HARD COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

RECEIVED
MAR 01 2016
OFFICE OF THE SECRETARY

ADMINISTRATIVE PROCEEDING
File No. 3-17004

In the Matter of

DEVEN SELLERS and ROLAND BARRERA,

Respondents.

MOTION FOR SUMMARY DISPOSITION

In accordance with the Order entered in this matter on January 28, 2016, the Division of Enforcement ("Division") submits this Motion for Summary Disposition against Respondents Deven Sellers and Roland Barrera (collectively, "Respondents") and would respectfully show[1] as follows:

I. Procedural Background

On December 15, 2015, the Securities and Exchange Commission ("Commission") issued an Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 [("Exchange Act")] and Notice of Hearing ("OIP") against Sellers and Barrera, alleging that they violated the securities laws in a securities offering by a Texas company called Vendetta Royalty Partners ("Vendetta").[2] In the OIP, the Division alleged that, on October 21, 2015, a final judgment was entered against the Respondents by a United States District Court, permanently enjoining them from future violations of certain provisions of the Exchange Act and

[1] This motion is supported by evidence included in the attached Appendix. The Appendix pages are numbered serially in the lower right corner. Reference to the Appendix is by these page numbers, using the format "App. at [page #]."

[2] *Deven Sellers, et al.*, Exchange Act Release No. 76659, 2015 SEC LEXIS 5169, at *1-2 (December 15, 2015).

the Securities Act of 1933 ("Securities Act").[3] The Division served the OIP on the Respondents in December 2015. App. at 97. On February 4, 2016, the Hearing Officer dispensed with the requirement for the Respondents to file answers to the OIP.[4]

The Commission initiated these proceedings for three reasons: (1) to determine whether the allegations set forth in the OIP are true; (2) to afford the Respondents an opportunity to establish any defenses to such allegations; and (3) to determine what, if any, remedial action is appropriate in the public interest against the Respondents pursuant to Section 15(b) of the Exchange Act.[5]

As set forth below, the Division asserts that it is entitled to summary disposition against Sellers and Barrera as a matter of law because it is beyond dispute that the aforementioned final judgment was entered and that remedial action against Sellers and Barrera is appropriate in the public interest.

II. The Standard for Summary Disposition

Under Rule 250(b) of the Commission's Rules of Practice, a motion for summary disposition may be granted if there is no genuine issue as to any material fact and the party making the motion is entitled to summary disposition as a matter of law.[6] The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noticed pursuant to

---

[3] *Id.* at 2.

[4] *Deven Sellers, et al.*, Admin. Proc. Rulings Release No. 3577, 2016 SEC LEXIS 416, at *1 (February 4, 2016).

[5] Deven Seller, *et al.*, 2015 SEC LEXIS 5169, at *3.

[6] 17 C.F.R. § 201.250(b).

Rule 323 of the Commission's Rules of Practice.[7]

The Commission modeled Rule of Practice 250 on Rule 56 of the Federal Rules of Civil Procedure.[8] By analogy to Rule 56, a factual dispute between the parties will not defeat a motion for summary disposition unless it is both genuine and material.[9] Once the moving party has carried its burden, "its opponent must do more than simply show that there is some metaphysical doubt as to the material facts."[10] The opposing party must set forth specific facts showing a genuine issue for a hearing and may not rest upon mere allegations or denials of its pleadings.[11]

The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction.[12] Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare."[13]

III. The Facts are beyond Reasonable Dispute

A. The Respondents stipulated to factual allegations in the OIP.

In a joint statement filed in this proceeding and dated January 22, 2016, the Division and the Respondents stipulated "to the facts alleged in Section II. B. of the OIP." App. at 97. These facts read as follows:

> 4. On October 21, 2015, a final judgment was entered against Sellers

---

7 17 C.F.R. § 201.250(a).

8 *Kornman v. SEC*, 592 F.3d 173, 182 (D.C. Cir. 2010).

9 *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

10 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,586 (1986).

11 *Id.* at 587.

12 *See Jeffrey L. Gibson*, Exchange Act Release No. 57266, 2008 SEC LEXIS 236, at *19-20 (Feb. 4, 2008) (collecting cases), *pet. denied*, 561 F.3d 548 (6th Cir. 2009).

13 *See John S. Brownson*, Exchange Act Release No. 46161, 2002 SEC LEXIS 3414, at *9, n.12 (July 3, 2002).

and Barrera, permanently enjoining them from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder in the civil action entitled *Securities and Exchange Commission v. Robert A. Helms, et al.*, Civil Action Number 1:13-cv-01036-ML, in the United States District Court for the Western District of Texas.[14]

5. The Commission's complaint alleged that Sellers and Barrera offered to sell Vendetta securities to an investor for $ 3,050,000. In the offer, Sellers and Barrera represented that they would split a "small" commission on the sale. In reality, their combined commission—$423,500—was more than 13% of the sale price and more than eight times greater than a $ 50,000 cap for promotional expenses, such as sales commissions, found in Vendetta's private-placement memorandum for the offering. Their statement that their commission would be "small" was an untrue statement of a material fact. They never corrected the untrue statement, even as they continued to promote other securities offerings, including Vesta and Iron Rock to the same investors.[15]

In the joint statement, the Respondents and the Division likewise stipulated [App. at 97-98] the admissibility into evidence for all purposes the following documents, contained in the accompanying Appendix and found on the docket of *SEC v. Robert A. Helms, et al.* Case No. 1:13-cv-01036-ML in the United States District Court for the Western District of Texas:

- Memorandum Opinion and Order on Motion for Summary Judgment, identified as Document 275.
- Defendants Motion to Reconsider Summary Judgment Order & Dispositive motion, identified as Document 289.
- Order Denying Motion for Reconsideration, identified as Document 291.
- Final Judgment as to Defendants Robert A. Helms, Janniece S. Kaelin, Deven Sellers, and Roland Barrera, identified as Document 292.

14 A copy of the final judgment is filed herewith at App. 88-95.

15 *Deven Sellers, et al.*, 2015 SEC LEXIS 5169, at *2-3.

B. The Respondents' permanent injunctions followed entry of a summary-judgment order against them, finding that they were unregistered brokers who made false statements in securities transactions.

On August 21, 2015, the United States District Court entered an order granting a Commission motion for summary judgment against Sellers and Barrera. App. at 1-42. Barrera subsequently filed a motion seeking reconsideration of the court's order. App. at 43-79. After considering Barrera's motion for reconsideration, the court entered an order denying it. App. 80-87. In these orders, the court found that Sellers and Barrera committed fraud while acting as unregistered brokers, as follows:

- Sellers and Barrera violated anti-fraud provisions of the federal securities laws—specifically, Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b–5—by making material misrepresentations to an investor regarding their compensation in a Vendetta securities transaction they brokered. They represented that their commission would be "small," when, in reality, it was "hardly" small and "alarmingly high." They shared $423,500, equaling nearly 14% of the $3,050,000 invested, and more than eight times the $50,000 cap for total promotional expenses in Vendetta's private-placement memorandum. In violating these provisions, "at the very least, Sellers and Barrera acted with severe recklessness." App. at 29-31, 34, 85-86.

- Sellers and Barrera were brokers within the meaning of Exchange Act Section 15(a). They were never associated with a registered broker or dealer. They were required to register as brokers, but failed to do so. They therefore violated Exchange Act Section 15(a). App. at 17, 34, 36, 85.

In addition to permanently enjoining Sellers and Barrera, the court's final judgment ordered them to disgorge $423,500, jointly and severally, plus prejudgment interest of $36,243.87. App. at 92. The court also ordered them to pay civil penalties of $150,000 apiece under Securities Act Section 20(d) and Exchange Act Section 21(d)(3). *Id.*

IV. Argument and Authorities

A. The Commission may impose a sanction against Sellers and Barrera.

Exchange Act Section 15(b)(6) authorizes the Commission to impose a sanction against

Sellers and Barrera, ranging from censure to collateral bar, if: (1) at the time of the alleged misconduct, they were associated with a broker or dealer; (2) they have been enjoined from any action, conduct, or practice specified in Exchange Act Section 15(b)(4)(C, including "engaging in or continuing any conduct or practice . . . in connection with the purchase or sale of any security"; and (3) the sanction is in the public interest. 15 U.S.C. §§ 78*o*(b)(4)(C) and 78o(b)(6)(A)(iii).[16]

Here, it is established beyond dispute that Sellers and Barrera were associated with a broker at the time of their misconduct. Each one was a broker. And one each was associated with the other. It is likewise established that they have been permanently enjoined from violating the aforementioned securities laws.

B. A collateral bar is in the public interest.

When considering whether an administrative sanction serves the public interest, the Commission considers the six factors identified in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) ("Steadman Factors"). *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009). The Steadman Factors are:

> (1) the egregiousness of the respondent's actions; (2) the isolated or recurrent nature of the infraction; (3) the degree of scienter involved; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his or her conduct; and (6) the likelihood that the

[16] Exchange Act Section 15(b)(6)(A)(iii) provides:

> With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer, or any person participating, or, at the time of the alleged misconduct, who was participating, in an offering of any penny stock, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person . . . is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

respondent's occupation will present opportunities for future violations.

Id. The inquiry is flexible, and no one factor is dispositive. *Id.*

Analyzing the Steadman Factors in Sellers and Barrera's case establishes that it is in the public interest to impose a collateral bar against them. Their misconduct was egregious. They induced an investment exceeding $3 million by concealing from the investor the alarmingly high commission they stood to receive and did receive. They acted with a high level of scienter, which the court characterized as "at least 'severely reckless.'" App. at 36. Indeed, Sellers admitted that he had no basis to represent to the investor that the commission would be small. App. 30. And Barrera intentionally withheld information regarding the magnitude of the commission when the investor specifically questioned him about it. App. at 85-86. As the court noted, their "violations were not particularly repetitive or numerous," but they "have not have not expressed remorse or recognized their transgressions." App. at 36. Finally, as for their occupations, "they have shown themselves capable of soliciting and negotiating with investors for millions of dollars in securities transactions." *Id.* On balance, therefore, this analysis weighs heavily in favor of imposing a collateral bar against Sellers and Barrera.

V. Conclusion

The Division has demonstrated that there is no reasonable dispute regarding the facts establishing Sellers and Barrera's violations, the court's permanent injunction against them, their status as brokers at the time of their misconduct, or the public interest in imposing collateral bars against them. The Division respectfully requests the Hearing Officer to impose a full collateral bar against each of them under Exchange Act Section 15(b)(6).

Dated: February 29, 2016

Respectfully submitted,

s/Timothy S. McCole
Timothy S. McCole
Mississippi Bar No. 10628
Attorney for Division of Enforcement
Securities and Exchange Commission
Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
Fort Worth, Texas 76102-6882
E-mail: McColeT@sec.gov
Telephone: (817) 978-6453
Facsimile: (817) 978-4927
DIVISION COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the forgoing document was served on Sellers and Barrera by email on February 29, 2016.

s/Timothy S. McCole

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

SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	§	
v.	§	
ROBERT A. HELMS, ET AL., Defendants,	§	A-13-CV-01036 ML
and	§	
WILLIAM L. BARLOW and GLOBAL CAPITAL VENTURES, LLC, Relief Defendants, solely for the purpose of equitable relief.	§	

**MEMORANDUM OPINION AND ORDER
ON MOTION FOR SUMMARY JUDGMENT**

Before the Court are Plaintiff's Motion for Summary Judgment against Robert Helms and Janniece Kaelin, filed June 30, 2015 (Clerk's Dkt. No. 258); Plaintiff's Motion for Sanctions against Defendant Janniece Kaelin, filed July 13, 2015 (Clerk's Dkt. No. 264); and Plaintiff's Motion for Summary Judgment against Defendants Deven Sellers and Roland Barrera, filed June 30, 2015 (Clerk's Dkt. No. 260). The parties consented to this Court's jurisdiction, and the case was assigned to this Court's docket for all purposes on September 29, 2014. (Clerk's Dkt. No. 118). Having considered the parties' arguments at the hearing, the briefing, and the applicable case law, the Court **GRANTS** the SEC's Motions (Clerk's Dkt. Nos. 258, 264) for the reasons set forth below.

I. PROCEDURAL BACKGROUND

On December 3, 2013, the Securities and Exchange Commission ("SEC") filed an action against Robert A. Helms ("Helms"), Janniece S. Kaelin ("Kaelin), Deven Sellers ("Sellers"), Roland Barrera ("Barrera"), and a number of entities ("Defendant Entities") (collectively, "Defendants").

The complaint alleged Defendants were engaged in securities fraud and sought appointment of a receiver. That same day, the Court entered a Temporary Restraining Order restraining and enjoining Defendants from further violations of the Anti-Fraud and Broker-Dealer registration provisions of federal securities laws. (Clerk's Dkt. No. 10). The Court also entered an order appointing Thomas L. Taylor III ("Receiver") as Receiver for Defendants. (Clerk's Dkt. No. 11). The appointment order granted the Receiver authority to marshal and preserve Defendants' assets for the benefit of the Receivership Estate. The SEC now moves for summary judgment against Helms and Kaelin, contending they violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), and Securities Section 10(b) of the Exchange Act of 1934 ("Exchange Act") and Rule 10b–5 promulgated thereunder, by engaging in a fraudulent Ponzi scheme and misrepresenting material facts to investors. The SEC also moves for summary judgment against Sellers and Barrera contending they violated Section 15(a) of the Exchange Act, Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b–5 promulgated thereunder by soliciting investors and negotiating the sale of limited-partnership securities without the required license and making various misrepresentations of material facts.

II. SUMMARY JUDGMENT EVIDENCE

As a preliminary matter, Defendants Helms and Kaelin have failed to respond to the motion for summary judgment or otherwise provide evidence rebutting or controverting the SEC's evidence. Defendants Sellers and Barrera have also failed to respond to the motion for summary judgment against them. Accordingly, the Court hereby accepts as true the evidence proffered in support of each motion for summary judgment.[1] *See Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986) (after

[1] Of course, Defendants' failure to respond to the motion for summary judgment does not permit the Court to enter a "default" summary judgment in favor of the SEC. *Eversley v. MBank Dall.*, 843 F.2d 172, 174 (5th Cir. 1988).

defendant offers evidence establishing there is no genuine disputed of material fact, burden shifts to plaintiff to direct Court's attention to evidence in record sufficient to establish genuine dispute of material fact exists for trial); *Tillison v. Trinity Valley Elec. Coop.*, 2005 WL 292423, at *1 (N.D. Tex. Feb. 7, 2005) (citing *Bookman v. Shubzda*, 945 F. Supp. 999, 1002 (N.D. Tex. 1996)) (court may accept non-rebutted evidence as true for summary judgment purposes). The evidence the SEC submits is as follows:

A. Background

Defendants Helms and Kaelin operated and controlled Vendetta Royalty Partners ("Vendetta Partners") and several other Defendant Entities, including Iron Rock Royalty Partners ("Iron Rock").[2] Vendetta Partners was organized and marketed as a standard limited partnership that would hold and distribute royalty interests from approximately 2,000 oil and gas wells located principally in Texas ("Vendetta Portfolio"). Vendetta Partners began soliciting investors in at least July 2011. Iron Rock was a limited partnership offering Helms and Kaelin launched after forming Vendetta Partners which purportedly sought to raise $300 million in less than a year for the purpose of investing in oil and gas properties.

B. Ponzi Scheme Evidence

Helms and Kaelin raised approximately $31,422,861.00 by selling limited-partnership interests issued by Vendetta Partners and Iron Rock to as many as 129 investors. APP0002. As detailed below, Helms and Kaelin represented to investors that Vendetta Partners generated profits from a portfolio of oil-and-gas royalty interests. Those profits were then distributed to investors as "royalty distributions." However, Vendetta Partners' royalty revenues alone, even disregarding the

[2] Helms admits that he and Kaelin alone controlled and directed the activities of Vendetta and Iron Rock. APP0059 (Helms at 85:1–13; 141:24–142:7); (*see also* Clerk's Dkt. No. 5 at APP000109 (organizational chart)).

profits remaining after expenses were paid from those revenues, fell short of covering the royalty distributions. APP0003.

Because the royalty revenues were insufficient to pay the royalty distributions, Helms and Kaelin paid the distributions using later investors' money.[3] These distributions began at least as early as August 2011 and continued until the very last investment in mid-2013. By way of example, Vendetta Partners made the following distributions during this period: (i) $187,836.00 on August 17, 2011; (ii) $650,000.00 on January 25, 2012; (iii) $222,000.00 on November 30–December 1, 2012; and (iv) $255,841.00 on December 6–8, 2012. (Clerk's Dkt. No. 5-22 (Hahn Declaration) at 8–9; Clerk's Dkt. No. 186-1 (Cheek Declaration) at 8–11. In each instance, Vendetta used investor funds to make the investor distributions. *Id.* Helms and Kaelin similarly used the very last investment—a $500,000.00 investment into Iron Rock in mid-2013 by investor Ralph Parks ("Parks")—to make a distribution to investors. APP0106–07 (Helms at 275:6–277:9). Helms testified that he and Kaelin used $100,000.00 of the investment to buy out a Vendetta Partners investor. *Id.*

Danielle Supkis Cheek ("Cheek"), the forensic accountant retained by the court-appointed Receiver in this matter, testified that in her professional opinion, Vendetta Partners and its affiliated entities operated as a Ponzi scheme.[4] Of the $31,422,861.00 raised from investors, Helms and Kaelin made distributions using new investor funds totaling at least $4,767,541.00.[5] APP0003.

---

[3] Helms in particular, as the General Partner, was responsible for calculating and distributing the distributions for Vendetta Partners. (Helms at 81:1–13); *see also, generally* APP0814–832 (Helms's handwritten notes reflecting profit and loss calculations and notes on distributions).

[4] The declaration of Carol J. Hahn, staff accountant with the SEC, also supports this finding. (Clerk's Dkt. No. 5-22).

[5] This is the deficit of cumulative net royalty income versus investor distributions paid ($3,925,295.00 minus $8,692,836.00). This number certainly understates the amount of Ponzi payments since it ignores other expenses paid out of royalty income. Cheek also confirmed that there were no other significant sources of cash other than royalty

Cheek further testified that from mid-2011 until the last distribution was made in late 2013, every investor distribution was a "Ponzi payment" because from mid-2011 forward investor outflows exceeded cumulative royalty income. APP0005 (Fig. 2).

