Helms, Kaelin, Iron Rock Partners, Iron Rock Management, SeBud Minerals, Lake Rock, G3 Minerals, and Arcady Resources violated Securities Act Section 17(a)(1) and (3)

and Exchange Act Section 10(b) and Rule 10b-5(a) and (c) by participating in a fraudulent scheme or practice, or both, in the Iron Rock Partners offering. Each of these Defendants is promoting the Iron Rock Partners offering, which is based on the Vendetta Partners fraudulent model. As in the Vendetta Partners offering, Helms and Kaelin intend the Iron Rock Partners offering to induce investments so they can misappropriate the proceeds.

In furtherance of this scheme, Helms and Kaelin filed a false Form D, concealing Kaelin and Sellers' promotional roles and misrepresenting that states in which the offering is made. Also in furtherance of this scheme Helms and Kaelin have distributed by email and Iron Rock Partners securities offering, falsely stating that investors could expect a 300% to 500% return in five to seven years, and concealing Helms and Kaelin's Vendetta Partners Ponzi scheme. These misrepresentations are material. Helms and Kaelin are carrying out the scheme with scienter, which imputes to the companies they control in the scheme, Iron Rock Partners, Iron Rock Management, SeBud Minerals, Lake Rock, G3 Minerals, and Arcady Resources.

C. Unregistered-Broker Provision: Section 15(a)(1) of the Exchange Act

Exchange Act Section 15(a)(1) makes it unlawful for a broker to make use of the mails or any means or instrumentality of interstate commerce to effect or induce any transaction in any security unless such broker is registered under Exchange Act Section 15(b). 15 U.S.C. §§ 78o(a)(1) and (b). Exchange Act Section 3(a)(4), defines the term "broker" to include "any person engaged in the business of effecting transactions in securities for the accounts of others." 15 U.S.C. § 78c(a)(4).

Courts consider several factors in determining whether a person has acted as a broker, including whether the person: (1) actively solicited investors; (2) advised investors as to the merits of an investment; (3) acted with a certain regularity of participation in securities

transactions; and (4) received commissions or transaction-based remuneration. *SEC v. Corporate Rels. Group, Inc.*, 2003 U.S. Dist. LEXIS 24925, 56-57 (M.D. Fla. Mar. 28, 2003) (citations omitted). Additional factors include whether the person is an employee of the issuer, is selling, or previously sold, the securities of other issuers, or is involved in negotiations between the issuer and the investor. *Id.* It is not necessary to prove *scienter* to establish a violation of Section 15(a)(1). *SEC v. National Executive Planners, Ltd.*, 503 F. Supp. 1066, 1073 (M.D.N.C. 1980).

Sellers and Barrera were neither registered as brokers nor associated with a Commission-registered broker. They personally solicited investors to buy Vendetta Partners, Vesta Partners, and Iron Rock Partners stock. They made sales presentations and negotiated investment terms. And they directly received transaction-based compensation in the form of commissions for their stock sales. Therefore, they were brokers. Because they were unregistered, they violated Exchange Act Section 15(a)(1).

VII. CONCLUSION

Because the evidence set forth above demonstrates that the Defendants violated the securities laws, and unless restrained and enjoined will continue to violate the securities laws, the Commission respectfully requests that the Count enter orders providing the relief requested in the accompanying Motion for Preliminary Injunction and *Ex Parte* Temporary Restraining Order, Asset Freeze, Appointment of a Receiver, and other Emergency and Ancillary Relief

Dated: December 3, 2013.

Respectfully,

/s/Timothy S. McCole

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