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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**Civil Action No.: 1:13-cv-1036-LY**
	§	
ROBERT A. HELMS, ET AL.,	§	
	§	**UNOPPOSED MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO FED. R. CIV. P. 55(c)**
Defendants,	§	
	§	
and	§	
	§	
WILLIAM L. BARLOW, and GLOBAL CAPITAL VENTURES, LLC,	§	
	§	
Relief Defendants, solely for the purposes of equitable relief.	§	
	§	

TO THE HONORABLE COURT AND TO ALL PARTIES:

NOW COMES Defendant Robert A. Helms ("Helms") and moves this Court to set aside the Clerk's Entry of Default as to Defendant Robert A. Helms for good cause, pursuant to Rule 55(c) of the Federal Rules of Civil Procedure.

This motion is based on the attached Memorandum of Points and Authorities, Declaration in Support, the complete files and records in this action, and upon such oral and documentary evidence as may be allowed at the hearing of this motion.

The Defendant conferred with counsel for the SEC, counsel for Receiver Thomas Taylor, and the individual named defendants, none of whom oppose the relief requested herein.

DATED: 5/20/14

By: Robert A. Helms

Robert A. Helms, Defendant

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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
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vs.	§	**Civil Action No.: 1:13-cv-1036-LY**
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ROBERT A. HELMS, ET AL.,	§	
	§	**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO FED. R. CIV. P. 55(c)**
Defendants,	§	
	§	
and	§	
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WILLIAM L. BARLOW, and GLOBAL CAPITAL VENTURES, LLC,	§	
	§	
Relief Defendants, solely for the purposes of equitable relief.	§	

Defendant Robert A. Helms ("Helms") respectfully submits this Memorandum of Points and Authorities in Support of Defendant's Motion to Set Aside Clerk's Entry of Default as to Defendant Robert A. Helms.

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I. INTRODUCTION

A review of the court's docket and pleadings on file in this action when the clerk entered its entry of default clearly demonstrate that Helms had not failed to plead or otherwise defend this action as alleged in Plaintiff's motion and supporting declaration, which precludes an entry of default pursuant to Fed. R. Civ. P. 55(a). As such, Plaintiff was not entitled to the relief given by default and the Court should set aside the Clerk's Entry of Default against Helms (Dkt. 42-3).

Additionally, the Court should set aside the Clerk's Entry of Default against Helms pursuant to Fed. R. Civ. P. 55(c) because good cause exists for Helms' delay in filing his answer to Plaintiff's complaint.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Plaintiff filed suit against all defendants, including Helms on December 3, 2013. On December 4, 2013 Plaintiff served its complaint and related pleadings on the individual defendants including Helms. That day, the Court-ordered receiver Thomas L. Taylor ("Receiver") took possession of all of Helms' personal and business bank accounts, as well as his books and records, office equipment and electronic communications located at his office in Austin, Texas and Defendant's place of residence in Austin, Texas. After service of Plaintiff's suit, and prior to the due date for his answer, Helms took the following actions in response to the lawsuit:

Helms and the other named individual defendants appeared and participated through counsel in a telephonic hearing before the Court on December 10, 2013 (Dkt. 14). On December 11, 2013 Helms and the other named individual defendants joined in Plaintiff's Unopposed Motion To Extend Temporary Restraining Order As To All Defendants (Dkt. 15) and requested

that the Court reschedule the preliminary-injunction hearing to the next available court date of December 23, 2013. That motion acknowledged the December 10, 2014 telephonic hearing before the Court and the relief requested by the parties including Helms. (Dkt. 15, ¶ 3, ¶ 4). The Court entered its Order Extending Temporary Restraining Order on December 11, 2013 (Dkt. 35), finding that Helms and the other named individual defendants consented through counsel on the record to the extension. As a courtesy, attorney Katherine Lunsford appeared for Helms and the other individual defendants for the limited purpose of obtaining the extension of date for the original TRO hearing. Since then, Helms has not been represented by counsel, and the seizure of his assets has made retaining counsel essentially impossible.

On December 17, 2013 and at Helms request, Plaintiff's attorney Timothy S. McCole ("McCole) met with Helms in person for a conference in Austin, Texas regarding the rescheduled TRO hearing, pending depositions for certain defendants including Helms, and other matters relating to the subject action. The other defendants participated via telephone. During that conference, Helms and the other individual defendants negotiated the terms of an agreed preliminary injunction with Plaintiff and resolved other pending pre-trial matters (Helms Decl. ¶4).

Importantly, Helms and the other individual defendants negotiated additional terms in the agreed preliminary injunction, in particular the right of any defendant to move the Court for relief from the receivership order and the asset freeze during the pendency of the action. (Dkt. 37, ¶VII, Helms Decl. ¶4) This additional concession provides the opportunity for significant relief to Helms and the other individual defendants prior to a trial on the merits of Plaintiff's case, which trial could realistically occur months or years from the initial filing of the subject

action. Additionally, during the December 17, 2013 conference, Helms and the other individual defendants negotiated an agreement from McCole to withdraw Plaintiff's pending depositions scheduled for all individual defendants. (Helms Decl. ¶5). In fact, Defendants Janniece S. Kaelin and Roland Barrera were to be deposed by Plaintiff the very next morning on December 18, 2013 at 9:00 a.m. in Austin, Texas and in Newport Coast, California respectively. Helms and Defendant Deven Sellers were to be deposed the following day on December 19, 2013 at 9:00 a.m. in Austin, Texas and in Denver, Colorado respectfully. Further, this concession from Plaintiff prevented Helms and the other defendants from being deposed without adequate representation by counsel. (Helms Dec.¶5). Finally, Helms and Plaintiff negotiated an extension of the due date to prepare and file the sworn statements and accounting due pursuant to this Court's order until January 31, 2014. (Dkt. 37, ¶VI.) Helms assumed that this extension would necessarily involve the Plaintiff or Receiver allowing access to his books and records in the possession of Plaintiff and Receiver, without which Helms would be unable to comply with the Court's order. Helms Decl. ¶6).