C. Furtherance of Ponzi Scheme Evidence

1. Misappropriation

Helms and Kaelin represented to investors in the Vendetta Partners Private Placement Memorandum ("PPM"), which they controlled and distributed, that any funds raised would be used as follows:

	Application of Maximum Proceeds	Percent of Subscriptions
Purchase Costs of Royalty Interests	$49,570,500.00	99.14%
Loan Repayment	$379,500.00	.76%
Promotional Expenses	$50,000.00	.10%

(Clerk's Dkt. No. 5-11 (Moore Declaration) at 4; Clerk's Dkt. No. Dkt. 5-12 (7/28/12 email attaching PPM) at 1; Clerk's Dkt. No. 5-13 (Vendetta Partners PPM and addendum, signed by Helms and Kaelin) at 17, 32). Investor funds were not spent this way. Instead, as detailed below, Helms and Kaelin spent millions on other items, including: (i) Helms and Kaelin's personal spending, including spending on their families, friends, and associates; (ii) business expenses; and (iii) royalty distributions.[6]

a. Misappropriation for Personal Use

Helms and Kaelin misappropriated at least $8,442,116 for spending on themselves and their

---

revenues and investors' money. APP0003.

[6] As noted above, Helms and Kaelin alone controlled the Vendetta entities. Helms admits that he, as managing partner, oversaw expenditures. APP0076 (Helms at 154:18-22).

families, friends, and associates. APP0013. Their personal spending included: (i) $247,415.00 for Kaelin's daughter's wedding in Hawaii; (ii) $111,600.00 for airfare, including for the wedding; (iii) $102,440.00 for tuition; and (iv) $287,928.00 for mortgage payments. APP0015.

Helms and Kaelin also used investor funds to take a 23-day trip around the world during March and April 2012. As Helms noted in an email to his daughter, this "Journey of Man" included over 50 hours of flight time on a private jet. APP0319-331. According to Helms, he and Kaelin relaxed on the beach in Fiji; swam with dolphins in Hawaii; met elephants in Thailand, while staying at a Four Seasons overlooking an elephant reserve; attended a fireworks display at the Rajah's palace in India; spotted elephants in Tanzania; and rode camels in Jordan. *Id.* The trip cost at least $137,460.00. APP0332; APP0015. Helms paid for the trip with the proceeds from a single $200,000.00 investment.[7] APP0016.

b. Misappropriation for Business Expenses

As noted in the PPM chart above, investment proceeds could only be used for two kinds of business expenses: loan payments and promotional expenses. Consistent with this, Helms and Kaelin represented to investors that business expenses would be paid using royalty-interest revenues: "Every dollar that comes in goes out in acquisitions. So if you put $1 million into the company, that $1 million is spent on acquisitions. Revemue [sic] then comes in and the bills are paid." APP0333; see also Dkt. 5-11 (Moore Declaration) at 3-4; Dkt. 5-16 (Morally Declaration) at 3-4.[8]

However, Vendetta Partners revenue was grossly insufficient to cover its expenses, largely

---

[7] The balance of this investment was also misappropriated—primarily for a $61,250 payment to a rehabilitation center. APP0015.

[8] Further, as Cheek noted in her testimony at the Court's February hearing, "Now, usually investor distributions are used as a return on the investment to the investors, and are funded out of the accumulation of net income." 2/12/15 Hearing Tr. at 31:14-16. Thus, this statement from Helms and Kaelin is consistent with the expectations of a reasonable investor about the source of funds for both business expenses and distributions—which is no doubt why it was made.

because Helms and Kaelin were spending significant amounts of investor funds on themselves. The total amount of investor funds misappropriated to cover business expenses was at least $12,851,455.00.[9] APP0013. These funds were misappropriated for items including: (i) $2,343,037.00 for payroll, contract labor, taxes, and benefits; (ii) $3,295,931.00 for professional services; (iii) $172,430.00 for telecom, internet, and IT; and (iv) $161,901.00 for rent, utilities, and maintenance. APP0014.

2. *Misrepresentation in Furtherance of Ponzi Scheme*

a. Misrepresentations about Use of Investor Funds

Helms and Kaelin represented in the PPM chart and other communications that more than 99% of investor funds would be used to buy royalty interests. However, at most, 32% of investment proceeds were used to purchase mineral interests.[10] APP0002, 0013.

Similarly, Helms and Kaelin overspent on loan payments. They made at least $1,100,000.00 in loan payments to Amegy Bank ("Amegy")—almost three times the amount disclosed to investors. (Clerk's Dkt. No. 5-22 (Hahn Declaration) at 5). They paid these excess amounts in an effort to cure delinquency and covenant violations in the loan agreement with Amegy. (Clerk's Dkt. No. 232-2 (February 2012 email correspondence with Amegy) at 16-17); APP0825–826. Helms and Kaelin knew about the loan delinquency, the covenant violations, and Amegy payment amounts. *Id.* But they did not disclose these important facts to investors in the PPM or otherwise. (Clerk's Dkt. No. 5-13 (Vendetta Partners PPM); Clerk's Dkt. No. 5-11 (Moore Declaration) at 5-6; Clerk's Dkt. No.

---

[9] This amount is calculated as: [$8,824,624: Business Expenses] + [$1,838,370: Commissions & Investor Recruiting] + [$2,617,961: Amegy & Other Loan] – [$50,000: Disclosed Promotional Payments] – [$379,500: Disclosed Amegy Loan Payments].

[10] This percentage, calculated as [$9,922,370: Potential Royalty Interest Purchases] % [$31,422,861: Investor Proceeds], is certainly overstated since fixed asset purchases are overstated in Vendetta Partners' books and records. APP0012.

5-16 (Morally Declaration) at 5-6).

b. Misrepresentations about Professional Backgrounds and Performance of Prior Investment Portfolios

Helms and Kaelin represented to investors that they had extensive experience in royalty-interest acquisitions and that they had successfully managed multiple portfolios. Helms's PPM bio stated 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." (Clerk's Dkt. No. 5-13 (Vendetta Partners PPM) at 21). In reality, as Helms admitted in his deposition, his only meaningful experience in this area consisted of work for Vendetta Partners and its related entities. APP0043–45 (Helms at 23:10–32:6). He had no prior experience with any mineral company, much less "multiple mineral companies." *Id.* And the experience that he did have was focused on tax and estate planning work—not the acquisition and management of royalty interests. *Id.*

Kaelin also greatly overstated her experience. She distributed Vendetta Partners marketing materials, directly and through a commissioned sales force, stating:

> In the early Nineties, after an extremely successful history in the offshore oil and gas industry Jeff Sanderfer [sic] set up and [sic] energy fund ($500M). Approximately 15 years ago, Janniece Kaelin was hired to run and manage royalty mineral rights for his fund. [...] Sanderfer [sic] provided his "rolodex of wealthy industry and business contacts" and proprietary software (worth millions in development) to Kaelin and gave her the opportunity to do this on her on [sic]. Utilizing their years of experience and the wealth of contacts provided them, Kaelin and her team of experts then formed Vendetta Royalty Partners, Ltd.

APP340–53.

Kaelin never managed acquisitions for Sandefer's fund or worked closely with him.

APP0180–81, 189 (Foti at 120:8–121:16; 154:20–155:17).[11] Sandefer's fund was not worth $500 million, and he did not give Kaelin his "rolodex of wealthy industry contacts." *Id.* Nor did he give her proprietary software worth millions in development. *Id.* Rather, Kaelin's role was limited to cold calling land owners and attempting to get them to sell their mineral interests, with separate approval required before any sale was finalized. APP0155, 157 (Foti at 19:13–20:13; 25:3–26:20).

Upon discovering that Vendetta Partners was using this language to promote its investments, Sandefer confronted Kaelin. He told her the description was "highly misleading." APP354–57. Sandefer also rebuked, "You were not hired to manage royalty mineral rights nor did I provide you a 'rolodex' or proprietary software." *Id.* Kaelin responded, "I have no idea where this has come from. I have never, at any time said that I managed anything for you. This is not in anything that we have ever said, written or communicated to any investor." *Id.* However, Kaelin personally emailed the language to investors and provided it to her sales force to use in soliciting investors. APP340–53.

Finally, Kaelin and Helms misrepresented their success in managing other investment funds. Vendetta Management marketing documents claimed that its principals—Helms and Kaelin—had invested over $300 million since 2003. APP0362. They also claimed to have managed seven investment partnerships and achieved "consistent" and "significant" returns. *Id.* However, Helms and Kaelin had neither invested $300 million nor managed seven partnerships, much less produced the claimed returns in those partnerships. APP0186 (Foti 143:4–144:10).

c. Misrepresentation about Litigation

Both the Vendetta Partners and Iron Rock PPMs[12] falsely stated, "There are no material

---

[11] Raquel Foti worked with Kaelin for many years, starting at Sandefer's fund, where Foti ran financial models valuing oil and gas properties, and continuing through her time at Vendetta Partners. APP0154–58, 175–76 (Foti at 14:9–29:16;100:5–104:3).

[12] The Iron Rock PPM was written by Helms and Kaelin. APP371–461.

pending legal proceedings against the Partnership, the General Partner or its Affiliates." (Clerk's Dkt. No. 5-13 (Vendetta Partners PPM) at 30); APP0407; APP0228 (Parks at 53:20-54:13). In truth, Vendetta Partners, Vendetta Management, Helms, Kaelin, and other entities affiliated with them were engaged in litigation. A private party sued Helms and Kaelin in December 2011, alleging that they committed fraud by purporting to sell mineral interests that they did not own in exchange for $1.2 million.[13] (*See generally* Clerk's Dkt. No. 5-5 (docket report), Clerk's Dkt. No. 5-6 (state court petition), and Clerk's Dkt. No. 5-7 (second amended petition)). The Illinois Environmental Protection Agency initiated action against Haley Oil—an entity owned 50/50 by Helms and Kaelin—in May 2012, alleging illegal "release incidents." APP0069 (Helms at 126:16-19); (*see generally* Clerk's Dkt. No. 5-8 (violation notice) and Clerk's Dkt. No. 5-9 (compliance commitment agreement)). And the IRS initiated action against Kaelin in October 2012 relating to a tax liability. (*See generally* Clerk's Dkt. No. 5-10 (petition to enforce IRS summons)).[14]

D. Cover Up Evidence

1. Fabricated Audit Letter

Helms and Kaelin used an audit letter purportedly written by Haas Petroleum Engineering Services, Inc. ("Haas") to give investors the impression that the Vendetta Partners portfolio had an audited value of over $26 million. APP0462, 506, 556, 645, 646-650.[15] The letter, dated January 17,

[13] Parks testified that he would have "stopped cold" if he had known about this litigation when deciding whether to invest in Iron Rock Partners. APP0237–38 (Parks at 92:17-93:3).

[14] As the documents cited in this paragraph show, Helms and Kaelin knew about these proceedings and actively participated in them. *See also* APP0817, 821, 828, 832. Helms's own notes also show that he was aware that this representation was false. APP818 ("No litigation pending" (-2 lawsuits now)") (emphasis in original).

[15] Aside from distributing the fake audit letter, Helms also lied to potential investors about these audits. He told one investor that "audits have occurred at least once year [sic], and often once per quarter. Since new partners share in the existing portfolio, Raquel's engineering for the effective date(s) of the new partners is always audited by outside firms. We currently use Haas Petroleum in Dallas, Tx [sic] and the management team has used them since the beginning 2007 [sic] for auditing." APP0651. As Helms knew, Vendetta Partners was not currently using Haas, and Haas never

2011, stated that as of December 30, 2010 Vendetta Partners owned over 18,000 properties worth over $26,189,000, "which compares closely with Ms. Foti's value of [. . .] $26,379 [million]." *Id.*

Robert Haas ("Haas"), the purported author, testified he did not do any work for Vendetta Partners during this time period. APP0268-279 (Haas at 28:7–33:13). In his records, Haas has no supporting documentation for the audit letter. *Id.* Haas neither invoiced Vendetta Partners nor received any payments during this period. *Id.* The last work that Haas did for any entity related to Vendetta was an audit letter for the Robro Royalty Partners portfolio, dated August 14, 2009. APP0270 (Haas at 34:4–35:7); APP0173 (Foti at 89:23–90:2). This was one of only two audits that Haas did for Robro. APP0173 (Foti at 90:14–21).

In fact, it would have been impossible for Haas to have performed the audit as claimed in the letter. Foti's year-end valuation was not complete until months into the year. APP0173 (Foti at 90:2–96:8); APP0656–57. Therefore, there is no way that the audit could have been completed by January 17, 2011, as claimed in the letter. There was nothing to audit at that time. Moreover, based on Haas's two prior engagements by Helms and Kaelin, the audit did not begin and the audit letters were not issued until much later in the year (October 10, 2008 and August 14, 2009). *Id.*; APP0658–661.

2. *Round-Trip Transactions as Royalty Revenue*

Helms and Kaelin orchestrated what are called "round-trip transactions." For example, on November 17, 2011, Vendetta Partners transferred $2,208,800.00 to Relief Defendant William Barlow ("Barlow"). (Clerk's Dkt. No. 5-22 (Hahn Declaration) at 6-7; Clerk's Dkt. No. 186-1 (Cheek Declaration) at 8). The next day, Barlow transferred $2,200,300.00 to Haley Oil. *Id.*

---

did a quarterly audit. APP0185–86 (Foti at 140:15–141:9).

Between December 1 and February 1, 2011, Helms returned $1,955,000.00 million from Haley Oil to Vendetta Partners and recorded it as either royalty income or lease bonus income in Vendetta Partners' accounting system. *Id.* This had the effect of creating fictitious income to support "partnership income" distributions—which were actually funded by later partners' investments. It had the added effect of making Vendetta Partners seem more profitable to actual or potential investors. APP0664–65.

There was no legitimate business purpose for these transactions. Barlow was a neighborhood friend of Helms and Kaelin. APP0283–85 (Barlow at 19:17–25:15). He testified that he had no oil-and-gas experience, never owned any mineral interests, and never engaged in any mineral-related transactions with Vendetta Partners. *Id.* at APP0285, 287–88 (Barlow at 26:16-27:7; 35:23-37:10). Helms and Kaelin orchestrated these transactions solely to cover up their scheme.

Helms and Kaelin falsified documents in order to make the round-trip transactions seem legitimate. In 2011, Kaelin asked Barlow to come to Vendetta Partners' office to execute a series of documents. APP0287–94 (Barlow at 33:22-62:15); APP0669-715. The documents were prepared by Helms, and signature pages were brought into Kaelin's office for Barlow to sign. *Id.* Barlow was told that he was signing releases for funds that had been transferred to his account. *Id.* In reality, he was being asked to sign signature pages for deeds to certain properties, including properties located in Ohio. *Id.* However, Barlow did not own any of these properties. *Id.* Rather, these properties were owned by Helms and Kaelin through Technicolor Minerals, another entity they controlled. APP0053 (Helms at 61:2–13); APP0795; APP0674. These properties had been purchased by Technicolor about two years earlier for only $70,000.00. APP0747.

Helms and Kaelin also falsified purchaser letters accompanying these deeds. For example, a November 15, 2011 letter purporting to be from Barlow to Kaelin was signed "Willie." APP0673.

However, prior to his SEC deposition Barlow had never seen the document. APP0287 (Barlow at 34:6-12). Nor has he ever signed a letter "Willie" in his life. *Id.*[16]

E. Sellers and Barrera

Sellers is Kaelin's cousin. In 2012, Sellers worked for Helms and Kaelin at Vendetta Partners selling securities. SBAPP 7, 13, 15, 74 (Sellers at 23:24–25, 48:8–22, 53:19–20) (Barrera at 31:3–12). In mid-2012, Sellers invited Barrera to join him in selling Vendetta securities and the securities of several other Defendant Entities. SBAPP 20, 23, 74–75, 78, 83 (Sellers at 73:6–21, 88) (Barrera at 31:13–35:5; 45:24–46:18; 67:13). Sellers and Barrera agreed to split any commissions earned on investments brought in by Barrera. SBAPP 20, 31, 78 (Sellers at 73:6–21, 119:2–6) (Barrera at 47:16–48:2).

1. Solicitation and Negotiation Evidence

Based on Sellers's description of the Vendetta investment, Barrera thought that his friend Jamie Moore might be interested. SBAPP 20, 74–75, 78 (Sellers at 73:1–19) (Barrera at 31:13–35:5; 45:24–46:18). Moore represented an investment company, Lacova Capital LLC ("Lacova"), which he operated with his partner John Morally. (Clerk's Dkt. No. 5-11 at 1 (Moore Declaration)).

Barrera contacted Moore and explained the opportunity to invest in Vendetta. He then arranged for Moore to personally meet with Sellers and Barrera to learn more about the investment. SBAPP 20, 79 (Sellers at 73:1–21) (Barrera at 50:19–51:17). On July 27, 2012, Barrera, Sellers, and Moore met at a restaurant in Costa Mesa, California. SBAPP 19, 21, 79 (Sellers at 72:17, 77:3–5, 142:2–7) (Barrera at 51:16–17). Barrera testified that the "only reason" he set up the meeting was that he stood to make money if Lacova invested in Vendetta. SBAPP 82 (Barrera at 64:6–15).

During the meeting, Sellers and Barrera offered to sell Lacova Vendetta securities. Sellers

[16] Helms was responsible for approving the filing of the falsified deeds. APP0810–11.

described Vendetta as an oil fund. SBAPP 79 (Barrera at 52:5–23). Sellers told Moore that Vendetta "had an opening of 3 million available to sell," that Lacova would likely receive "two or three times" its investment in returns, and that the Lacova investment would buy out the interest of an existing investor. *Id.*; SBAPP 20 (Sellers at 73:22–74:1; 76:17–24). After the meeting, Sellers emailed Moore, copying Barrera and attaching the Vendetta Partners PPM containing a detailed description of the securities offering. (Clerk's Dkt. No. 5-11 at 2 (Moore Declaration); Clerk's Dkt. No. 5-12 (7/28/12 email attaching PPM); SBAPP 21, 85–86 (Sellers at 78:5–10) (Barrera at 73:3–77:25)).

Sellers and Barrera remained in contact with Moore to help negotiate the Lacova investment after the initial meeting. Barrera spoke with Moore about the deal multiple times, determining the issues that needed to be resolved before Lacova would invest and passing them along to Sellers. SBAPP 88 (Barrera at 85:7–87:19), 105. Barrera's continuing contact with Moore facilitated discussions between Lacova and Vendetta while they negotiated an addendum to the Vendetta subscription agreement prior to any investment. (Clerk's Dkt. No. 5-13 at 31–32).