In its Unopposed Motion to Enter Agreed Preliminary Injunction as to Each Defendant and to Cancel Preliminary Injunction Hearing filed on December 18, 2013, Plaintiff's pleadings state that the defendants, including Helms, negotiated an agreement to resolve Plaintiff's motion (Dkt. 36, ¶ 4). Helms and the other defendants executed the Agreed Preliminary Injunction (Dkt. 37) which acknowledged Helms' and the other defendants' consent to its terms, and that Helms and the other defendants had "agreed that this Court has jurisdiction and over the Defendant and over the subject matter of this action and has agreed to waive a hearing and the entry of finding of facts and conclusions of law." (Dkt 37, Page 2).

Prior to the due date of Helms' answer, Helms communicated via email and telephone multiple times beginning on December 4, 2013 with McCole regarding this suit, including the TRO, seizure of Helms' business and personal property, books and records and electronic communication, the agreed temporary injunction, Helms' and other defendants' depositions, and Helms requested access to his office to recover his business and personal records and property. Plaintiff and Helms have always timely responded to communication from the other. (Helms Decl. ¶ 8).

Notably, after the due date of Helms' answer, Helms continued to receive pleadings and communication from Plaintiff, including service of Plaintiff's Notice of Appearance on January 9, 2014. (Dkt. 38; Helms Decl. ¶9). None of Plaintiff's employees and agents have ever refused my request for access to my books and records or other property. However, Plaintiff has not yet offered a specific time or place to access my office, records and property. (Helms Decl. ¶ 9). McCole and Helms spoke by telephone several times during this time period, and during one call McCole informed Helms that he should file an answer but noted that Plaintiff did not intend to default him for failure to file an answer. Plaintiff did not specify a time limit for Helms to accomplish the filing, and Helms again requested access to his office for books and records necessary to prepare a complete and responsive answer to the complaint. (Helms Decl. ¶ 9).

At all times during this proceeding, Helms has used one Gmail account to communicate with Plaintiff and the Receiver, and Helms has not used any other email account to communicate with Plaintiff. The Receiver controls Helms' two other email addresses, and Helms has no access to them. In fact, prior to the filing of the motion for entry of default, Plaintiff and Helms had communicated by email at least ten times beginning December 17, 2013 via Helms' Gmail

account. After filing its motion for entry of default, Plaintiff and Helms communicated at least eight times via Helms' Gmail account. Notably, the only time Plaintiff failed to electronically communicate or electronically serve Helms involved Plaintiff's attempted notice of filing its motion, and its attempted delivery of entered default. (Helms Decl. ¶10). On February 21, 2014, Plaintiff attempted electronic service of its motion to Helms, but Plaintiff failed to serve the pleadings to Helms' correct email address. The following February 24, 2014 Plaintiff again attempted electronic service to Helms for the executed and entered entry of default, and again failed to serve Helms' correct email address. As a result, Helms did not receive Plaintiff's notice of the motion being filed or notice that the entry of default had occurred until it was hand-delivered by UPS on February 26, 2014, at which time Helms learned that the attempted service was to an incorrect email address, giving Helms no opportunity to discuss or resolve this matter with Plaintiff before the clerk's entry default. In response, Helms filed his answer as soon as possible after receiving Plaintiff's mailed notice of the entry of default, some eight days later on March 6, 2014. (Helms Decl. ¶11).

On April 17, 2014 and at Plaintiff's request, Helms participated in a telephone conference with McCole to discuss a resolution of the clerk's entry of default against Helms. During that conference, McCole agreed *in principle* that Plaintiff would not oppose Helms' motion to set aside entry of default, and further stated that Plaintiff would be unlikely to succeed if it filed a motion for default judgment. Helms offered to prepare a draft motion to set aside the entry of default for Plaintiff's review by April 24, 2014, but was unable to complete the motion by that date due to circumstances beyond his control, and his failure to prepare this motion within the time agreed not willful or intentional. (Helms Decl. ¶12).

III. ARGUMENT

A. The Clerk's Entry of Default Is Not Supported By The Record in This Case

Although Helms did not timely file his answer, the actions taken by Helms since the inception of this action prior to Plaintiff's motion for entry of default demonstrate his ongoing participation in the litigation process, first by appearing through counsel at the December 10, 2013 hearing before this Court, his ongoing communications and negotiations with Plaintiff through its attorneys, his joinder in pleadings with Plaintiff and the other individual defendants, as well as his efforts taken as whole to defend this action which facts preclude an entry of default pursuant to Rule 55(a).

Plaintiff's Motion for Clerk's Entry of Default (Dkt. 42) depends on Plaintiff's declaration that Helms has not filed an answer to the Complaint or otherwise defend in this case. The Clerk's Entry of Default states that "As of the date of this entry, no answer has been filed on behalf of the Defendant *nor has Defendant otherwise defended*." (Dkt.42-3). However, the record in this suit and the Plaintiff's own pleadings demonstrate that Helms did not fail to plead or otherwise defend as alleged in Plaintiff's Motion. (Dkt. 42-1 ¶4.) The actions taken by Helms show that he appeared, pled or otherwise defended this suit which refutes the necessary elements required for an entry of default pursuant to Rule 55(a). Therefore, Plaintiff is not entitled to the relief provided by the Clerk's Entry of Default as to Helms under Rule 55(a) and the Court should order that the clerk's entry of default was not supported by the evidence in the record, and is void or in the alternative, the clerk's entry of default should be set aside for failing to meet the necessary elements for the entry of default.

Plaintiff's assertion that Helms failed to plead or otherwise defend in this case contradicts the plain language and intent of Rule 55(a). The Committee Notes on Rules- 2007 Amendment states in relevant part:

> Former Rule 55(a) directed the clerk to enter a default when a party failed to plead or otherwise defend "as provided by these rules." The implication from the reference to defending "as provided by these rules" seemed to be that the clerk should enter a default even if a party did something showing an intent to defend, but that act was not specifically described by the rules. Court in fact have rejected that implication. Acts that show an intent to defend have frequently prevented a default even though not connected to any particular rule.

Albeit late, Helms filed his answer to the complaint, and only eight days after learning that Plaintiff had obtained an entry of default. Before Helms' answer was due, he meaningfully participated in the litigation and clearly demonstrated his intent to defend this suit.

In addition to appearing through counsel on December 10, 2014 before this court, Helms' other actions in defense of this litigation as detailed herein and reflected on the record should be found to be both an appearance and sufficient evidence that he has otherwise defended this action, both before and after the due date of his answer. The courts have determined that actions much less formal than those taken by Helms constitute an appearance preventing the court entering a default judgment under Fed.R.Civ.P. 55(b)(2), including finding that letters and phone calls from defendant's counsel constituted an appearance, *Charlton L. Davis & Co., P.C. v. Fedder Data Ctr., Inc.*, 556 F.2d 308, 309 (5th Cir. 1977) and that a defendant's letter to plaintiff constituted an appearance, *Dalminter, Inc. v. Jessie Edwards, Inc.*, 27 F.R.D. 491, 492 (S.D. Tex.1964), and that the movant's presence at two pre-trial conferences was a factor influencing the court to find that an appearance had been made. *Collex, Inc. v. Walsh,* 74 F.R.D. 443, 446 (E.D. Pa.1977).

In a similar case before another court, the defendants, although failing to file their answer, had actively participated in the litigation process, and were granted relief due to the actions reflected on the record in defending the suit. As the Court observed in its order setting aside the clerk's entry of default, it was "puzzled why Plaintiff made no mention of Defendants' efforts to otherwise defend this action." *Winmark Corporation v. Todd A. Schneeberger and Patricia A. Scheeberger*, No. 13-CV-0274-WJM-BNB, 2013 WL 1154506 (D. Colo. March 19, 2013) * Footnote 3.

B. Good Cause exists to Set Aside the Entry of Default

Should this Court not set aside the entry of default based on Helms' showing that he pled or otherwise defended this action which precludes entry of default under Fed. R. Civ. P. 55(a) or order that the entry of default is void, then Fed. R. Civ. P. 55(c) provides that an entry of default may be set aside upon a showing of good cause. The decision to set aside a default decree lies within the sound discretion of the district court. *United States v. One Parcel of Real Prop.*, 763 F.2d 181, 183 (5th Cir. 1985). The good cause standard is a liberal one. *Effjohn Int'l Cruise Holdings, Inc. v. A & L Sales, Inc.*, 346 F.3d 552, 563 (5th Cir. 2003). The 5th Circuit has recognized that good cause under Rule 55(c) "is not susceptible of precise definition, and no fixed, rigid standard can anticipate all of the situations that may occasion the failure of a party to answer a complaint timely." *In re Dierschke*, 975 F.2d 181, 183 (5th Cir. 1992).

In deciding whether a defendant has shown good cause, courts consider (1) whether the failure to respond was due to excusable neglect; (2) whether the plaintiff would suffer prejudice if the default was set aside; and (3) whether the defendant has presented a meritorious defense. These three factors are not "talismanic" and a court may choose not to consider all three factors,

or consider additional factors. *Id., CJC Holdings, Inc. v. Wright & Lato, Inc.*, 979 F.2d 60, 64 (5th Cir. 1992) (adopting excusable neglect inquiry in place of willfulness). These factors are nonexclusive; another factor often considered by the courts is whether the party acted promptly to correct the default. *Effjohn*, 346 F.3d at 563.

Excusable neglect is an "elastic concept" and is not limited strictly to omissions caused by circumstances beyond the control of the movant. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380, 392 (1993). The term extends to simple, faultless omissions to act and, more commonly, omissions caused by carelessness." *Id.* at 388. Excusable neglect has been found to include late filings resulting from "mistake, inadvertence or carelessness…" *Mattress Giant Corp. v. Motor Adver. & Design Inc.*, No. 3:07-CV-1728-D, 2008 WL 898772, at *2 (N.D. Tex. Mar. 31, 2008). Default judgment "should not be granted on the claim, without more, that the defendant had failed to meet a procedural time requirement." *Mason & Harger-Silas Mason Co. v. Metal Trades Council*, 726 F.2d 166, 168 (5th Cir. 1984).