Sellers continued to email Moore after the initial meeting, seeking to induce the investment. For example, Sellers wrote, "I spoke with [Barrera] last night and he talked with me a little about the things you need to help you make this decision. [. . .] We look forward to bringing you into the [Vendetta Partners] family." SBAPP 105. Sellers also participated in behind-the-scenes communications with Vendetta concerning the Lacova negotiations, saying that he could smooth over certain concerns Moore had about the investment. SBAPP 106, 111. He was copied on email discussions between Lacova and Vendetta regarding the PPM, and he tried to facilitate the negotiations where he could. SBAPP 26 (Sellers at 99:8–10). And he relayed information from Vendetta to Moore regarding the reasons the existing investor wanted to sell. SBAPP 24 (Sellers at 91:16–92:15).

Lacova invested $3,050,000.00 in Vendetta over August 13–14, 2012. (Clerk's Dkt.No. 5-13 at 31 (Vendetta PPM and addendum)); SBAPP 116. In return, on August 14, 2012, Vendetta paid Sellers $212,500.00 and on August 20, 2012, paid Barrera $211,000.00 for the Lacova investment. Vendetta booked these payments in its general ledger as promotional expenses, specifically "Promotion on 3,050,000.00 partner investment" and "Promotion on 3mil Investment," respectively. SBAPP 118.

2. *Commission Misrepresentation Evidence*

During the initial meeting on July 27, 2012, Sellers told Moore that Sellers and Barrera would receive a "small" payment for securing the investment. SBAPP 24 (Sellers at 90:5–91:15); (Clerk's Dkt. No. 5-11 at 2 (Moore Declaration)). Barrera admittedly did not dispute Sellers's characterization that it would be "small." *Id.*; SBAPP 82 (Barrera at 63:18–64:15). Barrera further admitted that when Moore asked him after the meeting whether Barrera "was going to get anything" in connection with a Lacova investment, Barrera considered the subject "none of his business." SBAPP 83 (Barrera at 65:2–4). Barrera simply said Sellers "was going to take care of me." SBAPP 83 (Barrera at 66:5–11). He did not fully explain to Moore that Barrera and Sellers would split the commission. *Id.*

As mentioned above, Sellers emailed Moore the PPM the day after the lunch, copying Barrera. Sellers admitted that he read the PPM before he emailed it to Moore. SBAPP 26 (Sellers at 100:2–7). Barrera claimed he did not read it. SBAPP 85 (Barrera at 76:18–77:2). The PPM contained a stand-alone page with a bold-print heading, stating "Application of Proceeds." (Clerk's Dkt. No. 5-13 (Vendetta PPM) at 17). This section stated that Vendetta would use no more than $50,000.00 of the entire $50,000,000.00 offering proceeds for "Promotional Expenses." *Id.* It further stated that all other proceeds would be used to purchase royalty interests and to repay loans.

Id. However, the combined commissions totaled $423,500.00.

Sellers testified that he had no basis for making the statement that his compensation would be small. SBAPP 24 (Sellers at 91:4–15). He testified that he knew he would receive compensation but was unsure of the amount. SBAPP 24 (Sellers at 90:5–9). And he testified that Kaelin told him, after he received the payment, that Vendetta had already paid the existing investor $500,000.00 before receiving the Lacova investment. SBAPP 26 (Sellers 95:22–98-13). He further testified that Kaelin told him Vendetta was able to pay $423,500.00 of Lacova's investment to Sellers and Barrera, and the balance of the $500,000 to another Vendetta employee, because Vendetta had previously paid $500,000 to the existing investor. *Id.*

Barrera testified that he that he believed he would receive from 2% to 3% of the amount invested. SBAPP 78 (Barrera at 48:3–8). In other words, Barrera believed that he and Sellers would split an amount ranging from $122,000.00 to $183,000.00 based on the value of Lacova's proposed $3,050,000 investment. Barrera believed, therefore, that he personally stood to receive far more than the $50,000 PPM limit and that Sellers would receive a similar amount. Yet he made no effort to dispute Sellers's representation at the lunch that the total amount would be small. Nor did he truthfully state to Moore the amount he believed he stood to receive upon direct questioning from Moore. He thus allowed Moore to continue to believe the expected shared commission was simply "small," specifically $50,000 or less.

3. *Offer of Securities Issued by Other Companies Evidence*

Roland and Barrera also offered to sell investors limited-partnership interests in Vesta Royalty Partners ("Vesta"), a company affiliated with Vendetta Partners. (Clerk's Dkt. No. 5-15 (7/29/12 email attaching Vesta solicitation) at 1–21); SBAPP 30, 86 (Sellers at 11:20–25) (Barrera at 78:19–79:6). Two days after the initial meeting with Moore, Sellers emailed him, copying Barrera

and attaching an offer to sell Vesta securities. *Id.* In addition, Sellers offered to sell John Morally ("Morally"), Moore's business partner, securities issued by Iron Rock. SBAPP 19 (Sellers at 69:4–18)); (Clerk's Dkt. No. 5-16 at 7 (Morally Declaration); Clerk's Dkt. No. 5-20 (3/1/13 email attaching Iron Rock solicitation)). As detailed above, each also admittedly knew that he would receive compensation for successfully closing investments in these offerings. Neither Sellers nor Barrera has ever registered as a broker or become associated with a registered broker. SBAPP 45 (Sellers at 173:10–22); (Clerk's Dkt. 5-1 (Davis Declaration) at 4).

III. STANDARD OF REVIEW

Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure only "if the movant shows there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). A dispute is genuine only if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Royal v. CCC & R Tres Arboles, L.L.C.*, 736 F.3d 396, 400 (5th Cir. 2013) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986)). The Court will view the summary judgment evidence in the light most favorable to the non-movant. *Distribuidora Mari Jose, S.A. de C.V. v. Transmaritime, Inc.*, 738 F.3d 703, 706 (5th Cir. 2013).

The party moving for summary judgment bears the initial burden of "informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrates the absence of a genuine issue of material fact." *Davis v. Fort Bend Cty.*, 765 F.3d 480, 484 (5th Cir. 2014) (quoting *Celotex*, 477 U.S. at 323). The burden then shifts to the nonmoving party to establish the existence of a genuine issue for trial. *Celotex*, 477 U.S. at 323; *Celtic Marine Corp. v. James C. Justice Co., Inc.*, 760 F.3d 477, 481 (5th Cir. 2014). The parties may satisfy their respective burdens by tendering depositions, affidavits, and other competent

evidence. *Celtic Marine*, 760 F.3d at 481 (citing *Celotex*, 477 U.S. at 325). Once the non-movant has been given the opportunity to present evidence to create a genuine issue of fact, the court will grant summary judgment if no reasonable juror could find for the non-movant. *Boos v. AT&T, Inc.*, 643 F.3d 127, 130 (5th Cir. 2011).

IV. ANALYSIS

A. Motion for Sanctions

As a preliminary matter, SEC filed a motion for sanctions against Kaelin that, if granted, would have a substantial effect on this case. Specifically, due to Kaelin's repeated refusal to comply with her discovery obligations, SEC argues the Court should strike her pleadings, enter default judgment against her, and draw an adverse inference against her in this matter. Kaelin did not respond to the motion.

1. Background

As the SEC points out, Kaelin's history of evasive and manipulative conduct to avoid her discovery obligations is well documented in the record. Kaelin's failure to participate in discovery and comply with court orders are as follows:

> (1) Kaelin did not appear for her deposition by the Court-appointed Receiver in this matter on June 30, 2014, claiming to be in the hospital;
>
> (2) Kaelin did not appear for her deposition by the SEC on April 9, 2014, again claiming to be in the hospital;
>
> (3) Kaelin did not appear for her deposition by the SEC on May 21, 2015, claiming an incapacitating illness prevents her from being deposed (Clerk's Dkt. No. 219);
>
> (4) Kaelin did not appear for a hearing relating to her discovery obligations on June 4, 2015 and failed to comply with a court order to submit medical documentation in support of her incapacity claims (Clerk's Dkt. No. 242);
>
> (5) Kaelin appeared for her court-ordered deposition on June 30, 2015, but failed to

meaningfully participate in the deposition[17] (Clerk's Dkt No. 264; Ex. 4 at 1–14 "6-30 Tr.");

(6) Kaelin appeared for her court-ordered deposition on July 1, 2015, but failed to meaningfully participate and left soon after arriving, claiming she needed to go to the emergency room.[18] (Clerk's Dkt No. 264; Ex. 4 at 14–60 " 7-1 Tr.")

The Court has found on several occasions that the SEC had met its burden to show Kaelin has engaged in a pattern and practice of evasive and manipulative behaviors to avoid her discovery responsibilities in this litigation. (Clerk's Dkt. Nos. 246, 255, 256). The Court has also found Kaelin failed to meet her burden to show she was incompetent and therefore unable to be deposed.[19] (Clerk's Dkt. Nos. 245, 246, 255, 256). (*See* Clerk's Dkt. No. 264 Ex. 2 "6-22 Tr." (transcript of July 22, 2015 hearing)). In fact, Kaelin's medical records and courtroom demeanor establish she is competent to testify. (Clerk's Dkt. No. 255 at 5). During each hearing and within each discovery order, the Court admonished Kaelin of the possible consequences of noncompliance with its orders,

---

[17] During an emergency hearing on Kaelin's lack of participation in the deposition, counsel for the SEC explained that Kaelin took repeated bathroom breaks claiming she had diarrhea, placed her head on the table where it remained for much of the deposition, informed the SEC that she was heavily sedated, had slurred speech, was unresponsive to questioning, and often would groan instead of answering "yes" or "no" questions. The Court again found Kaelin had not presented evidence that she was incompetent to testify. In fact, the Court noted in an order relating to the emergency hearing:

> Kaelin's demeanor in the courtroom is, as the SEC characterized it, "dramatically and diametrically opposite" from the demeanor the SEC described during her deposition. Kaelin was again able to respond to the Court's questions with relevant, clear answers. She appeared alert and engaged. Further, she was able to cogently argue that she is ill and the deposition should be stayed until her next medical appointment is completed, the date and nature of which is unclear. Physically, Kaelin was sitting upright and unsupported, maintained eye contact with the Court, and spoke swiftly without slurring.

(Clerk's Dkt. No. 256 at 3). The Court cancelled the deposition and rescheduled it for the following morning.

[18] Kaelin again claimed she was incapable of testifying because she was sedated, in pain, and had diarrhea. (7-1 Tr. 17:10–24; 20:7–16). She also took three breaks totaling 28 minutes in the first 82 minutes of the deposition. (7-1 Tr. 14:1, 27:20–25, 42:6–12; 53:7–12). After a fourth break 11 minutes later, Kaelin indicated she could not continue and was going to the emergency room. (7-1 Tr. 60:2–14).

[19] "Every person is competent to be a witness unless [the Federal Rules of Evidence] provide otherwise." FED. R. EVID. 601. "A witness is competent to testify if she is capable of communicating relevant material and understands she has an obligation to do so." *United States v. Saenz*, 747 F.2d 930, 936 (5th Cir. 1984).

including awarding sanctions and finding her in contempt of court.

2. Analysis of Motion for Sanctions

a. Default Judgment

Where a party fails to comply with a discovery order, Federal Rule of Civil Procedure 37(b)(2)(A) permits the Court to strike the pleadings of and render default judgment against the disobedient party. *See Elite v. The KNR Grp.*, 216 F.3d 1080 (2000) ("The decision to strike a party's pleadings and enter default judgment is a matter within the district court's discretion . . . ."). For the Court to award default judgment as a sanction, two criteria must be met: "First, the penalized party's discovery violation must be willful. Second, 'the drastic measure is only to be employed where a lesser sanction would not substantially achieve the desired deterrent effect.'" *United States v. Real Prop. Known As 200 Acres of Land Near FM 2686 Rio Grande City, Tex.*, 773 F.3d 654, 660 (5th Cir. 2014) (internal citations and quotations omitted).

In light of the above-detailed evidence and the Court's previous findings, the Court concludes Kaelin's conduct is willful. She has repeatedly failed to comply with subpoenas, court orders, and the Federal Rules of Civil Procedure and Evidence. Kaelin has not produced evidence that supports a finding of incompetence, and frankly, has established herself as a chronic malingerer and skillful manipulator. Despite the Court's and counsel's patience—rescheduling hearings, withholding judgment to give Kaelin an opportunity to appear and respond to discovery motions, agreeing to depose Kaelin in her home,[20] rescheduling depositions, and wading through piles of medical documents, to name a few examples—Kaelin has willfully refused to fulfill her discovery obligations.

[20] (Clerk's Dkt. No. 217, 229).

Moreover, because the SEC has been deprived of the opportunity to depose a key defendant in this action, the SEC will undoubtedly be prejudiced by Kaelin's conduct. *See id.* (court may consider whether discovery violations prejudiced opposing party's preparation for trial (quoting *United States v. $49,000 Currency*, 330 F.3d 371, 376 (5th Cir. 2003))). "[T]here is no evidence that, after [over 20] months of litigation, [Kaelin] would begin to comply with the court's orders regarding discovery after the imposition of some lesser sanction." *Id.* at 660–61. Kaelin's well-documented history of evasive and manipulative conduct to avoid her discovery obligations warrants striking her pleadings and entering default judgment against her. *Id.* (trial court was within its discretion in granting default judgment where party did not comply with court orders and discovery motions for 17 months).

b. Adverse Inference

In order to remedy the prejudice caused by a party's refusal to participate in discovery, Federal Rule of Civil Procedure 37(b)(2)(A)(i) permits the Court to "issue further just orders," which may include "directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims." "[A party's] refusal to testify may be used against him in a civil proceeding."[21] *Hinojosa v. Butler*, 547 F.3d 285, 291 (5th Cir. 2006) (quoting *Farace v. Indep. Fire Ins. Co.*, 699 F.2d 204, 210 (5th Cir. 1983))). Although this

[21] As the SEC points out, the published Fifth Circuit opinions on drawing an adverse inference generally address a party's refusal to testify based on the Fifth Amendment privilege against self-incrimination. Kaelin never stated she was refusing to testify on Fifth Amendment self-incrimination grounds. Rather, Kaelin consistently asserted she was unable to testify due to her illnesses and the medication prescribed to her. Nevertheless, Rule 37(b) grants the Court broad discretion to fashion an appropriate remedy in this circumstance, i.e., where a party's failure to participate in discovery is highly prejudicial to the opposing party. *See Smith & Fuller, P.A. v. Cooper Tire & Rubber Co.*, 685 F.3d 486, 488 (5th Cir. 2012) ("[D]istrict courts 'have authority to grant a broad spectrum of sanctions' under Rule 37(b) . . . ." (quoting *Chilcutt v. United States*, 4 F.3d 1313, 1323 n.23 (5th Cir. 1993))); *Wehling v. Columbia Broad. Sys.*, 608 F.2d 1084, 1089 (5th Cir. 1979) (same). It is also worth mentioning that other circuits, as stated above, have drawn adverse inferences against parties who refuse to participate in discovery solely for the purpose of obstructing discovery.

"adverse inference" is generally considered in the context of spoliation of evidence or the assertion of the Fifth Amendment privilege against self-incrimination, it has been applied to repeated discovery-order violations and other discovery obstruction. *See Motorola Credit Corp. v. Uzan*, 509 F.3d 74, 84 (2d Cir. 2007) (adverse inference was proper where defendants repeatedly refused to answer discovery questions despite court-offered accommodations, including video depositions); *Tech. Recycling Corp. v. City of Taylor*, 186 F. App'x 624, 638 (6th Cir. 2006) ("[P]laintiffs' egregious failure to comply with discovery orders supports a powerful adverse inference . . . ."); *Stevenson v. Union Pac. R.R. Co.*, 354 F.3d 739, 746–48 (8th Cir. 2004) (affirming adverse inference jury instruction for intentional prelitigation destruction of documents where it prejudiced opposing party); *Residential Funding Corp. v. DeGeorge Fin. Corp.*, 306 F.3d 99, 109–10 (2d Cir. 2002) (vacating district court's decision refusing to draw adverse inference where "purposeful sluggishness" in producing documents requested in discovery could support an adverse inference that materials were harmful to party refusing to produce documents).

Again, due to Kaelin's repeated refusal to participate in the discovery process, the Court finds it necessary to "issue further just orders" to remedy the prejudice to the SEC. This is especially true considering the fact that Kaelin's co-defendant Helms frequently stated in his deposition that Kaelin could explain questions that Helms could not answer. The Court therefore infers, based on Kaelin's bad faith refusal to testify, that her answers to the SEC's deposition questions would have been unfavorable to her.[22]

[22] The SEC clarifies,"[I]t is not the SEC's position that an adverse inference alone is sufficient for summary judgment—but that the Court should consider the adverse inference along with the extensive evidence the SEC presented in its motion for summary judgment. [*SEC v. Colello*, 139 F.3d 674, 678 (9th Cir. 1998)] (district court granted summary judgment based on 'proof of Colello's receipt of the funds of the victims combined with an adverse inference drawn from Colello's silence.')".

B. Motion for Summary Judgment

The SEC contends Helms and Kaelin violated Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b–5 (collectively, "Antifraud Provisions") promulgated thereunder by engaging in a fraudulent scheme and misrepresenting material facts. The SEC accordingly requests against both Helms and Kaelin a permanent injunction, joint and several liability for disgorgement, and a civil money penalty. The SEC requests similar relief against Roland and Barrera, contending they too violated the aforementioned Antifraud Provisions, in addition to Exchange Act Section 15(a) ("Broker-Registration Provision").

1. Antifraud Provisions Violations

Section 17(a) of the Securities Act prohibits the offer or sale of securities by use of interstate commerce:

> (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 to state 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)–(3). Section 10(b) of the Exchange Act empowers the SEC to promulgate rules to prevent manipulative or deceptive practices in the sale or purchase of securities. 15 U.S.C. § 78j(b). Under this grant of authority, the SEC issued Rule 10b–5, which makes it unlawful:

> (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, in connection with the purchase or sale

of any security.

17 C.F.R. § 240.10b–5.

Because the basic precepts of Sections 17(a) and 10(b) and Rule 10b–5 are the same, they will be analyzed as one herein. *See SEC v. Spence & Green Chem. Co.*, 612 F.2d 896, 903 (5th Cir. 1980) ("[T]he proscriptions of section 17(a) are substantially the same as those of section 10(b) and rule 10b–5"); *see also SEC v. Seghers*, 298 F. App'x 319, 327 (5th Cir. 2008); *SEC v. Brooks*, 1999 WL 493052 at *2 (N.D.Tex. July 12, 1999).