When a defendant files an answer subsequent to an entry of default, a court may construe the subsequently filed answer as a motion to set aside default. *E.E.O.C. v. Mothers Work, Inc.*, No. Civ. A. SA04CA0873-XR, 2005 WL 465400, at *2 (W.D. Tex. Feb 28, 2005). Therefore, the Court may also consider Helms' answer filed March 6, 2014 as his first request to set aside the entry of default, as well as this motion when considering Helms' request for relief.

(i) Helms' Delay in Answering was not Willful or Intentional

Helms' failure to timely file his answer was not intentional or willful, and under these circumstances the failure to timely file his answer meets the "elastic" standard for excusable neglect. *Pioneer Inv. Servs. Co.*, 507 U.S. at 392. Helms believed that his appearance through

counsel at the December 10, 2013 hearing, his consent through counsel to Plaintiff's Unopposed Motion To Extend Temporary Restraining Order As To All Defendants, his negotiations with McCole, including obtaining Plaintiff's withdrawal of Helms' pending deposition, and joining in Plaintiff's Unopposed Motion To Extend Temporary Restraining Order As To All Defendants precluded an entry of default pursuant to Rule 55(a). Helms filed his answer as soon as possible after receiving Plaintiff's notice of the motion and entry of default, only eight days after service of the pleadings.

Plaintiff and Receiver possess and control all of Helms' cash, income, business and personal assets and records, as well as Helms' office equipment and personal computers, and it has been virtually impossible to prepare pleadings and properly defend this action without access to these items. Helms has been forced to rely on borrowed computers, printers and other office equipment necessary to prepare his defense of this action including this motion. This borrowed equipment is not continuously available to him. Defendant Helms has repeatedly communicated this challenge to McCole in several in-person meetings, phone calls and electronic communications since at least December 17, 2013. (Helms Decl. ¶ 14). Due to the seizure of his property, Helms has also been unable to retain counsel to represent him in this action.

(ii) Plaintiff Will Not Suffer Prejudice If Entry of Default is Set Aside

Plaintiff would not suffer prejudice if the default was set aside. Since the clerk's entry of default was entered, Plaintiff has not moved this Court for a default judgment, and the case is still in its early stages. In fact, other than the subject Motion for Clerk's entry of Default against Helms and the other named individual defendants, Plaintiff has not filed any substantive pleadings since the inception of this suit. As recently as April 17, 2014, during a phone

conference between Helms and McCole, the Plaintiff agreed in principle that if Helms filed a motion to set aside the clerk's entry of default that Plaintiff would not oppose the motion. During that call, Helms agreed to provide this motion for review by April 24, 2014 for consideration by Plaintiff. In spite of his best efforts, Helms was unable to complete this motion within that time due to circumstances beyond his control. The delay was not intentional or willful. (Helms Decl. ¶ 12).

Since the inception of this action, Plaintiff and the Receiver have had exclusive possession and control of all of Helms' assets and documents potentially relating this case, and therefore no evidence could become lost or unavailable to Plaintiff. The parties negotiated and agreed to the terms of a preliminary temporary injunction which continues to protect Plaintiff's interests. No harm can come to Plaintiff if the entry of default is set aside, rather Plaintiff will simply have the burden of proving its case. Helms should be permitted to defend this case on the merits.

(iii) Defendant Has a Meritorious Defense to the Lawsuit

In his in-person, telephonic and electronic communication with McCole and other SEC staff, Helms has always been led to believe that he would be allowed access to his books, records and other property, allowing him to properly defend this action. As recently as April 17, 2014 Helms and McCole discussed accessing Helms' books and records located in the Austin office. (Helms Decl. ¶ 12).

It would be inequitable to allow the Clerk's Entry of Default to stand as entered. An entry of default causes all well-pleaded allegations of fact to be deemed admitted. *J & J Sports Prods., Inc. v Papania*, 2010 WL 1191807, at*2 (W.D. La. Mar. 26, 2010), *see also* 10A Charles Wright,

Arthur Miller & Mary Kane, Federal Practice & Procedure § 2688 (3d ed. 2010). "Even after default, however, it remains for the court to consider whether the unchallenged facts constitute a legitimate cause of action, since a party in default does not admit mere conclusions of law." 10A Wright & Miller § 2688, at 63. It would be particularly inequitable in this action, where Plaintiff's complaint, supporting exhibits and declarations contain material and substantial misstatements of facts, some even evident on the face of Plaintiff's pleadings, and other allegations that have no proof except from the testimony of declarants which Helms has denied is true.

Since Helms has not yet been allowed access to the Austin office to obtain the necessary information and documents to prepare his defense of Plaintiff's complaint, it has been impossible for him to demonstrate that the material allegations supporting the complaint are untrue. Nonetheless, all of the material allegations contained in Plaintiff's complaint have been denied in Defendant Helms' Answer filed herein (Dkt. 54), putting at issue the facts Plaintiff must prove in its action. Helms has not filed a "blanket denial" of Plaintiff's complaint, and Plaintiff should be required to prove its allegations to obtain the relief requested.

For example, Plaintiff simply omits millions of dollars in revenue and profits earned and received by defendant Vendetta Royalty Partners, Ltd. ("Vendetta") from the sale of a few of its mineral properties, from lease bonuses and other sources of income when describing "cash generated from legitimate royalty interests" at Paragraph 39 of its complaint. (Dkt. 1, ¶39; Helms Decl. at ¶18).

Helms can only demonstrate that some of Plaintiff's allegations are untrue by sworn denial, although Plaintiff cannot prove its allegations as the alleged events, documents or facts

simply do not exist to prove its claims. By way of example, Plaintiff alleges that Helms controls various defendants, namely Lake Rock, LLC, G3 Minerals, LLC and Arcady Resources, LLC and used these entities to promote the Iron Rock offering. (Dkt. 1 at ¶6). This allegation is simply untrue, and Helms does not, nor did he ever control or operate those entities nor did Helms ever possess any ownership in them. (Helms Decl. at ¶16).

As another example, Plaintiff alleges that Defendants Helms and Kaelin offered and sold securities in the form of limited partnership interests in defendant Vesta Partners, L.P. ("Vesta"). (Dkt. 1 at ¶30). This allegation is untrue, as Vesta *never sold or issued securities*, nor owned any assets, nor received property or cash from any person. In fact, Vesta *never even opened a bank account*. (Helms Decl. at ¶17). Notably, Plaintiff's Declarant Emmanuel Salter avers that Helms "regularly instructed him to transfer funds to or among…other entities (*including*) Vesta Royalty Partners, L.P." (*See* Dkt. 5, Exhibits Appendix in Support of Plaintiff's Application for Ex Parte Temporary Restraining Order, Preliminary Injunction, and Other Emergency Relief ("Plaintiff's Appendix") at APP000248, ¶10.) Neither the Receiver nor Plaintiff can identify a limited partner in Vesta that was "sold" an interest as alleged, nor identify any transfer of funds to Vesta from any defendant or any other party, since these things simply do not exist.

As a result of Plaintiff's allegations, the Receiver has been appointed over three entities (Lake Rock, LLC, G3 Minerals, LLC and Arcady Resources, LLC) that Helms does not own, operate or otherwise control, and two companies (Vesta Royalty Management, LLC and Vesta Partners, LP) that has never sold a security nor received any cash.

Additionally, Helms can demonstrate that some of the allegations in the complaint are refuted by Plaintiff's own exhibits. For example, Plaintiff alleges that Helms' and other

defendants offered to sell securities issued by Vesta, and at Helms' direction, Defendants "Sellers and Barrera emailed two prospective investors a Vesta Partners presentation describing the company and its offering." (Dkt. 1, ¶ 48) which Plaintiff alleges contained false representations, presumably relied on by the declarant Jamie Moore. Plaintiff supports this allegation with a copy of the presentation in Plaintiff's Appendix at APP000136 through APP000155, without noting the presentation, at APP000155 contains a full-page disclaimer which states in relevant part:

> "THIS SUMMARY IS FOR INFORMATION PURPOSES ONLY AND DOES NOT CONSTITUTE AN OFFER TO SELL OR A SOLICITATION OF AN OFFER TO BUY ANY SECURITES AND MAY NOT BE USED OR RELIED UPON IN CONNECTION WITH A NY OFFER OR SALE OF SECURITIES."

Clearly, the Vesta proposal was not an offer to sell securities nor could it reasonably be construed as an offering In a similar fashion, Plaintiff alleges that defendants, including Helms offered securities in Defendant Iron Rock Royalty Partners, LP ("Iron Rock") to investors in California via a "proposal," supporting its allegations with an email dated March 1, 2013 and the alleged proposal (Dkt. 1, ¶52 and Plaintiff's Appendix at APP 000210 through APP000240) all of which was presumably relied on by declarant John Morally. Again, Plaintiff fails to note that the proposal, at APP000240 contains a full-page disclaimer which states in relevant part:

> "THIS SUMMARY IS FOR INFORMATION PURPOSES ONLY AND DOES NOT CONSTITUTE AN OFFER TO SELL OR A SOLICITATION OF AN OFFER TO BUY ANY SECURITES AND MAY NOT BE USED OR RELIED UPON IN CONNECTION WITH ANY OFFER OR SALE OF SECURITIES."

Clearly, the Iron Rock proposal is not an offer to sell securities nor could it reasonably be construed as an offering. More to the point, Iron Rock Royalty Partners, Ltd. did not even exist

when the proposal was emailed, *as Iron Rock was not formed until nearly two months later on April 25, 2013*. (Dkt. 1, ¶50).

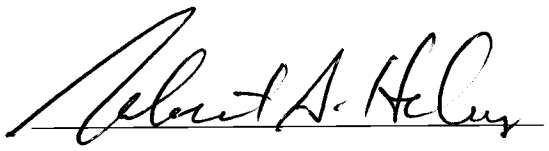
Obviously, without access to his books and records, it is impossible for Helms to conclusively demonstrate that the Vesta presentation and the Iron Rock proposal do not contain false statements. However, Plaintiff has alleged that the two summary documents, both of which contained the above referenced disclaimer, are evidence of two false offerings by Helms.

As another example, at Paragraph 37 of its complaint, Plaintiff alleges that the PPM failed to disclose "material pending legal proceedings," asserting, among other things, "The Illinois EPA initiated action against Haley Oil in May 2012, alleging illegal release incidents." This is untrue, as the EPA "action" attached to Plaintiff's Appendix in Support of Plaintiff's Application for Ex Parte Temporary Restraining Order, Preliminary Injunction, and Other Emergency Relief ("Plaintiff's Appendix") was actually an *agreement* between Defendant Haley Oil Company, Inc. ("Haley") and the Illinois EPA, which agreement and its terms were initiated at the request of Defendant Haley Oil Company, Inc. in response to the Illinois EPA's notice, which allowed Haley Oil Company, Inc. to take advantage of an *administrative* procedure to allow sufficient time to remediate the release of approximately 3 barrels of oil next to a corn field in Southern Illinois. In fact, the alleged "action" *explicitly states* in its first paragraph that "This Compliance Commitment Agreement ("CCA") is entered into voluntarily by the Illinois Environmental Protective Agency… and Haley Oil Company, Inc." (Plaintiff's Appendix at APP000075). The alleged "action" also acknowledges that Haley Oil proposed the terms of the Compliance Commitment Agreement. (Plaintiff's Appendix at APP000076, ¶4). Notably, the

remediation was completed as agreed, and Haley complied in full with the terms of the agreement. (Helms Decl. at ¶19).