Sections 17(a)(1) and 10(b) and Rule 10b–5 require the SEC to prove scienter. To establish scienter, a plaintiff must show the defendant intended to deceive, defraud, or manipulate, or that the defendant acted with severe recklessness. *Lormand v. U.S. Unwired, Inc.*, 565 F.3d 228, 251 (5th Cir. 2009). Severe recklessness is limited to "highly unreasonable omissions or misrepresentations" involving an "extreme departure from the standards of ordinary care." *Nathenson v. Zonagen, Inc.*, 267 F.3d 400, 408 (5th Cir. 2001). A showing of negligence suffices for Section 17(a)(2) or (3) violations. *Seghers*, 298 F. App'x at 327 (citing *Aaron v. SEC*, 446 U.S. 680, 702 (1980)).

Of course, a limited partnership interest is a "security" within the meaning of the Antifraud Provisions. *Siebel v. Scott*, 725 F.2d 995, 998 (5th Cir. 1984). Therefore, the sales and offers for sale of limited partnership interests in the Defendant Entities are governed by the Antifraud Provisions. Similarly, the record is replete with evidence that Helms, Kaelin, Sellers, and Barrera utilized interstate commerce, including emails, phone calls, and wire transfers, to communicate with investors. *See SEC v. Spinosa*, 31 F. Supp. 3d 1371 (S.D. Fla. 2014) (Florida defendant's receipt of email from Ponzi operator and defendant's misrepresentations to Texas investor established use of interstate commerce). Therefore, the following analysis will focus on whether Helms and Kaelin engaged in a fraudulent scheme and whether Helms, Kaelin, Sellers, and Barrera made material

misrepresentations within the meaning of the Antifraud Provisions.

a. Helms and Kaelin

i. Scheme to Defraud

A Ponzi scheme is 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) (quoting BLACK'S LAW DICTIONARY 1198 (8th ed. 2004)). Put another way, in a Ponzi scheme, investors are promised high returns on their investments, and prior investors are paid distributions from new investors' contributions, rather than a legitimate, underlying business concern. *See Janvey v. DSCC, Inc.*, 712 F.3d 185, 188 n.1 (5th Cir. 2013) ("A 'Ponzi scheme' typically describes a pyramid scheme where earlier investors are paid from the investments of more recent investors, rather than from any underlying business concern, until the scheme ceases to attract new investors and the pyramid collapses." (quoting *Eberhard v. Marcu*, 530 F.3d 122, 132 n.7 (2d Cir. 2008))). Similarly, commingling of funds is a common characteristic of a Ponzi scheme. *In re LLS Am., LLC*, 2013 WL 3305393, at *7 (Bankr. E.D. Wash. Jul. 1, 2013).

As described above, the SEC proffers sworn declarations of two forensic accountants who each independently concluded that Helms and Kaelin paid royalty dividends to old investors with new investor funds from 2011 until mid-2013.[23] This is the hallmark of a Ponzi scheme. *See United States v. Setser*, 568 F.3d 482, 486 (5th Cir. 2009) ("[I]n a classic Ponzi scheme, as new investments [come] in . . . , some of the new money [is] used to pay earlier investors."). Although the evidence

[23] As the SEC asserts, the forensic accountants' sworn declarations provide "clear, numerical support" that Helms and Kaelin were responsible for these Ponzi payments. *See Alguire*, 647 F.3d at 597–98 (finding sufficient evidence of substantial likelihood of success that company operated as Ponzi scheme where declarations "provide clear, numerical support for the creative reverse engineering undertaken . . . to accomplish the Ponzi scheme").

shows Helms and Kaelin used some of the investments to purchase royalty interests, the existence of a Ponzi scheme is not negated. Engaging in some legitimate business operations does not counteract the existence of a Ponzi scheme because the distributions made to investors were nevertheless funded by other investors' money. *See DSCC, Inc.*, 712 F.3d at 188 (finding Ponzi scheme where vast majority of money raised was not used to invest in securities); *In re Twin Peaks Fin. Serv's Inc.*, 516 B.R. 651, 655 (Bankr. D. Utah 2014) ("The fact that an investment scheme may have some legitimate business operations is not determinative. If the debtor's legitimate business operations cannot fund the promised returns to investors, and the payments to investors are funded by newly attracted investors, then the debtor is operating a Ponzi scheme."). The evidence provided by the SEC establishes that Helms and Kaelin repeatedly misappropriated investor funds to make Ponzi payments. The SEC has therefore established that Helms and Kaelin operated a Ponzi scheme, which is, by definition, a "fraudulent scheme." *See Quilling v. Schonsky*, 247 F. App'x 583 (5th Cir. 2007) (Receiver's affidavit is sufficient evidence to establish existence of Ponzi scheme).

The SEC also proffers uncontroverted evidence that Helms admitted he and Kaelin controlled the operations of the Defendant Entities and how the investor funds were spent. Moreover, Helms admitted in his deposition that he and Kaelin purposefully used the final investment in Iron Rock to buy out a Vendetta Partners investor. This knowing misappropriation of investor funds for Ponzi payments supports a finding of scienter.

ii. Material Misrepresentations

"A statement or omitted fact is 'material' if there is a substantial likelihood that a reasonable investor would consider the information important in making a decision to invest." *Seghers*, 298 F. App'x at 328 (quoting *ABC Arbitrage Plaintiffs Grp. v. Tchuruk*, 291 F.3d 336, 359 (5th Cir. 2002)).

Materiality is not judged in the abstract, but in light of the surrounding circumstances. *Rubinstein v. Collins*, 20 F.3d 160, 168 (5th Cir.1994).

The SEC contends it offers evidence Helms and Kaelin misrepresented or omitted material facts regarding: (1) how investor funds would be used; (2) their professional backgrounds; (3) litigation involving themselves and affiliated entities; and (4) the value of the Vendetta Portfolio and whether it had been audited.

The evidence presented clearly supports that Helms and Kaelin used investor funds for purposes other than the "purchase costs of royalty interests," "loan repayment," and "promotional expenses" they represented in the PPM. Rather, as evinced above, Helms and Kaelin used investor funds for personal expenses, business expenses (apparently to prevent the collapse of the Ponzi scheme), and Ponzi payments to investors (apparently to perpetuate the Ponzi scheme). *See SEC v. Recile*, 10 F.3d 1093, 1097 (5th Cir. 1993) (affirming summary judgment where defendant misappropriated $3,000,000 of investor funds for personal use); (*see also* Parks Declaration at 88:1–89:2 (stating he would not have invested had he known his investment would be used to buy our a Vendetta Partners investor)). The evidence also supports Helms made misrepresentations about his experience with mineral companies and royalty interests.[24] Similarly, Kaelin made misrepresentations about her experience working for Sandefer and his provision of his "rolodex of wealthy industry and business contacts" and "proprietary software."[25] APP0340–53. *See SEC v. Constantin*, 939 F. Supp. 2d 288, 306 (S.D.N.Y. 2013) ("There c[ould] be no doubt that . . .

[24] Helms admitted in his deposition that he had no prior experience with any mineral company. Rather, his experience focused on tax and estate planning, rather than royalty interest management and acquisition. APP0043–45; (Helms Depo. 23:10–32:6).

[25] Again, Sandefer's email to Kaelin states, "I consider [the representations made about Kaelin's work for Sandefer] to be highly misleading and ask you to stop using my name immediately. You were not hired to manage royalty mineral rights nor did I provide you a "rolodex" or proprietary software." APP0355.

misrepresentations [involving] educational backgrounds [and] professional experience [were material]").

As to the litigation involving Helms, Kaelin, and the affiliated entities, the Iron Rock and Vendetta Partners PPMs establish Helms and Kaelin affirmatively and falsely stated there was no material pending legal proceedings against them. *See Kunz v. SEC*, 64 F. App'x 659, 666 (10th Cir. 2003) (litigation history omitted from PPM was important to investors' decisions to purchase investment products). Finally, the false audit letter supports both a finding that Helms and Kaelin misrepresented that Vendetta Partners portfolio had been audited and a finding that it had been valued over $26 million. *See Cox v. Collins*, 7 F.3d 394, 396 (4th Cir. 1993) (affirming judgment as a matter of law that financial health of corporation was material); *SEC v. Murphy*, 626 F.2d 633, 653 (9th Cir. 1980) (information regarding financial condition, solvency, and profitability was material).

The evidence also establishes that Helms and Kaelin knew their misstatements were false. For example, again, they knowingly used investor funds to pay for things not specified in the PPM, including personal expenses. Helms admitted he lied about his professional background. Although Kaelin did not directly admit she lied about her professional background, circumstantial evidence shows she sent an email containing false information about her background to investors, she was confronted by Sandefer about the false information, and she denied creating or sending the false information about her background. Helms and Kaelin also knowingly made misrepresentations through the PPM (which they both supplied to potential investors) about litigation against themselves and affiliated entities, as they were clearly served with process in those lawsuits and had knowledge of them.

Finally, circumstantial evidence that the audit report was fabricated and was proffered solely by Helms and Kaelin to investors establishes that Helms and Kaelin knew the valuation and other audit information was false. Because both Helms and Kaelin sent the false audit report to potential investors, they each had scienter. *See Aubrey v. Barlin*, 2010 WL 3909332, at *8–9 (W.D. Tex. Sept. 29, 2010) (seller's representation that collateral was worth $465,000 when seller personally observed collateral was worth $135,000, and seller "made a great deal of money as a result of these false statements," established seller's scienter at motion to dismiss stage).

In light of the above, the SEC has established Helms and Kaelin used interstate commerce to perpetuate a securities-fraud scheme and made material misrepresentations of facts relating to the offer and sale of securities. Helms and Kaelin therefore violated Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b–5 promulgated thereunder.

b. Sellers and Barrera

The SEC contends Sellers and Barrera violated the Antifraud Provisions by making material misrepresentations regarding their compensation. Sellers' and Barrera's representation that their commission would be "small" was misleading.[26] A $423,500.00 commission is hardly "small." More importantly, the commissions were nearly 14% of the investment, more than eight times the PPM's $50,000 limit for total promotional expenses. When Sellers and Barrera presented Moore with the PPM containing this limit, they represented to him that they would receive up to and not

[26] Sellers made an affirmative misrepresentation regarding himself and Barrera. Barrera heard the misrepresentation and said nothing, thus ratifying the misrepresentation. However, even if Barrera's silence did not ratify Sellers' statement, he had a duty to disclose due to his fiduciary duty to Moore and Lacova. Silence, absent a duty to disclose, does not violate section 10(b) and Rule 10b–5. *Chiarella v. United States*, 445 U.S. 222, 228 (1980). Under the federal securities laws, a duty to disclose "arises from the relationship between the parties." *Dirks v. SEC*, 463 U.S. 646, 658 (1983). Such duty attaches when "a fiduciary or other similar relation of trust and confidence" exists. *Id.* at 225. Sellers and Barrera owed Moore a fiduciary duty by practicing as brokers, even though they were unlicensed. *See SEC v. Randy*, 38 F. Supp. 2d 657, 670 (N.D. Ill. 1999) (holding unregistered broker to the same standard of care as a registered broker and explaining that a broker's recommendation implies that a reasonable investigation has been made and that the recommendation rests on the conclusions of that investigation).

exceeding $50,000.00 for soliciting his investment—nowhere near the combined $423,500.00. This alarmingly high sum presents a conflict of interest in two ways. One, a reasonable investor would want to know if the broker offering the security was receiving a high sum. This is supported by the fact that Moore directly asked Sellers and Barrera what their commission would be. Two, Moore would want to know if a broker was benefitting to the detriment of the limited partnership (due to the violation of the PPM). "It is indisputable that potential conflicts of interest are 'material' facts with respect to clients and the [SEC]." *Vernazza v. SEC*, 327 F.3d 851, 859 (9th Cir. 2003) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 201 (1963)). *See, e.g., Capital Gains*, 375 U.S. at 201 (investment advisors required to "fully and fairly reveal[] [their] personal interests in [their] recommendations to their clients"). The misrepresentation was therefore material. *See Kaufman & Enzer Joint Venture v. Dedman*, 680F. SUpp. 805, 812 (W.D. La. 1987) ("commission arrangement" was material).

Sellers and Barrera, even as unlicensed brokers,[27] owed Lacova, via Moore, a fiduciary duty. *See Rolf v. Blyth Eastman Dillon & Co., Inc.*, 424 F. Suppp. 1021, 1036 (S.D.N.Y. 1977) (listing cases holding that brokers, by virtue of their position, owe fiduciary duties to customers). They accordingly owed a duty to disclose any potential conflicts of interest to Moore—not deflect his question about potential commissions in a misleading way. Moreover, Sellers admitted he had "no basis" to make representation to Moore that the commission would be "small." *See SEC v. Hasho*, 784 F. Supp. 1059, 1107–08 (S.D.N.Y. 1992) (broker is not shielded from liability if even if he actually believed representations which he had no adequate basis to make). The fact that Sellers and Barrera both admitted to receiving the PPM and providing Moore with the PPM charges them with

[27] See discussion of Sellers's and Barrera's broker status *infra*.

knowing that their commissions were excessive. Therefore, at the very least, Sellers and Barrera acted with severe recklessness in failing to know that their commission was a violation of the PPM to the detriment of all limited partners at Vendetta Partners. *SEC v. Randy*, 38 F. Supp. 2d 657, 670 (N.D. Ill. 1999) (holding unregistered broker to the same standard of care as a registered broker and explaining that a broker's recommendation implies that a reasonable investigation has been made and that the recommendation rests on the conclusions of that investigation). This supports a finding of scienter. Because Sellers and Barrera made material misrepresentations and breached their fiduciary duty to Moore with scienter, their conduct was a violation of Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b–5 promulgated thereunder.

2. *Broker Provisions*

The SEC contends Sellers and Barrera violated the Broker Provisions by acting as unregistered brokers. It is undisputed that neither is registered with the SEC as a broker pursuant to Section 15(a) of the Exchange Act. Section 15(a) states:

> unlawful for any broker or dealer ... to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security ... unless such broker or dealer is registered.

15 U.S.C. § 78o(a)(1). Scienter is not an element of § 78o(a)(1). *SEC v. Rabinovich & Assocs., LP*, 2008 WL 4937360, at *5 (S.D.N.Y. Nov. 18, 2008); *see also Eastside Church of Christ v. Nat'l Plan*, Inc., 391 F.2d 357, 361–62 (5th Cir. 1968) (without making finding of scienter, finding that defendant violated § 78o(a)(1)).

A broker is "any person engaged in the business of effecting transactions in securities for the account of others," 15 U.S.C. § 78c(a)(4). Section 15 of the Exchange Act does not define the phrase "engaged in the business." Various courts have described the conduct that constitutes being

"engaged in the business" of "effecting transactions in," or "buying and selling," securities. (internal quotation marks and citations omitted). To determine whether a person falls within this definition, courts consider whether the person may be "characterized by a certain regularity of participation in securities transactions at key points in the chain of distribution." *S.E.C. v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003). Courts also have considered whether the person:

> (1) is an employee of the issuer; (2) received commissions as opposed to a salary; (3) is selling, or previously sold, the securities of other issuers; (4) is involved in negotiations between the issuer and the investor; (5) makes valuations as to the merits of the investment or gives advice; and (6) is an active rather than passive finder of investors.

Id. (internal citations omitted).

The Exchange Act likewise does not define "effecting transactions" for the purposes of being a broker. In determining whether a person "effected transactions," courts consider several factors, such as whether the person: (1) solicited investors to purchase securities, (2) was involved in negotiations between the issuer and the investor, and (3) received transaction-related compensation. *SEC v. Earthly Mineral Solutions, Inc.*, 2011 WL 1103349, at *3 (D. Nev. Mar. 23, 2011) (citing *SEC v. Hansen*, 1984 WL 2413 (S.D.N.Y. Apr. 6, 1984)); *see also SEC v. U.S. Pension Trust Corp.*, 2010 WL 3894082, at *21 (S.D. Fla. Sept. 30, 2010) (compiling list of 11 factors courts consider when determining whether someone is a broker).

i. Sellers

The SEC analogizes Sellers' activities as analogous to those in *SEC v. StratoComm Corp.* 2 F. Supp. 3d 240 (N.D.N.Y. 2014). In *StratoComm*, an employee of the defendant entity's primary responsibility was to solicit investors to purchase the defendant entity's securities. He contacted investors, relayed the transaction terms, and received transaction-based compensation in the form of a "discretionary bonus that depended on how much money he raised." *Id.* at 263. The Court in

that case found the unlicensed employee " regularly engag[ed] in the business of effecting transactions in securities for the accounts of others in exchange for transaction-based compensation" in violation of Section 15(a). *Id.* at 262–63.

Similarly, Sellers was hired to solicit investors to purchase limited-partnership interests in Vendetta Partners. He contacted and negotiated with investor Moore, relayed the transaction terms, and received a transaction-based bonus (that was rather large) that depended on how much money he raised. Sellers also offered for sale securities in Vesta and Iron Rock with the expectation that he would receive a bonus if successful. Because Sellers has failed to respond to the motion with any legal authority or evidence to the contrary, the undersigned finds *StratoComm* to be analogous. Sellers was therefore a broker for the purposes of Section 15(a) of the Exchange Act and was required to register as a broker.

ii. Barrera

Barrera was not an employee of Vendetta, rather, he was recruited by Sellers. Barrera actively sought to induce Lacova, through his friend Moore, to invest in Vendetta. Barrera himself identified Lacova as a prospective investor and arranged the meeting with Moore. He participated in negotiations at the meeting and continued to act as a negotiator–intermediary by briefing Vendetta of Moore's concerns. In addition, Barrera appears to have played a role in offering Vesta securities to Moore and expected to receive compensation therefrom. Barrera's conduct is therefore similar to the unlicensed broker in *StratoComm*: he contacted and negotiated with Moore, relayed the transaction terms, and received a transaction-based bonus. Although it could be argued Barrera was not necessarily participating in securities transactions "regularly," he was hired by Sellers to conduct these types of negotiations "regularly." He also played a central role in securing a hefty $3,050,000.00 investment from Lacova. *See SEC v. Kenton Capital, Ltd.*, 69 F. Supp. 2d 1, 12–13

(D.D.C. 1998) (regularity of participation can be shown also by "such factors as the dollar amount of securities sold . . . and the extent to which advertisement and investor solicitation were used").