IV. CONCLUSION

Based on the above stated reasons, this Court should grant Defendant's motion to set aside the clerk's entry of default.

DATED: 5/20/14 By: 

Robert A. Helms
Pro Se Defendant

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

SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
vs.	§	
ROBERT A. HELMS, ET AL,	§	
Defendants,	§	**Civil Action No.: 1:13-cv-1036-LY**
and	§	
WILLIAM L. BARLOW, and GLOBAL CAPITAL VENTURES, LLC,	§	
Relief Defendants, solely for the purposes of equitable relief.	§	

DECLARATION OF ROBERT A. HELMS IN SUPPORT OF MOTION TO SET ASIDE CLERK'S ENTRY OF DEFAULT PURSUANT TO FED. R. CIV. P. 55(c)

I, Robert A. Helms do hereby declare under penalty of perjury, in accordance with 28 U.S.C. §1746, that the following is true and correct, that this declaration is made on my personal knowledge, and that I am competent to testify as the matters stated herein:

1. I am a defendant in the above-captioned civil action, and I submit this Declaration in Support of my Motion to Set Aside Clerk's Entry of Default as to the Defendant Robert A. Helms. I am proceeding in this action pro se.

2. Plaintiff filed suit against all defendants on December 3, 2013. On December 4, 2013 Plaintiff served its *Complaint* and related pleadings on the defendants and the Court-ordered receiver Thomas L. Taylor ("Receiver") took possession of all of my personal and business bank accounts, my office and all of my books and records located in Austin, Texas and my place of residence in Austin, Texas. In response to Plaintiff's suit, and prior to the due date for my answer, I took the following actions:

3. I appeared and participated through counsel in a telephonic hearing before this Court December 10, 2013 (Dkt. 14). On December 11, 2013 I joined in Plaintiff's Unopposed Motion to Extend Temporary Restraining Order as to All Defendants (Dkt. 15) and requested that the Court reschedule the preliminary-injunction hearing originally set for December 14, 2013. That motion acknowledged my participation in the December 10, 2014 hearing before the Court and the relief requested by the parties including me. (Dkt. 15, ¶ 3 and ¶ 4). The Court entered its Order Extending Temporary Restraining Order on December 11, 2013 (Dkt. 35), finding that the named individual defendants including myself consented through counsel on the record to the extension. As a courtesy, attorney Katherine Lunsford appeared for Helms and the other individual defendants for the limited purpose of obtaining the extension of date for the original TRO hearing. Since then, I have not been represented by counsel, and the seizure of my assets has made retaining counsel essentially impossible.

4. On December 17, 2013 and at my request, Plaintiff's attorney Timothy S. McCole ("McCole) met with me in person for a conference in Austin, Texas regarding the rescheduled TRO hearing, pending depositions for individual defendants including myself, and other matters relating

to the subject action. The other defendants participated via telephone. During that conference, I participated with the other defendants and negotiated the terms of an agreed preliminary injunction with Plaintiff and resolved other pending pre-trial matters. I participated with the other defendants and obtained additional terms for the preliminary injunction, in particular the right for me to move the Court for relief from the receivership order and the asset freeze during the pendency of the action. (Dkt. 37 at ¶VII). This additional concession provides the opportunity for significant relief to me and the other individual defendants prior to a trial on the merits of Plaintiff's case, which trial will realistically occur months or even years from the initial filing of this suit.

5. Additionally, during the December 17, 2013 meeting, I participated in negotiations with Plaintiff agreed to withdraw its pending depositions scheduled for the individual defendants. In fact, Defendants Janniece S. Kaelin and Roland Barrera were to be deposed by Plaintiff the very next morning on December 18, 2013 at 9:00 a.m. in Austin, Texas and in Newport Coast, California respectively. I was to be deposed the following day on December 19, 2013 at 9:00 a.m. in Austin, Texas as was Defendant Deven Sellers in Denver, Colorado. Notably, none of the individual defendants including Helms had retained counsel to represent them in the depositions.

6. Additionally, I negotiated with Plaintiff for an extension of the due date until January 31, 2014 to file my sworn statement and accounting as ordered by the Court's order. (Dkt. 37 at ¶VI). At that time I understood that this extension would necessarily involve the Plaintiff or Receiver allowing me to access to my books and records in the possession of Plaintiff and Receiver, without which I would be unable to comply with the Court's order.

7. In its Unopposed Motion to Enter Agreed Preliminary Injunction as to Each Defendant and

Cancel Preliminary Injunction Hearing, Plaintiff's states that the defendants, including myself, negotiated an agreement to resolve its motion (Dkt. 36, ¶ 4). I executed the Agreed Preliminary Injunction as did all defendants, and the Court acknowledged my consent to the terms of the order, and that noted that the defendants had "agreed that this Court has jurisdiction and over the Defendant and over the subject matter of this action and has agreed to waive a hearing and the entry of finding of facts and conclusions of law." (Dkt 37 at Page 2).

8. Prior to the due date of my answer, I communicated by email and telephone multiple times beginning on December 4, 2013 with McCole regarding this suit, including the TRO, the agreed temporary injunction, my scheduled deposition, and I also requested access to my office to recover my business and personal records and other property. Since this suit was filed, I have always timely responded to all communications from Plaintiff, and Plaintiff has always responded timely to my communications as well.

9. After the due date of my answer, I received electronic service of Plaintiff's Notice of Appearance on January 9, 2014. (Dkt. 38). None of Plaintiff's employees and agents have ever refused my request for access to my books and records or other property. However, Plaintiff has not yet offered a specific time or place to access my office, records and property. I spoke with McCole by telephone several times after the due date of my answer, and during one such call McCole informed me that I was required to file an answer, but noted that Plaintiff did not intend to default me for failing to file an answer "any time soon." McCole did not specify a time limit for me to accomplish the filing, and I again requested access to my office for books and records

necessary to prepare a complete and responsive answer as well as prepare my defense to this action.

10. At all times during this proceeding, I have used only one Gmail account to communicate with Plaintiff, and I have not used any other email account to communicate with Plaintiff. The Receiver controls my two other email addresses, and I haves no access to them. In fact, prior to the filing of its motion for entry of default against me, Plaintiff and I successfully communicated using my Gmail account at least ten times beginning December 17, 2013. After filing its motion for entry of default, Plaintiff and I communicated at least eight more times via my Gmail account. To the best of my knowledge, the only time Plaintiff failed to electronically communicate or electronically serve me was its attempted notice of filing the motion for entry of default, and its attempted electronic delivery of the default entered by the clerk.

11. On February 21, 2014, Plaintiff filed its Motion for Clerk's Entry of Default as to Robert A. Helms and attempted electronic service of its motion to me, but Plaintiff failed to serve the motion to my correct email address (Dkt. 42). Plaintiff certified electronic delivery of its motion to me via email. (*Id.* at Page 3.) On February 24, 2014 Plaintiff again attempted electronic service to me for the executed and entered entry of default, and again failed to serve my correct email address. As a result, I did not receive Plaintiff's notice of the motion being filed or Plaintiff's notice that the entry of default had occurred until it was hand-delivered by UPS on February 26, 2014, at which time I learned that the attempted service was to an incorrect email address, giving me no opportunity to discuss or resolve this matter with Plaintiff before the clerk's entry default. In response, I filed my answer as soon as possible after receiving Plaintiff's the entry of default on March 6, 2014.

12. On April 17, 2014 and at Plaintiff's request, I spoke with McCole by telephone and discussed the resolution of the clerk's entry of default against me. During our conversation, McCole agreed *in principle* that Plaintiff would not oppose my motion to set aside entry of default, and I agreed to submit a draft of my motion by April 24, 2014 for his review. In spite of my best efforts, I was unable to complete this motion within that time due to circumstances beyond my control. The delay was not intentional or willful. I do not have access to my office or personal computers, other office equipment, nor my books and records, nor consistent access to my email account. During this call I also discussed accessing my office to obtain my books, records, and personal and business property, even discussing how long it might take to recover all these items once I was permitted to access my office.

13. I timely failed to file an answer in this cause, but my failure to file should be excused for the following reasons: Since the inception of this suit, I have not been allowed access to my office, my books, business records, personal and business accounting records, electronic communication, personal and business computers, office equipment and other information necessary to complete a meaningful and complete answer to Plaintiff's complaint; I am not licensed to practice law in Federal Court, and at the time my answer was due to be filed, I believed that my participation through counsel in the December 10, 2013 telephonic hearing before this Court, my act of joining in Plaintiff's Unopposed Motion To Extend Temporary Restraining Order As To All Defendants (Dkt.15) and participating in the negotiation of the terms of Plaintiff's Unopposed Motion for Preliminary Injunction as to Each Defendant and to Cancel Preliminary Injunction Hearing (Dkt. 36) and my execution of the Agreed Order (Dkt. 37) constituted my appearance

entitling me to notice of all of Plaintiff's pleadings, and further that such acts precluded a default under Fed. R. Civ. P. 55(a). All of these events took place before the due date of my answer.

14. Since at least my first in-person meeting with McCole on December 17, 2013, I have repeatedly requested access to my office in Austin, Texas to obtain my personal and business property, including my books and records in order to 1) prepare the necessary statements and accounting ordered by the Court and 2) to prepare a defense of this action. Beginning December 4, 2013 and continuing through April 17, 2014 I have communicated in person, by telephone or by email with Plaintiff's attorney regarding access to my office, books and records as well as personal items. Each time I communicated with McCole, he indicated a willingness to allow me access my office to recover these items, and at no time did he inform me that I would not be allowed to access my records. Neither McCole nor any of Plaintiff's employees or agents have ever refused my request for access to my records. They simply have not offered a specific opportunity to do so.

15. McCole and I spoke by telephone several times both before and after the due date of my answer. During one call McCole informed me that I should file an answer but that Plaintiff did not intend to default me for failure to timely file. McCole did not specify a time limit for me to accomplish the filing, and I again requested access to my office for books and records necessary to prepare a complete and responsive answer to the complaint.