In light of the above, Sellers and Barrera were brokers within the meaning of Section 15(a) of the Exchange Act. They were therefore required to register as such. *See, e.g., SEC v. Offill*, 2012 WL 246061, at *8 (N.D. Tex. Jan. 26, 2012) (concluding parties were dealers where alleged dealers did not respond to SEC's claim that they were dealers, and SEC produced evidence that they used instrumentalities of interstate commerce in acting as unregistered dealers). Because of their failure to do so, they violated Section 15(a).

3. Relief Requested

a. Permanent Injunction

Section 21(d) of the Exchange Act allows for the entry of permanent injunctions in enforcement actions brought by the Commission when the evidence establishes a "reasonable likelihood" that a Defendant will engage in future violation of the securities laws. See 15 U.S.C. § 77t(b); 15 U.S.C. § 78u(d)(1); *SEC v. Zale Corp.*, 650 F.2d 718, 720 (5th Cir. 1981); *Murphy*, 626 F.2d at 655. "[T]he Commission is entitled to prevail when the inferences flowing from the defendant's prior illegal conduct, viewed in light of present circumstances, betoken a 'reasonable likelihood' of future transgressions." *Zale Corp.*, 650 F.2d at 720; *see SEC v. Caterinicchia*, 613 F.2d 102 (5th Cir.1980); *SEC v. Blatt*, 583 F.2d 1325 (5th Cir. 1978). In predicting the likelihood of future violations, courts evaluate the totality of the circumstances. *Zale Corp.*, 650 F.2d at 720.

When evaluating SEC requests for injunctive relief, courts consider: (1) the egregiousness of the defendant's conduct; (2) the degree of scienter; (3) the isolated or recurrent nature of the violation; (4) the sincerity of the defendant's recognition of his transgression; and (5) the likelihood

of the defendant's job providing opportunities for future violations. *SEC v. Gann*, 565 F.3d 932, 940 (5th Cir. 2009); *Blatt*, 583 F.2d at 1334.

i. Helms and Kaelin

Considering the vast amount of capital invested for Helms and Kaelin's personal gain, the 129 duped investors, and the repeated affirmative misrepresentations here, Helms' and Kaelin's conduct was particularly egregious. As noted above, Helms and Kaelin had a high degree of scienter, consistently manipulating and lying to investors to perpetuate their Ponzi scheme. Moreover, that the violations were recurrent and spanned a significant period of time weighs in favor of a permanent injunction. Neither Helms nor Kaelin recognized their transgressions, in fact, Helms denied wrongdoing in his deposition, and Kaelin's refusal to testify has warranted a presumption against her. Finally, Helms and Kaelin could very well begin soliciting susceptible and non-sophisticated investors, who would not be savvy enough to research litigation against Helms and Kaelin, for a new scheme. *See SEC v. Cavanagh*, 2004 WL 1594818, at *28 (S.D.N.Y.2004) (commission of past illegal conduct is highly suggestive of likelihood of future violations). All five permanent injunction factors weigh heavily in favor of granting the permanent injunction. Accordingly, a permanent injunction against Helms and Kaelin enjoining them from engaging in future violations of securities laws is warranted. *See SEC v. Global Telecom Serv's, L.L.C.*, 325 F. Supp. 2d 94, 120–21 (D. Conn. 2004) (permanent injunction granted where systematic securities violations, substantial evidence of scienter, refusal to admit wrongdoing, and substantial investor losses).

ii. Sellers and Barrera

Sellers and Barrera made an affirmative misrepresentation to Moore when he asked directly about their commissions. That Sellers and Barrera owed Moore a fidiciuary duty at the time this

misrepresentation makes their misrepresentation egregious and weighs in favor of issuing a permanent injunction. Sellers and Barrera were at least "severely reckless," in making their representations, and violated several securities laws by acting as unlicensed broker–dealers, which also supports issuing a permanent injunction. Sellers' and Barrera's violations were not particularly repetitive or numerous, weighing against issuing a permanent injunction. However, Sellers and Barrera have not expressed remorse or recognized their transgressions. In addition, they have shown themselves capable of soliciting and negotiating with investors for millions of dollars in securities transactions. Sellers' and Barrera's conduct pales in comparison to Helms' and Kaelin's, nevertheless, the factors weigh in favor of granting a permanent injunction. Having received no response or arguments from Sellers or Barrera, the Court finds a permanent injunction enjoining them from engaging in future violations of securities laws is warranted.

b. Joint and Several Liability for Disgorgement

The court has broad discretion to award disgorgement and, if so, the amount of any award. *SEC v. AMX, Int'l, Inc.*, 7 F.3d 71, 73 (5th Cir. 1993). The purpose of this remedy is to deprive the party or parties responsible for the fraud of their gains and to deter future violations of the law. *Id.* at 76 n. 8. Regarding the calculation of a disgorgement figure, the Fifth Circuit has stated that "[t]he court's power to order disgorgement extends only to the amount with interest by which the defendant profited from his wrongdoing." *Blatt*, 583 F.2d at 1335. This "profit," however, is not derived from a wrongdoer's ultimate enrichment after business and other expenses are deducted. *Seghers*, 298 F. App'x at 336; *SEC v. Kenton Capital, Ltd.*, 69 F.Supp.2d 1, 16 (D.D.C. 1998) (noting the "overwhelming weight of authority" holding that securities law violators may not offset their liability with business expenses).

Rather, the defendant is subject to disgorging a reasonable approximation of the proceeds causally connected to the wrongdoing. *Seghers*, 298 F. App'x at 336 ("A defendant is not immune from disgorgement merely because he has spent or lost the proceeds of his fraudulent scheme."); *SEC v. Banner Fund Int'l*, 211 F.3d 602, 617 (D.C.Cir. 2000) (holding that disgorgement establishes a defendant's personal liability to pay an amount equal to wrongfully-obtained sums, regardless of the disposition of the original assets). "[A]ny risk of uncertainty in calculating disgorgement should fall on the wrongdoer whose illegal conduct created that uncertainty." *SEC v. Patel*, 61 F.3d 137, 140 (2d Cir. 1995).

"An award of pre-judgment interest in a case involving violations of the federal securities laws rests within the equitable discretion of the district court to be exercised according to considerations of fairness." *Chris–Craft Indus., Inc. v. Piper Aircraft Corp.*, 516 F.2d 172, 191 (2d Cir. 1975), rev'd on other grounds, 430 U.S. 1 (1977). In calculating this sum, the court generally turns to the Internal Revenue Service's underpayment rate related to income tax arrearages. 26 U.S.C. § 6621(a)(2); *SEC v. Koenig*, 532 F. Supp. 2d 987, 995 (N.D. Ill. 2007). Courts likely will order joint and several liability against defendants as to the disgorgement figure plus interest when "two or more individuals or entities collaborate or have close relationships in engaging in the illegal conduct." *SEC v. Hughes Capital Corp.*, 124 F.3d 449, 455 (3d Cir. 1997); *see also SEC v. First Jersey*, 101 F.3d 1450, 1475 (2d Cir. 1996).

i. Helms and Kaelin

The SEC requests the Court hold Helms and Kaelin jointly and severally liable for disgorgement in the amount of $31,422,861—the amount of funds invested by individuals as a direct result of their scheme to defraud. As the Court found herein, the evidence establishes the Ponzi scheme operated by Helms and Kaelin realized proceeds in this amount. Therefore, Helms and

Kaelin are jointly and severally liable for disgorgement of $31,422,861. *See SEC v. Halek*, 537 F. App'x 576, 581–82 (5th Cir. 2013) (affirming district court's finding that individual defendant was jointly and severally liable for disgorgement for all ill-gotten profits realized by individual defendant and two companies; "how [the ill-gotten profits were] distributed and spent 'has no relevance to the disgorgement calculation'" (quoting *SEC v. JT Wallenbrock & Assoc.*, 440 F.3d 1109, 1116 (9th Cir. 2006))).

The SEC requests prejudgment interest on any award of disgorgement from the date of the first violation (June 26, 2011) through the date of the instant motion (June 30, 2015). Because the Court has awarded the SEC disgorgement of Helms and Kaelin's ill-gotten gains, prejudgment interest is appropriate. Prejudgment interest in the requested amount of $3,873,043.00 is therefore awarded. APP0835 (prejudgment interest report). Moreover, because the evidence has established that Helms and Kaelin had a close relationship in engaging in the illegal conduct, they should be jointly and severally liable for the prejudgment interest.

ii. Sellers and Barrera

The SEC requests the Court hold Sellers and Barrera jointly and severally liable for disgorgement in the amount of $423,500.00, which is the combined total of their commission for securing the Lacova investment. The evidence establishes Sellers and Barrera received this combined amount as a result of their unlawful conduct. Therefore, disgorgement in this amount is appropriate. SBAPP 119 (prejudgment interest report). The evidence establishes Sellers and Barrera worked closely as a team to solicit and secure the Lacova investment. Therefore, they should be jointly and severally liable for disgorgement of $423,500.00. Prejudgment interest in the amount of $36,243.87 was requested, dating from July 27, 2012 (the initial meeting with Moore), and should be awarded in that amount.

b. Civil Money Penalty

Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange act authorize the Court to assess civil money penalties against natural persons. 15 U.S.C. §§ 77t(d), 78u(d). There are three tiers of penalties, each one with its own required showing. The third tier requires a finding that the defendant's violation "involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and . . . directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons." 15 U.S.C. §§ 77t(d)(2)(C), 78u(d). The penalty imposed shall not exceed the greater of $100,000 (plus inflation adjustment) or the "gross amount of pecuniary gain to such defendant as a result of the violation . . . ." 15 U.S.C. §§ 77t(d), 78u(d); *see* 17 C.F.R. 201.1004–05 (increasing statutory amounts to reflect inflation; 2012 adjusted to $150,000 and 2013 adjusted to $160,000).

Monetary penalties are designed to serve as deterrents against securities law violations, in contrast with disgorgement, which primarily aims to remove a defendant's profit from illegal transactions and which "merely places the offender in the same position he would have been in had he not committed the offense." *SEC v. Lipson*, 129 F.Supp.2d 1148, 1159 (N.D.Ill.2001). To determine civil penalties, a court considers the following factors:

> (1) the egregiousness of the defendant's conduct; (2) the degree of the defendant's scienter; (3) whether the defendant's conduct created substantial losses or the risk of substantial losses to other persons; (4) whether the defendant's conduct was isolated or recurrent; and (5) whether the penalty should be reduced due to the defendant's demonstrated current and future financial condition.

SEC v. Offill, 2012 WL 1138622, at *3 (N.D.Tex. Apr.5, 2012) (citations omitted). *See also SEC v. Sargent*, 329 F.3d 34, 42 (1st Cir. 2003) (listing similar factors).

i. Helms and Kaelin

The SEC requests the Court "order Helms and Kaelin each to pay a third-tier civil penalty up to the maximum amount allowable," which the Receiver has suggested is "at least $31,422,861, the gross investment proceeds." (SEC Mot. at 20). As the Court found above, Helms and Kaelin's violations were egregious, and involved fraud, deceit, and manipulation on a massive scale in clear disregard of federal securities laws. In addition, Helms and Kaelin's violations directly resulted in substantial losses or created a significant risk of substantial losses to their former investors.[28]

However, the SEC did not specify how the proposed $31,422,861.00 civil penalty should be divided between Helms and Kaelin, or whether the penalty should be awarded on a joint and several basis.[29] Moreover, in light of the significant disgorgement ordered herein, the Court declines to award the maximum penalty requested. *See SEC v. StratoComm Corp.*, __F. Supp. 3d__, 2015 WL 1013792, at *11 (N.D.N.Y. Mar. 9, 2015) (declining to order maximum third-tier civil penalty where financial disgorgement and prejudgment interest ordered were "substantial," and defendant's impaired financial worth was mitigating factor).

Instead, the Court finds it appropriate to impose a penalty in the amount that Helms and Kaelin's misappropriated investor funds were used for personal enjoyment and personal expense. The SEC has proven that Helms and Kaelin misappropriated at least $8,442,116.00 for spending on themselves, their families, friends, and associates. APP0013. Accordingly, the undersigned finds it just that Helms and Kaelin each pay a penalty in the amount of $4,221,058.00—half of the total misappropriation of investor funds applied for personal use.

ii. Sellers and Barrera

---

[28] Neither Helms nor Kaelin has presented evidence of their current financial conditions.

[29] The SEC provides no authority regarding whether a civil money penalty can be imposed on a joint and several basis, and the Court cannot find any authority on the matter.

The SEC requests third-tier penalties in the amount of $212,500.00 for Sellers and $211,000.00 for Barrera because their misconduct caused investor losses exceeding $3 million. Moreover, Sellers and Barrera breached their fiduciary duty to Moore and Lacova, which is particularly egregious. Nevertheless, although Sellers and Barrera caused a significant loss, their conduct was not repetitive, and they acted with severe recklessness, rather than outright intention. A penalty should be issued in order to deter Sellers and Barrera from future violations in light of their apparent lack of remorse, but it should not equal the disgorgement amount. Because Sellers and Barrera violated securities laws in 2012, the low end of the statutory spectrum would assess penalties against them in the amount of $150,000.00 each. 17 C.F.R. 201.1004–05. Accordingly, a civil penalty in the amount of $150,000.00 against each Sellers and Barrera is appropriate to deter them from future securities violations.

V. ORDER

Accordingly, Plaintiff's Motion for Sanctions against Defendant Janniece Kaelin (Clerk's Dkt. No. 264) is hereby **GRANTED**;

Plaintiff's Motion for Summary Judgment against Robert Helms and Janniece Kaelin, (Clerk's Dkt. No. 258) is further **GRANTED**;

Plaintiff's Motion for Summary Judgment against Defendants Deven Sellers and Roland Barrera (Clerk's Dkt. No. 260) is further **GRANTED**.

Plaintiff the Securities and Exchange Commission is hereby **ORDERED** to file with this Court on or before **Friday, September 4, 2015**, and serve upon the parties as appropriate a proposed final judgment detailing the terms of:

(1) the proposed permanent injunctions against each defendant specified herein;

(2) the disgorgement awards against each defendant specified herein, including the prejudgment interest awards;

(3) the civil money penalty awards each defendant specified herein.

The proposed final judgment must make proposals in accordance with the findings in this order, including the award amounts. Furthermore, the proposed final judgment should specify the methods and details of payment.

Finally, Plaintiff the Securities and Exchange Commission is hereby ORDERED to file an advisory to the Court detailing the remaining causes of action and defendants against whom they are asserted, if any. In addition, the advisory should notify the Court of any further action it foresees to be necessary in this action. The Court acknowledges that the Receiver in this matter continues to perform his duties as required to benefit the Receivership Estate.

SIGNED on August 21, 2015.

MARK LANE
UNITED STATES MAGISTRATE JUDGE

RECEIVED
OCT 9 2015
CLERK U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY DEPUTY

Case 1:13-cv-01036

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

FILED
OCT - 9 2015
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY DEPUTY

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

V.

ROBERT A. HELMS, ET AL.,

Defendants,

and

WILLIAM L. BARLOW and GLOBAL CAPITAL VENTURES, LLC,

Relief Defendants, solely for the purpose of equitable relief

§ § § § § § § § § § § § § § § § § § §

Civ. Action No. 1:13-cv-01036-ML

DEFENDANTS MOTION TO RECONSIDER SUMMARY JUDGMENT ORDER & DISPOSITIVE MOTION

TO THE HONORABLE JUDGE MARK LANG;

COMES NOW Roland Barrera Po Se Defendant herein ("Barrera") asking for lenience on the summary Judgment made on Barrera (Dkt. #275) on August 21, 2015. As stated in Barrera's Answers To Complaint that Barrera is without knowledge with respect to most allegations made in Plaintiff's complaint. (Dkt. #64) Barrera has never engaged in any form of securities governed by the Securities Exchange Commission prior to the single "security based swap transaction". (Exhibit A (1.)) Additionally the Plaintiffs Summary Judgment (Dkt. #275) states that Barrera violated Section 15(a) of the Exchange Act, Section17 (a) of the Securities Act and Section 10(b) of the

Exchange Act and Rule 10b-5 when Barrera actually didn't conduct or violate not one of the above stated laws therein. On Page 2 of 42 (Dkt. #275) include the total false allegations Barrera has been accused of violating. The order of each item along with exhibits is here included below:

The complaint against Barrera states Barrera Violated Section 15(a)of the Securities Exchange Act.

Evidence to support Barrera's Motion To Reconsider Summary Judgment

1. In EXHIBIT A (1.) you will discover that Barrera was simply included in an email from Sellers with the VRP marketing materials attached that were requested by Jamie Moore. In Sellers deposition (Dkt. #261-1, Pg. 77 5-6, 13-15) he states for the record that Barrera conducted an "introduction only" and that Barrera "sat there and said nothing". Sellers also concluded that Barrera had "Zero" connection to VRP. Sellers goes on to say that the reason for copying Barrera; "why did you (Sellers) copy Roland Barrera on this email?" Sellers stated "just out of pure courtesy". (Dkt. #261-1;Sellers 71:8-10;118:19) Sellers statement couldn't be more accurate regarding Barrera's involvement therein. In the Plaintiffs evidence section of the Summary Judgment reads "In mid-2012, "Sellers invited Barrera to join him in selling Vendetta securities and the securities of several other Defendant entities." (Dkt. #275, Pg.13 E.) When this statement actually never had or held any truth and the docket reference info stated by the Plaintiff was actually misleading and should of have had sufficient, undisputable and substantial evidence when making such allegations of this nature towards Barrera. (Dkt.#261-1 Sellers at 73:12-13) The truth is Barrera had been briefed and asked about "one swap" opportunity, in "one" particular fund, and in "one" particular company called VRP (Barrera at 31:13-35:5; 45:24-46:18; 67:13).

The violation of 15(a) also includes "to make use of the mails or any means or instrumentality of the interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or a sale of, any security (other than an exempted security or commercial paper, bankers' acceptance with subsection (b) of this section"). In EXHIBIT A (2) you will see an email from Sellers to Moore that was used to frame Barrera for selling "multiple securities" as well as "interstate commerce".

Evidence to support Barrera's Motion to Reconsider Summary Judgment

2) The above mention herein Barrera not once "make use of the mails or any means instrumentally of interstate commerce to effect any transactions" as stated In the Plaintiffs *Commission Misrepresentation Evidence* section of the Summary Judgment. The judgment states that Barrera did not dispute this commission number because Barrera was still without knowledge and did not read, "paying attention", or aware of what Sellers bonus or commission was in the initial meeting with Moore and Sellers. (Dkt #261-1 Sellers 77:5-6, Dkt. #64) Therefor this section in the Plaintiff's Motion for Summary Judgment is baseless. The Plaintiff states "Sellers and Barrera had an agreement to split any commissions earned on investments that Barrera brought in." (Dkt. No 260 – I. A) The Plaintiff uses a generalization in Barrera's deposition when asked, "when is the first time you heard about Vendetta? (Dkt.261-31:3-4) Barrera goes on to answer that Sellers made mention of "a" (singular) company. (Dkt.261-31:9-10) The Plaintiff uses this single statement made by Barrera and frames it in such a way that makes Barrera appear and was in the sale of securities in multiple security based company's that were owned by the defendants. Barrera's deposition the Plaintiff states "we're going to get in the particulars of how they got involved and what your role was in a minute, at the very least, I mean, they came to know about the

investment (not in the plural form by Plaintiffs own declaration as stated by Plaintiff in the Memorandum Opinion and Order for Summary Judgment dated 8/21/2015) through you; correct?" (Dkt.261-40:8-12)

Evidence to support Barrera's Motion to Reconsider Summary Judgment

3) The undisputed facts are that Sellers mentioned an opportunity in his current business and decided to call on Barrera and introduce a swap position opportunity. Sellers never explained any details of the swap transaction because Barrera was without knowledge as stated in Barrera's Answers To Complaint. (Dkt #64) For the record herein Barrera and Sellers have been best friends since the 3rd grade and doesn't have one reservation about not believing in Sellers. (Dkt #261-1, Sellers;71:1-10) Barrera goes on and provided one "introduction meeting" between Moore and Sellers and did not speak about or never engaged in the conversation regarding the sale of any type of securities or a security based swap whatsoever and was only made aware of the actual negotiations between VRP and Lacova from Moore on or after on July 28th, 2012. Moore's outbursts of enthusiasm, Moore's forwarded emails and Moore's standard emails to Barrera are how Barrera was informed about any or all detailed info regarding VRP and the negotiations that went along with it. Barrera had never responded in any of those emails trying "to induce or attempt to induce the purchase or sale of, any security" negotiate any of the VRP offerings so much so that in an email response to Moore's updates Barrera states in Exhibit C (3) Barrera states in response to one Moore's array of emails that "I was unaware of the deal not being [redacted] what you were wanting". Barrera was also very clear and adamant about introducing this opportunity or a business Barrera was unfamiliar with to anyone else. (Dkt.261-50:1-7) In the Plaintiff's Motion for Summary Judgment Against Defendants Sellers and Barrera Pg. 2 & 3 filed 6/30/2015 states "Barrera remained in

contact with Moore to help negotiate the Lacova investment after the initial meeting." It goes on to state "Barrera spoke with Moore about the deal multiple times, determining the issues that needed to be resolved before Lacova would invest and passing them along to Sellers." When in fact Moore and Barrera were reported regularly in one and others company "on a 3 to 4 times per week basis playing tennis, stuff like that." (Dkt.261-36:16-18, EXHIBIT B (4.) This indisputably legitimizes Moore and Barrera's regular time spent with one another and never suggest otherwise as well as their girlfriend's week in and week out for multiple years prior to the Sellers meeting. The EXHIBIT B (1) (2) will clearly show Barrera's facebook timestamp photo discovery that shows Moore and current wife this facebook page in mid July of 2010 as well as Moore and Barrera's girlfriends at the time (currently now the spouse of Moore and still current girlfriend of Barrera) back in early 2010 nearly 2-½ years prior to the VRP swap transaction.

Evidence to support Barrera's Motion to Reconsider Summary Judgment

4) EXHIBIT C (1) you will also see an email from Moore keeping in contact with Barrera and updating Barrera on Moore's swap transaction negotiations. Moore also goes on to convey his song selection for his Wedding day Dj that Barrera was invited to attend by Moore and Barrera was hired to produce the set list and curate the set list and reception prior to Sellers meeting by Moore and Moore's now in-law's. Moore and Barrera's conversations like any friendship would take place, in person, by email, and by phone simultaneously with Moore and VRP's negotiations for the swap based transaction. And, furthermore Moore even went to the extent to keep updating Barrera all the way up to Moore's confirmation at Moore's wedding reception just days before the actual transaction took place. (Dkt #261-1;50:13-16) Moore and Barrera without undisputable reasonable doubt communicated but never did Barrera effect Moore's

decision to move forward in the VRP swap. In EXHIBIT C (2) Moore is emailing Barrera again to brief him on his negotiations with VRP and states "we aren't funding to rush things with $3M cash until we're buttoned up **exactly how we (Jamie Moore & John Morally) want it.** You understand I'm sure". Moore goes on to explain and continues to update Barrera that when he was in the due diligence processes "I've (Moore) jumped through a ton of hoops on this as well. (Exhibit (2)) This deal from start to finish will be ridiculously fast especially considering the amount." This was one of many of Moore's due diligence processes in his multiyear successes in the real estate, development, land entitlement, commercial and residential" markets. Moore has had so much success that "he has personally conducted over $1B in various real estate transactions as a principal", Moore also then and currently "maintains several relationships as a result" of them. (Exhibit D (12) An industry and world all together that Barrera knows nothing or hasn't any knowledge or expertise to conduct, navigate or facilitate such a transaction. In Exhibit C (3) you will see an email back from Barrera that states specifically "I was unaware of the deal not being what you were wanting". This key statement alone has shows that again Barrera is "without Knowledge" and validates upon a reasonable doubt that Barrera is and had nothing to due with Moore and Morally's negotiations or had any affect on the sale of the swap transaction. Exhibit C (4) is the continuation of another email from Jamie to Barrera and showing a trend of continuous briefings from Moore to Barrera. This email also sheds more light on Moore's negotiations with a VRP defendant. (Exhibit C (4)) And, through this email thread forwarded by Moore was how Barrera was able to attain and retain most of Moore and Morally's negotiations with VRP and now concludes to the court exactly who was directing the negotiations between Lacova & VRP. The court

will discover most of the negotiation emails between Moore, Morally and Kaelin herein Exhibit D.

Evidence to support Barrera's Motion to Reconsider Summary Judgment

5) (Exhibit D (1)(2)(3)(4)(5)(6)(7)(8)(9)(10)(11)) Exhibit D concludes beyond a reasonable doubt that Barrera did not contribute, facilitate, by any mails and or "remained in contact with Moore" to pursue any of the negotiations on behalf of Lacova, Sellers or VRP parties. Therefor the Plaintiff's basis on "Barrera remained in contact with Moore" is baseless and shall not be used to produce such a Judgment on or against Barrera. The Plaintiff's proceedings fail to suggest that Barrera and Moore were in each other's company and regularly text, emailed and called each other long before the weekend of July 27th, 28th, 29th, and 30th in 2012 and remained in contact almost daily. The Plaintiff insinuates that Moore and Barrera's time spent together was to facilitate a sale of securities and has no truth to the Plaintiff's Statement of Undisputed facts against Barrera solely. Barrera states "I didn't say anything about what I was getting or was promised or anything." And, "What those earnings were, I was completely unaware of". (Dkt #261-1;65;5-6,12-13) It isn't uncommon for a finder to have an agreement with any seller furthermore for Barrera to think he should disclose the amount deposited by VRP into his personal account to anyone when Sellers explains to Barrera that in a swap deal coupled with a signed addendum to the PPM that acknowledges the swap. And, that if the principles in charge of that transaction (VRP) own more than 51% of that company then the remaining 500K that Barrera believed had already been paid out in distribution payments to the group in which Lacova took swap positions with, then their isn't any disbelief or questioning of Sellers further and that Barrera (at that time) felt he should of made any further. (Exhibit E (4a)(b)) Barrera as he thinks is truth believes that the remaining funds

(500K) can be used however these owners, officers, directors, members or managers decide to book them or how to distribute them. Barrera felt that the above mentioned duties herein are not the responsibilities of Barrera's and could not control or forecast the way VRP and or Lacova had handled, conducted or structured their businesses and dealings, more so to have gained or created exposure, responsibility and financial burden of these two entities named above herein.

Evidence to support Barrera's Motion to Reconsider Summary Judgment

6) The Plaintiff's allegations are shameless and a rather subpar attempt to try and further discredit and defame Barrera's ethics and overall judgment of character. Ultimately the Plaintiff tried to sway and devalue Moore and Barrera's authentic and organic friendship between the two. These lack lustered attempts of false accusations on Barrera by the Plaintiff to conclude their Summary Judgment on Barrera should be retracted, corrected and or dismissed altogether with the overwhelming and abundant amount of evidence of fact stated herein. The Plaintiff ventured way out of line from leaving out truth and facts of this transaction and failed to adhere to their code of ethics sworn in by the Federal Government and the Securities Exchange Commission regarding this particular transaction. A brutal yet blatant attempt try and frame Barrera for a falsified complaint by Morally and Moore furthermore filing of such a Motion or

---

In the event the Honorable Judge Mark Lang does not conclude Barrera has made "No Ill Intentions" then Barrera pleads to the Honorable Judge to consider Barrera's lenience or possible dismissal all together when considering The Rule 3a4-1 Safe Harbor. This Rule concludes that an "associated person" of an issuer that performs limited securities sales for the issuer as prescribed by the rule would be deemed not to be a "broker" under Section 3(a)(4) of the Exchange Act, and, thus, not required to register in accordance with Section 15 the Act. The 4th and 5th bullet point of the Preliminary Requirements associated with the above rule herein states (4th) "-When associated persons are informed of the issuer's intention to pay a bonus;" and (5th) "- whether the bonus paid to a particular associated person varies with their success in selling the issuer's securities". The third section of the above stated *"Preliminary Requirements"* is (3.) "The associated person must not be an associated person of a broker or dealer at the time of the sale. Among the reasons for this requirement discussed in the Adopting Release is the potential for abusive sales tactics or confusion of investors stemming from the dual association of the issuer's agent with a broker-dealer that may recommend the sale of the issuer's securities."

Summary Judgment on Barrera has a been reckless course of action by the Plaintiff, John Morally and Jamie Moore. To proceed further against Barrera would be a ludicrous attempt by the Plaintiffs. The Plaintiff has tried to create doubt that Moore and Barrera's friendship was a disingenuous illusion at best. And, that Barrera had any knowledge whatsoever of Moore's or Morally's (Lacova) negotiations with the VRP swap. This was and is a classic case of breaking in, firing and asks all the questions later tactic and assault against Barrera. In EXHIBIT C (1)(2)(3)(4) Moore is continually contacting and briefing Barrera on Moore's negotiations. Exhibit D (1) Moore states that he "just landed back in S. CA. John and I are enthusiastic about you and Robert. I have plenty of ideas that may be valuable for you in the long term. Let me know how you'd like to structure this transaction." Just one week after Sellers meeting, Moore and Morally fly out to Austin, Texas and are very enthused about VRP to say the least. Barrera isn't present in this meeting of the minds and just as quick as you can snap your fingers is fast Barrera is now in the rear view mirror of Moore and any or all conversations regarding Lacova and VRP. The Plaintiffs complaint on Barrera were based off of testimonies given by Morally and of Moore in which they too have sworn under oath that they are providing a true, testimony and declaration of their own. Unfortunately for Barrera Morally and Moore have their own agendas that superseded their sworn testimony under oath. So much so that Morally

---

(SEC. 3A. SWAP AGREEMENTS sections (2), (3-(A)(B)) and (4) states "The Commission is prohibited from registering, or requiring, recommending, or suggesting, the registration under this title of any security based swap agreement. If the Commission becomes aware that a registrant has filed a registration application with respect to such a swap agreement, the Commission shall promptly so notify the registrant. Any such registrant with respect to such a swap agreement shall be void and of NO FORCE or EFFECT. (A) "promulgating, interpreting, or enforcing rules; or (B) issuing orders of general applicability; under this title in a manner that imposes or specifies reporting or recordkeeping requirements, procedures or standards as prophylactic measures against fraud, manipulation or insider trading with respect to any security-based swap agreement. (4) References in this title to the "purchase" or "sale" of a security-based swap agreement shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security based swap agreement, as the context may require.")

(Lacova) had to call Barrera and use a form of **blackmail against Barrera** and stated that if Barrera didn't cooperate with them (Lacova) that he was going to name Barrera in a complaint to the SEC (Plaintiff) against VRP. (Dkt #261-1;38:7-9) In Exhibit D (13) you will discover an addendum and in this sensitive piece of evidence you will discover Moore and Morally's acknowledgment of their money into VRP was to take a swap position for another group of exactly equal ownership percentages. This ultimately meant that VRP and Lacova an the "non capital-raise transaction" didn't have the same or typical laws/bi-laws structured and governed by the SEC in a manner such as swap transaction implies. Sellers provided the basis of his presentation in the initial email dated July 28, 2012 in Exhibit A (1). Sellers states "a swap position a simple exchange" a securities based swap sale and transaction that the Plaintiff has misrepresented from fruition against Barrera and this swap transaction.

Evidence to support Barrera's Motion to Reconsider Summary Judgment

7) (Non capital-raising transaction) isn't governed in the exact manner as the Plaintiff had falsely reported and accused Barrera of doing so. The Plaintiff is suggesting and summarizing Barrera in a wrongful manner against their own code of ethics. **(SEC. 3A. SWAP AGREEMENTS sec. (2), (3-(A)(B)) and (4), Sec. 4. Def of The Texas Securities Act.**

The above state herein being the undisputed real, true and authenticated factual evidence Barrera asks to be dismissed from the court with no further action required from him. Furthermore in this single transaction summarized by the Plaintiff exposes Sellers in violation of the PPM as stated in the complaint file by Morally and Moore. (Dkt #1 Pg.4) In the same Plaintiff's complaint the Plaintiff accuses Barrera of the same law violations as Sellers, Kaelin and Helms (VRP) and should not be held accountable for any

misrepresentation of the above herein. **(SEC. 3A. SWAP AGREEMENTS sections (2), (3-(A)(B)) and (4))**

Evidence to support Barrera's Motion to Reconsider Summary Judgment

8) In Moralley's phone call to Barrera Morally stated "If I wasn't (typo in Barrera deposition) going to cooperate with them, that he (John Morally) was to go ahead and name me in this thing". (Dkt #261-1 Barrera 42:1-5) Barrera without any knowledge called Sellers immediately and explained the basis of Morally's call. Soon after Sellers instructed Barrera by the direction of Helms and told Barrera "NOT to call John Morally back" "So I didn't". (Dkt #261-1 Barrera 42:14-15, 17) Barrera in disbelief of this whole situation soon started to dig into the VRP case vs. Lacova and soon finds out that Morally and Moore had contacted an old VRP bookkeeping employee (Emmanuel Salter) and had him conduct a cyber crime to obtain any or all-financial statements that he could furnish from VRP. (Exhibit F(1.)) Salter states on July 19, 2013 in an email to Morally and Moore to "Click on the Link to download the files:" – Emmanuel (Salter). Barrera was in complete disbelief that Moore (Barrera's friend at that point in time) had done something so felony criminal. Barrera still in disbelief felt

---

On August 06, 2013 David W. Blass Chief Counsel of the Division of Trading and Markets and The Securities and Exchange Commission wrote a letter regarding "Finder" | Dear Mr. Blass: I am writing to address the issue of when business brokers and finders must registrar as broker dealers under section 15 of the Securities Exchange Act of 1934.

"A Finder Exemption
NSBA supports a regulatory exemption for finders who are not "engaged in the business" of "effecting transactions in securities for the account of others" or of "buying and selling securities." As an integral component of that exemption, we believe it is necessary to create a bright-line safe harbor such that small finders are not deemed to be engaged in the business of being a securities broker or a dealer. Such a bright line safe harbor would eliminate much of the regulatory uncertainty associated with the use of finders. The safe harbor is meant to ensure finders who assist small businesses to find capital from time to time either as an ancillary activity to some other business (e.g. the practice of law, public accounting, insurance brokerage, etc.) or as main street business colleagues or as friends or family members of the business owner are not treated the same for regulatory purposes as a Wall Street broker-dealer. Specifically, we support an exemption for finders from the section 15 registration requirement provided that the finder is not "engaged in the business of effecting transactions in securities for the account of others" and that the exemption provide a safe harbor such that a finder is deemed not to be engaged in the business of effecting transactions in securities for the account of others" if the finder meets one or more of the following criteria:

(1) the finder does not receive finder's fees exceeding $250,000 in any year;
(2) the finder does not assist an issuer in raising more than $5 million in any year;
(3) the finder does not assist any combination of issuers in raising more than $10 million in any year; or
(4) the finder does not assist any combination of issuers with respect to more than 10 transactions in any year"

sorry and bad for VRP and that he had introduced Moore to VRP. Barrera goes on to accumulate as much info as he can from Sellers and the VRP source. The first sign of Barrera's due diligence in the matter was an email from Sellers stating "They are gonna buy the guys out in a few weeks is what I am hearing." (Exhibit E (1.)) Barrera proceeds and remains without knowledge between Lavoca and VRP and is truly ashamed of Moore and Morally's behavior towards Sellers and VRP. Barrera continued searching for answers and receives an email from Sellers that includes a forwarded message from Kaelin that states "Dear Deven and Roland: Robert is working on this. We would like to talk hopefully sometime tomorrow regarding the emails and messages." (Exhibit E (2)) At that point Barrera had something to go on and still had every reason to believe everything was ok. Barrera and Sellers have been best friends since the 3rd grade. Barrera was a groomsman in Sellers first and second marriages. On September 27th, 2013 in true and moral Barrera character prior to December 3, 2013 has every right to still believe that his 33-year-old friendship can be trusted and remains loyal and faithful to his at this point life long friend. (Dkt #261-1, Sellers;71:1-10) In the same September 27, 2013 email in Exhibit E (2) Barrera reads on and discovers a note from Helms that states "Deven - working on this and how to best proceed, in the meantime don't do anything, and be sure Roland doesn't do anything. I will call in a few hours. - Robert A. Helms". In this same month Barrera discovers that VRP was suing Lacova for the above-mentioned Cyber crimes plus multiple accusations by VRP included in this lawsuit. Barrera "without knowledge" of the above stated on or before September of 2013 was still never questing the ethics of the VRP operators. Barrera has never tried to pursue, find or make any other introductions to Sellers or VRP after the Lacova swap transaction. A full 13 months had transpired between inception of Sellers and Moore lunch meeting and

introduction. Barrera pleads to court and most importantly the Honorable Judge Mark Lang for a dismissal without penalties and no longer be named a defendant in the above stated case herein.