16. I do not control or operate defendants Lake Rock LLC, G3 Minerals LLC and Arcady Resources, LLC nor have I ever used these entities to promote the Iron Rock offering as alleged in Plaintiff's complaint. (Dkt. 1 at ¶6). Additionally, I never possessed any ownership in them.

No documents or facts exist which would show I ever possessed an interest in, controlled, operated or benefitted from these entities or used them as Plaintiff alleges in its complaint.

17. Neither myself nor any entity or affiliate I am associated with, have never sold securities of any kind, whether in the form of limited partnership interests or otherwise, in defendant Vesta Partners, L.P. ("Vesta") as alleged in Plaintiff's complaint. (Dkt. 1 ¶30). In fact, Vesta never sold or issued securities, nor owned any assets, nor received property or cash from any person. In fact, *Vesta never even opened a bank account.* Declarant Emmanuel Salter's sworn statement that he transferred funds to and among Vesta Royalty Management, LLC and Vesta Royalty Partners is untrue.

18. Without access to my books and records, I am unable to refute Plaintiff 's specific allegation regarding the cash Defendant Vendetta Royalty Partners, Ltd.'s ("Vendetta") generates from its royalty properties. However, while detailing cash receipts from its "legitimate royalty interests," Plaintiff's complaint *omits any mention of the millions of dollars in cash received by Vendetta*, representing revenue and profits earned from the sales of a small portion of its large portfolio of mineral properties, from lease bonuses and other sources of income. (Dkt.1, ¶32, ¶39). For example, in 2010 Vendetta sold its mineral interests in approximately 30 wells in a single transaction for $1.8 million dollars. Vendetta sold a small unit in 2012 or 2013 for $450,000.00 containing a few oil wells. Notably, both of these transactions represented a significant profit for Vendetta, which participates in over 20,000 wells, and owns mineral interests in over 1.3 million acres.

19. At Paragraph 37 of its complaint, Plaintiff alleges that the PPM failed to disclose

"material pending legal proceedings," asserting, among other things, "The Illinois EPA initiated action against Haley Oil in May 2012, alleging illegal release incidents." The EPA "action" attached to Plaintiff's Appendix in Support of Plaintiff's Application for Ex Parte Temporary Restraining Order, Preliminary Injunction, and Other Emergency Relief ("Plaintiff's Appendix") was actually an *agreement* between Defendant Haley Oil Company, Inc. ("Haley") and the Illinois EPA, which agreement and its terms were and initiated and offered at the request of Defendant Haley Oil Company, Inc. in response to the Illinois EPA's notice, which allowed Haley Oil Company, Inc. to take advantage of an *administrative* procedure which allowed additional time to remediate the release of approximately 3 barrels of oil next to a corn field in Southern Illinois. In fact, the alleged "action" *explicitly states* in its first paragraph that "This Compliance Commitment Agreement ("CCA") is entered into voluntarily by the Illinois Environmental Protective Agency… and Haley Oil Company, Inc." (Plaintiff's Appendix at APP000075). The alleged "action" also acknowledges that Haley Oil proposed the terms of the Compliance Commitment Agreement. (Plaintiff's Appendix at APP000076, ¶4).

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

Executed on May 20, 2014.

Robert A. Helms
11708 Rydalwater Lane
Austin, Texas 78754
(512) 450-4700
Email: roberthelms1964@gmail.com

CERTIFICATE OF SERVICE

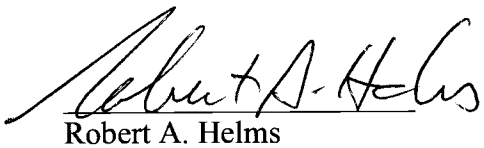
I hereby certify that on May 20th, 2014 I filed the foregoing document with the Clerk of the Court for the Western District of Texas, Austin Division and that I notified all parties in the manner listed below:

By Email:

Timothy S. McCole
Christopher Davis
801 Cherry Street
Fort Worth, Texas 76102
Counsel for the Securities and Exchange Commission

Thomas L. Taylor III Court-Appointed Receiver
4550 Post Oak Place Drive, Suite 241
Houston, Texas 77027-3117
info@vendettaroyaltyreceivership.com
Counsel for Defendants 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.

Janniece S. Kaelin, Deven Sellers, Roland Barrera and Willliam Barlow
Pro Se Defendants



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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**Civil Action No.: 1:13-cv-1036-LY**
	§	
ROBERT A. HELMS, ET AL.,	§	
	§	**PROPOSED ORDER GRANTING DEFENDANT'S MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO FED. R. CIV. P. 55(c)**
Defendants,	§	
	§	
and	§	
	§	
WILLIAM L. BARLOW, and GLOBAL CAPITAL VENTURES, LLC,	§	
	§	
Relief Defendants, solely for the purposes of equitable relief.	§	

ORDER GRANTING DEFENDANT'S UNOPPOSED MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO FED.R.CIV.P. 55(c)

Having considered Defendant's Motion and finding good cause therefore, Defendant's Motion is GRANTED.

IT IS HEREBY ORDERED that Defendant's Motion to Set Aside Entry of Default as to Robert A. Helms (Dkt. 44) is set aside. IT IS FURTHER HEREBY ORDERED that Defendant Robert A. Helms' Answer to Complaint and Request for Jury Trial (Dkt. 54), filed after the Clerk's Entry of Default, is hereby deemed to be filed as of the date of this Order below.

DATED: _____, 2014.

_____
Honorable Judge Lee Yeakel
UNITED STATES DISTRICT COURT