Evidence to support Barrera's Motion to Reconsider Summary Judgment

9) During June, July, August and September of 2013 Barrera was in the middle of two large design, production and T.I. construction projects and was physically working around the clock at almost 15 to 16 hour days. Barrera is an entrepreneur by definition in the humble sense; Barrera has been self-employed for over 15 years now and has needed little support from anybody up until now. Barrera has worked for everything he had and has had everything taken from him including his businesses due to this fictional story created by Moore and Morally under oath regarding Barrera. Barrera has never been sued and has a near perfect record up until that day of December 3, of 2013. Barrera isn't deceitful and did not have any ill intent on July 27th, 2013 all the way up to December 3, of 2013 when Barrera was falsely named in the above case. Barrera DOES have sympathy for all of the investors that have given their moneys to the Ill willed and reckless controllers of VRP. Barrera stated in his deposition when asked about Moore and Morally's investment and Barrera stated "I don't think they deserved it," (Dkt #261-1; 45:6) After hearing of Barrera's wrongfully accused, named, of the false accusations stated herein made and sworn by under oath by Moore and Morally it was at that exact time when Barrera "in terms of sympathy for them, I can't say that I do." (Dkt #261-1; 45:8) In Barrera's first ever in his lifetime deposition he was forced to relive the last two years all in 90 minutes due to this lawsuit Barrera has been tied up in. And, It is easy for anyone to say besides Barrera and especially JUDGE by his closest confidants that what Barrera has done or said was the wrong thing to do or say when taken OUT OF CONTEXT to not loose a case and or to sell

shameless magazine/social impressions for a day or two, but once an individual can step out of these horrible circumstantial incidences it is a lot easier for Barrera or anyone else for that matter without emotion to state for the record herein that "YES", Barrera too feels bad for all involved. Including the court and Honorable Judge Mark Lang for having to deal with such a long drawn out and complicated case herein.

Evidence to support Barrera's Motion to Reconsider Summary Judgment

10) On September 25, 2013 Under Oath Jamie Moore and John Morally (Lacova) filed a counter suit to VRPs current suit within The District Court Of Travis County, Texas. (Cause No. D-1-GN-13-001120) In this identical lawsuit and Application For Receivership filed by Moore and Morally against VRP and all company and entities associated with them they "DO NOT" include Barrera in the list of named Defendants under oath with knowledge. (Cause No. D-1-GN-13-001120 Pg. 1-2) With knowledge and under oath Moore or Morally never included or submitted a lawsuit to Barrera's doorstep with Barrera's name on it. With knowledge and under oath Moore or Morally never submit a registered email to Barrera that included Barrera in any section of this filing or any other lawsuit filed by Moore and Morally with Barrera included anywhere whatsoever. On September 25, 2013 with knowledge and under oath Moore and Morally didn't include Barrera in the "II PARTIES AND PROCESS" section of their filing against VRP but yet almost exactly 2 months later to that date Moore and Morally filed their pre-drafted, developed and mirrored complaint to the SEC under oath with knowledge. And, at that time decide to add and falsely name, accuse, slander and defame Barrera under oath to a United States Government Agency such as the SEC when processing and submitting Moore and Morally's complaint against VRP and named defendants with knowledge and under oath. (Cause No. D-1-GN-13-001120 Pg. 1-4, Exhibit F (2) On December 3 of 2013 Barrera genuinely did not

harbor any reservations and or belief that Barrera had done wrong. On this day Barrera had yet to have any communications with Moore and Morally as instructed by Sellers and VRP just two months prior to the above stated filing furthermore either did Moore and Morally. (Exhibit F (2)(3))

FIRMLY TO SEAL

PRESS FIRMLY TO SEAL

PRIORITY MAIL
POSTAGE REQUIRED

RIORITY®
MAIL ★

DATE OF DELIVERY SPECIFIED*

USPS TRACKING™ INCLUDED*

INSURANCE INCLUDED*

PICKUP AVAILABLE

* Domestic only

USED INTERNATIONALLY,
CUSTOMS DECLARATION
BEL MAY BE REQUIRED.

FROM:

P

US POSTAGE AND FEES PAID
PRIORITY MAIL
Oct 05 2015
Mailed from ZIP 92627
Priority Mail
Flat Rate Envelope
CommercialBasePrice

071V00806889

endicia.com

PRIORITY MAIL 2-DAY

ROLAND BARREA
[redacted]
COSTA MESA CA [redacted]

0006

Shipped using PostalMate®
Pkg:9474

SHIP TO:
WESTERN DISTRICT COURT
US DISTRICT CLERKS OFFICE
501 W 5TH ST STE 1100
AUSTIN TX 78701-3812

USPS TRACKING #

9405 5102 0088 3793 0915 94

00001000014

EP14F July 2013
OD: 12.5 x 9.5

VISIT US AT USPS.COM®
ORDER FREE SUPPLIES ONLINE

This packaging is the property of the U.S. Postal Service® and is provided solely for use in sending Priority Mail® shipments. Misuse may be a violation of federal law. This packaging is not for resale. EP14F © U.S. Postal Service; July 2013; All rights reserved.

EXHIBIT A

Case 1:13-cv-01036 [redacted]

☆ Devon [redacted] ⚑

To: Jamie Moore <jmoore@lacovacapital.com>, Roland Barrera <roland@sophisticatesunited.com>, Janniece Kaelin <Janniece@vendettaroyalty.com>

VRP

July 28, 2012 at 12:52 PM
Inbox - SUN
hide

Jamie,

It was really great to meet with you yesterday!!! I hope you found the perfect suit for the wedding.

So like I had promised I'm sending over all the docs that you will need to look over. I am copying one the the GP's in this email. Her name is Janniece Kaelin and she is out of our main office in Austin. She and I will help you answer any questions or concerns that you have. Please feel free to call or email me anytime.

Just to recap, we are offering you the opportunity to take the position of one of our partners for $ 3,000,050. It is a swap position a simple exchange. You will be eligible for two distributions for q3 (Expected 10-12) and q4(expected 1-13) 2012 and upon sale of the portfolio expected to be end of year 2012 or early in Jan 2013 your position becomes liquid. We expect that to happen no later than late January or February 2013. With an expected yield of 2X of investment. At that point you are welcome to roll over into our new fund like discussed, or cash out.

Let me know if you need anything at all.

Deven Sellers
Vendetta Royalty Partners
[redacted] cell
303-284-7745 Office
Deven.barefoot@comcast.net

6.1.2011 Subscription Agreement.pdf | 7.1.11 Vendetta PPM.pdf | VRP Asset List.pdf

1)

☆ Deven <deven.barefoot@comcast.net>

To: Jamie Moore <jmoore@lacovacapital.com>, Janniece Kaelin <Janniece@vendettaroyalty.com>, Roland Barrera <roland@sophisticatesunited.com>

VRP

July 29, 2012 at 10:31 AM
hide

Good Morning Jamie,

I have attached our new marketing material for the new portfolio, Vesta. The power point should give you all the info you will need as far as performance and may also show you a little more about us. I have attached Janniece in this email. I am going to forward over to her your info and she will call you to walk you through this deal in greater detail how this process works.

Again please feel free to call or email with any questions you have.

Have a great day.

Deven Sellers
Vendetta Royalty Partners
[redacted] Cell
303-284-7745 Office
Deven.barefoot@comcast.net

Vesta Marketing 07.29.12.pptx

2)

EXHIBIT B

Case 1:13-cv-01036 [redacted]

1.)

2.)

Jamie Moore <jmoore@lacovacapital.com> July 26, 2012 at 6:12 PM

To: Roland Barrera <roland@sophisticatesunited.com> Inbox - SUN

Re: Yo JM

DUDE! Do you have any good DJ's that we may be able to use Aug 11 at wedding rception? We're not finding anything we like. Something not too hipster but veristle, some jazz mix, some dancing, older and younger crowd yo know.....

Jamie Moore | Managing Partner
direct | 949.209.8943
Lacova Capital Group, LLC.
Distressed Real Estate Acquisitions & Dispositions
5000 Birch St. Suite 3000 | Newport Beach, CA
jmoore@lacovacapital.com
www.lacovacapital.com

3.) On Jul 26, 2012, at 6:14 PM, roland barrera wrote:

Yo J,

Good stuff...lets say 3 p.m. on Friday kid.

Tennis on Wednesday night?

Best,

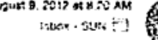
Roland Barrera
Director Of Operations
714.290.0375
TheSUNgrp
www.sophisticatesunited.com.

The information in this email is confidential. It is intended only for the use of the individuals or entities named above. You are hereby notified that if you are not the intended recipient, or employee or agent responsible for delivering it to the intended recipient, any use, dissemination, distribution or copying of the information in this email is strictly prohibited. If you receive this email in error, please notify us immediately by telephone and return the original by mail. Thank you.

4.) On Jul 23, 2012, at 12:08 PM, Jamie Moore wrote:

EXHIBIT C

Case 1:13-cv-01036

Jamie Moore <jmoore@lacovacapital.com> August 9, 2012 at 8:?0 AM


To: Roland Barrera <roland@sophisticatesunited.com>

Re: Wedding Inv.

Hey Roll,
FYI, looks like we have an agreement in place with VRP in Austin, we're finalizing our LLC and tax ID so we can execute, planning on having it all finished by Monday and funding then as well.
Good for everyone involved, now it just has to sell at the projected numbers in Jan!

In terms of songs, here's a start:

Opening song where we start to dance: Noelle Vougue "In a matter of speaking"
Others we'd want: The Police, The Presets, Edward Sharpe "home", Talking Heads "home"
any other ideas? Stuff to dance to that isn't cheezy. I'll think of more ideas and I'm sure you may have some.

We're thinking some light background jazz ish for dinner would be great as well. Kathy paid you right?

Jamie Moore | Managing Partner
direct | 949.200.8043
Lacova Capital Group, LLC.
Distressed Real Estate Acquisitions & Dispositions
5000 Birch St. Suite 3000 | Newport Beach, CA
jmoore@lacovacapital.com
www.lacovacapital.com

1)

Jamie Moore <jmoore@lacovacapital.com> August 9, 2012 at 10:35 AM

To: Roland Barrera <roland@sophisticatesunited.com>

Re: Wedding Inv

Yo we aren't funding to rush things with $3M cash until we're buttoned up exactly how we want it. You understand I'm sure. The deal wasn't exactly what we wanted so I had to convince John it works. It will be funded on Monday most likely. I've jumped through a ton of hoops on this as well. This deal from start to finish will be rediculosly fast especially considering the amount. We're not going in honeymoon just two day jaunt up the coast back on Wed. It's a done deal from our standpoint.

Thnx,

Sent from my iPhone

2)

Roland Barrera <roland@sophisticatesunited.com> August 9, 2012 at 10:58 AM

To: Jamie Moore <jmoore@lacovacapital.com>

Re: Wedding Inv.

Oh nice...I thought you were out for a few weeks or something like that??

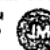
It is a big investment and I was unaware of the deal not being what you were wanting.

All good and I yes I believe it is going at an accelerated pace...so kudos to you for making it happen considering your big day and all.

Shaka shaka.

Roland Barrera

3)

Jamie Moore <jmoore@lacovacapital.com> August 11, 2012 at 12:42 AM


To: Roland Barrera <roland@sophisticatesunited.com>, Devan <devan.barsfoor@comcast.net>

Fwd: update

WTF!!

Sent from my iPhone

Begin forwarded message:

> From: John Morally <jpmorally@gmail.com>
> Date: August 10, 2012 10:14:38 PM PDT
> To: Jamie Moore <jmoore@lacovacapital.com>
> Subject: Fwd: update
>
> Look at this
>
> Sent from my iPad
>
> Begin forwarded message:
>
>> From: Janneca Koalin <janneca@vendettarealty.com>
>> Date: August 10, 2012 6:51:34 PM PDT
>> To: 'John Morally' <jpmorally@gmail.com>
>> Subject: RE: update

4)

EXHIBIT D

From: Jamie Moore [mailto:jmoore@lacovacapital.com]
Sent: Friday, August 03, 2012 2:12 PM
To: Janniece Koelin
Subject: Re: Letter from Solvenz

Janniece,
Just landed back in S. CA. John and I are enthusiastic about you and Robert. I have plenty of ideas that may be valuable for you in the long term. Let me know how you'd like to structure this transaction. I don't have Robert's email addy.

All the best,
Jamie

Sent from my iPhone

1)

On Aug 3, 2012, at 5:03 PM, Janniece Koelin <Janniece@vendettaroyalty.com> wrote:

> Dear Jamie:
>
> It was a pleasure to meet both you and John. Last night you asked for an undiluted 15% OF THE PARTNERSHIP. Unfortunately we are not able to do that as it would require that we amend the partnership agreement an we would need all of the partners to agree.
>
> However, if you would be happy to have you as a partner on the terms we discussed previously. The cost is $3,050,000.00 and you would step into the shoes of our existing partners. This would entitle you to both a third and fourth quarter distribution as well as the profit after the sale at the end of the year.
>
> We think you and your business philosophy are a good match with our company and I believe that we can make a lot of money working together. IN terms of the structure, we will need the subscription agreement filled out and the money wired. We will then issue a welcome letter and certificate. Please let me know if you have any additional questions. We look forward to having you as partners for many years.
>
> Thanks,
> Janniece

2)

Jamie Moore <jmoore@lacovacapital.com> August 11, 2012 at 12:42 AM
To: Roland Barrera <roland@sophisticatesunited.com>, Deven [REDACTED] Inbox - SUN

Fwd: update

WTF??

Sent from my iPhone

Begin forwarded message:

> **From:** John Moralty <jpmoralty@gmail.com>
> **Date:** August 10, 2012 10:14:38 PM PDT
> **To:** Jamie Moore <jmoore@lacovacapital.com>
> **Subject:** Fwd: update
>
> Look at this
>
> Sent from my iPad
>
> Begin forwarded message:
>
>> **From:** Janniece Koelin <Janniece@vendettaroyalty.com>
>> **Date:** August 10, 2012 6:51:34 PM PDT
>> **To:** 'John Moralty' <jpmoralty@gmail.com>
>> **Subject:** RE: update
>>
>> Dear John:
>>
>> I thought we had worked this out with Jamie and that we would provide it after next week. I guess I can stay up tonight and try to find where Robert and Emmanueal keep the data, but it is not something usually that I take care of. I will get it to you as quickly as possible [REDACTED]. If I get you this information can you make sure the wire goes out Monday morning? That way I can go into our bank tomorrow and initiate the wires from our end to go out on Monday as soon as your money hits our account. It would definitely make it easier on me to be able to focus on my daughter knowing that all of the arrangements have been made. I would definitely consider it a personal favor.

Case 1:13-cv-01036

As I explained to Jamie, I am not sure if the $20 million is exact, it was just my estimate, but I will do my best to get the exact number to you. I have always compared her to Drew Barrymore. Full of life and always looking for a new adventure. She wants to be a high school math teacher and principal.

Sorry to go on, hope you are having a great time and the wedding weekend. After you receive the data if you can give me a timeline so that I can manage expectations it would be very helpful.

Thanks,

3) Janniece

Begin forwarded message:

From: Jamie Moore <jmoore@lacovacapital.com>
Date: August 3, 2012 6:24:35 PM PDT
To: Janniece Kaelin <Janniece@vendettaroyalty.com>
Cc: Robert Helms <Robert@vendettaroyalty.com>, John Moralty <jomoralty@gmail.com>
Subject: Re: Letter from Solvenz

Janniece,
We'd like to still see the % of ownership breakdown on the portfolio fully capitalized today. It was our initial understanding the portfolio was capitalized at $24M.

Thank you,
Jamie

4) Sent from my iPhone

On Aug 6, 2012, at 7:07 PM, Janniece Kaelin <Janniece@vendettaroyalty.com> wrote:

Dear Jamie:

It was wonderful meeting you and I look forward to many years of working with you. The sharing ratio you will be coming in at is .1384398. Please note that we are expecting some additional capital to come in to buy a few additional properties, which means the sharing ratio will change, but the value will increase.

I know you are getting married this week and I know you will make a "groovy groom"! Just remember, your job is to show up sober, look good in the suit and tell your bride you have never been seen her look more beautiful and that it is the happiest day of your life that she is finally your wife. That is the secret to staying married.

And remember to have fun at the reception. Enjoy your friends and family and don't forget to eat.

IF you have any additional questions or need more information please don't hesitate to call me on my cell at .

Thanks,
Janniece

5)

On Aug 6, 2012, at 7:55 PM, Janniece Kaelin <Janniece@vendettaroyalty.com> wrote:

Dear Jamie:

Just left a message on your cell phone. I think I can walk you through this easier via telephone than trying to explain in an email. My cell is and I will be up late working until around 2:00 am.
Thanks,
Janniece

6)

Case 1:13-cv-01036 [redacted]

------ Original Message ------
Subject:Re: sharing ratio
Date:Tue, 7 Aug 2012 08:33:40 -0700
From:Jamie Moore <jmoore@locovacapital.com>
To:Janniece Koelin <Janniece@vendettaroyalty.com>
CC:deven[redacted]>

Hi Janniece,
As I think you would agree, John and I are the type of partners you want for several reasons. One, we're essentially in the same business and two, we have the ability to bring significant capital to the table on the next portfolio/fund.

We operate our business by reducing as much risk as we can upfront. This said, we are ready to conduct this transaction immediately but we will need to have a preferred share where our 13.84% ownership of portfolio will not be diluted/reduced with new capital injected prior to the sale. As GP's you have the ability to structure it any way you wish. So, in order for us to finalize this we would need the 13.84% ownership secured and guaranteed through the sale as well as the two royalty payments est. at $300K+ total. If you aren't willing to structure this I understand and simply wish you guys continued success.

I'm heading into a meeting here in 10 mins, please discuss and give me a call . I'll be finished in an hour.

Best,
Jamie

Sent from my iPhone

7)

------ Original Message ------
Subject:agreement
Date:Tue, 7 Aug 2012 21:51:32 +0000
From:Janniece Koelin <janniece@vendettaroyalty.com>
To:Jamie Moore <jmoore@locovacapital.com> (jmoore@locovacapital.com) <jmoore@locovacapital.com>
CC:Robert Holms <Robert@vendettaroyalty.com>, [redacted]
[redacted]

Dear Jamie:

Per our telephone conversation I wanted to put in writing our agreement to address your concerns.

1. Upon receiving the completed reserve report on Vendetta Royalty Partners we will sit down with you and review together which option will pay the most money for the portfolio.
2. At the time we have heard from the various parties that are interested in buying the portfolio, or if the brokers suggest that we add additional properties you will participate with us in making the determination of which option will maximize our return.
3. After reviewing the options together you and I will sit down and determine if additional properties need to be added to the portfolio and examine how much capital to add. We will also examine how that will affect your sharing ratio and the value of your interest.
4. We want to maximize your return and value your input as we go through this process. We welcome you as a partner and look forward to your participation.

Thanks,
Janniece

8)

On Aug 10, 2012, at 11:09 AM, Janniece Koelin <Janniece@vendettaroyalty.com> wrote

Dear John:

I didn't want to bother Jamie as I am sure he is in the thick of things right now with the wedding. I was hoping you might be able to give me a status report so that I can plan things on my end. I am a girl that likes to have a plan. Hope all is well with you and that you are able to enjoy the festivities with your fiancée. If you need to reach me my cell is[redacted]

Thanks,

Janniece

9)

Case 1:13-cv-01036 [redacted]

From: John Morally [redacted]
Sent: Friday, August 10, 2012 7:19 PM
To: Janniece Kaelin
Cc: Jamie Moore
Subject: Re: update

We need the report showing the investors capitalization for the fund and I am ready to wire money so I am thinking sometime Monday or Tuesday by 10 am my time you will receive 3 bank wires equaling 3.050.000

So we need the breakdown on who invested to equal the 20 million do not worry this weekend

your funding we be there Monday if you get me the info early morning

John

Sent from my iPod

10)

Begin forwarded message:

> **From:** Janniece Kaelin <janniece@vendettaroyalty.com>
> **Date:** August 11, 2012 3:03:36 PM EDT
> **To:** "Jamie Moore <jmoore@lacovacapital.com> (jmoore@lacovacapital.com)" <jmoore@lacovacapital.com>
> **Cc:** [redacted]
> **Subject:** Emailing: VRP Capital Contributions.xlsx
>
> Dear Jamie:
>
> Here is the information you requested. I hope you have a wonderful day and beautiful memories. I am sure you will be a fabulously handsome groom. Your bride is a lucky girl. Please let me know if you have any questions.
>
> Thanks,
> Janniece

VRP Capital Contributions.xlsx

11)

Case 1:13-cv-01036 [redacted]

12)

ADDENDUM to Subscription Agreement executed between and Lacova Fund I, LLC. and Vendetta Royalty Partners, LTD.

1.) Lacova Fund I, LLC. will receive .1384398 ownership of the entire Vendetta Royalty Partners "VRP"portfolio in exchange for swapping current Limited Partners their existing position for $3,050,000. Upon receiving the completed reserve report on VRP all parties will sit down with Lacova Fund I, LLC. and review together which option will pay the most money for the portfolio. Lacova Fund I, LLC. and VRP must reach consensus and both agree before accepting any new capital infusions which would dilute the ownership ratio prior to the sale of the portfolio and has the first right of refusal on new investment opportunities.

2.) Lacova Fund I, LLC. will receive 3rd and 4th quarter 2012 royalty distributions that are estimated to be $300,000.

3.) Distribution of royalty payments and proceeds on sale of portfolio: VRP agrees to distribute the royalty payments to Lacova Fund I, LLC. before any other limited or general partner. Upon an estimated sale date of the portfolio which is Jan 2013 as discussed, Lacova Fund I, will receive it's ownership distribution which currently is .1384398 % and may be diluted should Lacova Fund I, LLC. and the VRP General Partners decide that an additional capital infusion will maximize the value of the portfolio prior to the sale of the portfolio. Currently as an example: VRP sells the portfolio for $60M. VRP will net approx. $55M after broker fees, debt and expense if any. Lacova Fund I, LLC. will receive .1384398% which is $7,614,189 upon the close in addition to the two royalty payments referenced above for a total payout exit of $7,914,189. Of course this number will vary depending on the final sale amount and exact distribution amounts on the royalty payments.

Date: 8/8/12

Janniece Kaelin	Robert Helms
[signature]	[signature]
General Partner Vendetta Royalty Partners, LTD.	Genera Partner Vendetta Royalty Partners, LTD.
Jamie Moore	John Morally
[signature]	[signature]
Managing Member Lacova Fund I, LLC.	Managing Member Lacova Fund I, LLC.

13)

EXHIBIT E

Case 1:13-cv-01036 [redacted]

Deven [redacted]> 9/14/13

to me

Read that over. Just some info for you. They are gonna buy the guys out in a few weeks is what I'm hearing. Inside of a month. We can chat about it if you want

D

Sent from my iPhone

Begin forwarded message:

> **From:** Janniece Kaelin <Janniece@vendettaroyalty.com>
> **Date:** September 13, 2013, 8:37:47 PM MDT
> **To:** [redacted] <[redacted]>
> **Subject:** FW: FW: Vendetta Royalty Partners

1)

Janniece Kaelin <Janniece@vendettaroyalty.com> 9/27/13

to Deven, me, Robert

Dear Deven and Roland:

Robert is working on this. We would like to talk hopefully sometime tomorrow regarding the emails and messages. Is there a time tomorrow that would work for everyone. I will set up a conference call line for everyone to call into. Don't want you guys worrying. I believe Robert and Katherine have plan to address them. Hope you are having a great time in Mexico.

Love
Janniece

From: Deven Sellers [mailto:dsell3@aol.com]
Sent: Friday, September 27, 2013 5:32 PM
To: Robert Helms
Cc: deven; Janniece Kaelin
Subject: Re: FW: Fwd:

Hey Robert. I'm down in Mexico. No cell service but I can make calls from my room. Let me know a good time to call or just fill me in via email. If you could email me some directions for Roland to follow that'd be great. I can then forward them on to him

Let me know what to do

Sent from my iPad

On Sep 27, 2013, at 8:38 AM, Robert Helms <Robert@vendettaroyalty.com> wrote:

> Deven - working on this and how to best proceed, in the meantime don't do anything, and be sure Roland doesn't do anything. I will call in a few hours. - Robert A. Helms

2)

Case 1:13-cv-01036

Re: RE: FW: Fwd: Inbox

Janniece Kaelin <Janniece@vendettaroyalty.com> 9/28/13
to me, Robert

Hi Roland:

How about 4:30 Pacific Time? Also, can you give us your phone number?

Thanks,
Janniece

From my Android phone on T-Mobile. The first nationwide 4G network.

Roland Barrera wrote:

Anytime between 1p and 5pm pacific works for me.

Sent from my iPhone

On Sep 27, 2013, at 3:41 PM, Deven Sellers <dsell3@aol.com> wrote:

3)

Name (investor)	Initial investment	Wiring Instructions
Richard E. Tauber	500,000.00	Prosperity Bank 55 Waugh Dr. Houston TX 77007 [redacted] [redacted]713 For the account of: Richard E. Tauber & Anne M. Tauber
David W. Tauber	250,000.00	Trustmark Bank 4200 Westheimer, Suite 101 Houston, TX 77027 713 407 1251 ABA Fedwire [redacted] For the Account of: David and Lynda Tauber Account Number [redacted]483
Mike Pickens	500,000.00	North Dallas Bank and Trust 12900 Preston Road Dallas, Texas 75230 972-716-7100 Red Oak Equities Ltd Routing [redacted] Acct # [redacted]00-9
Pickens Trust	250,000.00	North Dallas Bank and Trust 12900 Preston Road Dallas, Texas 75230 972-716-7100 Kenney Marie Dixon Grantor Trust Routing [redacted] Acct# [redacted]77-7
Larry Taylor	100,000.00	Larry K Taylor Velocity Federal Credit Union ABA routing # 314092128 Account # 600494
Terry Luttrell	100,000.00	Citibank NA 111 Wall Street NY, NY 10005 ABA#: [redacted]0089 Account: Charles Schwab & Co., Inc. Account #: [redacted] Detail: Brush Creek Interests, LLC, Acct # [redacted]-8547
Britt Brookshire	550,000.00	Texas Bank & Trust 300 E Whaley Longview TX 75602 ABA [redacted]236 acct # [redacted]033 For the account of: Britton P. Brookshire & Susan P. Brookshire
Robert & Carolyn Feather	100,000.00	American Bank 1601 North I-35 Waco, TX 76715 ABA# [redacted]0034 Account [redacted]3011 For the account of: Robert C. Feather & Carolyn G. Feather
John Duffie	100,000.00	JP Morgan Chase Routing [redacted]0021

4a)

		One Chase Manhattan Plaza New York, NY 10006 For credit to National Financial Services Acct [redacted]8-221 For final credit to acct of John C Duffie [redacted]043
Patsy Bell	50,000.00	Bank Name: UBS AG Address: 677 Washington Blvd Stamford, CT 06901 ABA [redacted]593 For credit to: UBS Bank USA Account #101-WA792479-000 TTEE Account [redacted]0540
John Ratcliffe	100,000.00	Bank of America ABA# [redacted]3593 Acct# [redacted]3616 Merrill Lynch Account# [redacted]0038 For the account of John A. Ratcliffe
	2,550,000.00	

		Initial Investment	3rd Quarter Distribution	4th Quarter Distribution
Red Oak Equities LTD	Mike Pickens	500,000.00	20,854.81	34,195.64
Kervey Marie Dixon Grantor Trust	Pickens Trust	200,000.00	16,327.30	17,083.32
Richard Teuber		500,000.00	20,694.61	34,195.64
Larry Taylor		100,000.00	4,130.92	6,833.33
David Teuber		250,000.00	0.00	12,344.34
John Duffie		100,000.00	0.00	4,937.74
Brush Creek Interest	Terry Lofland	100,000.00	0.00	4,937.74
John & Peggy Ratcliff		100,000.00	0.00	4,937.74
Burd & Bedi Brookshire		500,000.00	0.00	24,688.65
Robert & Carolyn Fechter		100,000.00	0.00	4,937.74
Patsy Bell	(500,000) ~50,000	550,000.00	0.00	0.00
		3,050,000.00	55,707.44	149,033.91

4b)

EXHIBIT F

Case 1:13-cv-01036

John Morally

From:	Emmanuel Salter
Sent:	Friday, July 19, 2013 6:28 PM
To:	jmoore@lacovacapital.com; jpmorally@gmail.com
Subject:	VRP/VRM Quickbooks

Here are the QuickBooks files for VRPartners & VRManagement. From the partners file you will see how much management expenses was transferred to the management acct. From the management acct you will see all of the hidden office expenses the partners don't see. Much of the "promotional expenses" in the VRP acct and "VRP payables" in the VRM acct are advances to the Grady Vaughn family for "future" raised capital. Pay attention to the coding... There are a lot of expenses coded under JSK and/or RAH. These are personal expenses for Robert and Janniece. The VRM acct wont say that a check was cut to Haley Oil every time, rather it may say that a check was cut to one of the employees or Robert to cash at Austin Telco FCU and further credit to Haley Oil at Bank of America. These transaction will also be coded and noted accordingly.

Click on the Link to download the files:
https://www.dropbox.com/sh/2g8mj6qxs2g7wqe/TsIMe0186m

Emmanuel

1)

CAUSE NO. D-1-GN-13-001120

LACOVA CAPITAL GROUP, LLC Plaintiff(s), VS. VENDETTA ROYALTY PARTNERS, LTD.; VENDETTA ROYALTY MANAGEMENT, LLC; HALEY OIL COMPANY, INC., TECHNICOLOR MINERALS, G.P., BAREFOOT MINERALS, G.P., GLOBAL CAPITAL VENTURES, LLC, IRON ROCK INVESTMENTS, LLC, IRON ROCK ROYALTY PARTNERS, LP., IRON ROCK ROYALTY MANAGEMENT, LLC, SEBUD MINERALS, LLC, 03 MINERALS, LLC, LAKE ROCK, LLC, ROBERT ALLEN HELMS, JANNIECE STANFORD KAELIN, DEVEN SELLERS, AND WILLIAM BARLOW. Defendant(s).	§ §	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 261ST JUDICIAL DISTRICT

PLAINTIFF'S SECOND AMENDED PETITION AND APPLICATION FOR RECEIVERSHIP

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, LaCova Capital Group, LLC, in the above entitled and number suit, and file this its Second Amended Petition and Application for Receivership, respectfully showing unto the Court as follows:

I. DISCOVERY

1. This case will proceed under a Level 3 Discovery Plan under Rule 190.4(a), Texas Rules of Civil Procedure.

2)

II. PARTIES AND PROCESS

2. Lacova Capital Group, LLC is a limited liability company incorporated in California with its principal place of business in California.

3. Vendetta Royalty Partners, Ltd., is a Texas limited liability partnership that has been served with process and filed an answer in this suit.

4. Vendetta Royalty Management, LLC, is a Texas limited liability company that has been served with process and filed an answer in this suit.

5. Robert Allen Helms is an individual that has been served with process and filed an answer in this suit.

6. Janniece Stanford Kaelin is an individual that has been served with process and filed an answer in this suit.

7. Haley Oil Company, Inc., is a former Illinois corporation that has forfeited its existence and may be served with process by serving Robert Allen Helms at his work address at 8101 Cameron Road, Suite 109, Austin, Travis County, Texas 78754 or at his home address at

8. Technicolor Minerals, G.P., is a Texas general partnership that may be served with process by serving Robert Allen Helms at his work address at 8101 Cameron Road, Suite 109, Austin, Travis County, Texas 78754 or at his home address at .

9. Barefoot Minerals, G.P. is a Texas general partnership that may be served with process by serving Robert Allen Helms at his work address at 8101 Cameron Road, Suite 109, Austin, Travis County, Texas 78754 or at his home address at Austin,

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

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, V. ROBERT A. HELMS, ET AL., Defendants, and WILLIAM L. BARLOW and GLOBAL CAPITAL VENTURES, LLC, Relief Defendants, solely for the purpose of equitable relief.	§ § § § § § § § § § § § § § § § § § § §	A-13-CV-01036 ML

ORDER DENYING MOTION FOR RECONSIDERATION

On this day the Court considered Defendants [*sic*] Motion to Reconsider Summary Judgment Order & Dispositive Motion, [Dkt. #287], filed October 2, 2015 by Defendant, Roland Barrera, the Corrected (Redacted) version of this Motion [Dkt. #289] filed October 9, 2015, and Plaintiff's Response in Opposition to Defendants' Motion for Reconsideration [Dkt. #288], filed October 7, 2015 in this matter.

I. BACKGROUND

The SEC brought this civil suit against multiple defendants, alleging that over 100 investors were duped into a large-scale Ponzi scheme. On August 21, 2015, this Court entered summary judgment against some of those defendants, and in particular against Roland Barrera.

("Summary Judgment Order," [Dkt. #275]). Barrera had received a commission of over $200,000 for his role in soliciting a $3,050,000 investment from a company run by his personal friend, Jamie Moore. Based on his conduct in soliciting this investment and failing to disclose the size of his commission, the Court found Barrera liable for violations of the Exchange Act's Broker-Dealer and Anti-fraud provisions.

Barrera, although he filed an answer and sat for deposition in this matter, filed no response to the SEC's motion for summary judgment against him. After the entry of the Summary Judgment Order, however, Barrera moved this Court for reconsideration. Barrera asserts he was not an unregistered broker, because he was only tangentially involved in one securities transaction, and he never engaged in securities fraud because he never made any knowing misrepresentations to investors.

II. STANDARD OF REVIEW

As a threshold matter, the Court notes the standard for reconsideration on an interlocutory order such as this one is not, as the SEC suggests, set out by Federal Rule of Civil Procedure 59(e) or 60(b). Because the Court's August 21, 2015 Summary Judgment Order [Dkt. #275] was not a final order within the meaning of 28 U.S.C. § 1291, this Court retains plenary power to review its decision and "'afford such relief . . . as justice requires.'" *McKay v. Novartis Pharm. Corp.*, 751 F.3d 694, 701 (5th Cir. 2014) (quoting *Zimzores v. Veterans Admin.*, 778 F.2d 264, 266 (5th Cir. 1985)). The Court therefore considers Barrera's arguments and evidence under the ordinary standard applicable to a nonmovant resisting a motion for summary judgment. *Zimzores*, 778 F.2d at 267 (citing *Galindo v. Precision American Corp.*, 754 F.2d 1212, 1216 (5th Cir. 1985)).

The summary judgment standard requires the moving party to bear the initial burden of demonstrating that judgment is appropriate as a matter of law. *Davis v. Fort Bend Cty.*, 765 F.3d 480, 484 (5th Cir. 2014). For the reasons outlined in the Court's August 21, 2015 Order, the SEC has met this initial burden. *See generally* Summary Judgment Order [Dkt. #275]. In opposing summary judgment, Barrera now bears the burden to establish the existence of a genuine issue of material fact for trial. *Celtic Marine Corp. v. James C. Justice Co., Inc.*, 760 F.3d 477, 481 (5th Cir. 2014). The Court will view the summary judgment evidence in the light most favorable to Barrera as the nonmovant. *Distribuidora Mari Jose, S.A. de C.V. v. Transmaritime, Inc.*, 738 F.3d 703, 706 (5th Cir. 2013).

III. ANALYSIS

Even under this generous standard, the argument and evidence presented by Barrera in opposition to the SEC's motion for summary judgment fails to raise any issue of material fact with regard to Barrera's liability. *See generally* Motion and Corrected Motion to Reconsider [Dkt. #287, 289].

A. Barrera Acted as an Unregistered Broker

The Court previously found Barrera violated the Broker Provisions of the Exchange Act by soliciting the investment of Lacova Capital LLC ("Lacova") in Vendetta Royalty Partners ("Vendetta") and by acting as a link between Lacova's agent, Jamie Moore, and Vendetta's agent, Deven Sellers, during the negotiation of the investment. Summary Judgment Order [Dkt #275] at 13-15, 31-34. In his Motion to Reconsider, Barrera admits he was involved in soliciting Moore to invest Lacova's money in Vendetta. He nevertheless argues he should not be considered an unregistered broker because he was only involved in one transaction. Mot. Reconsider [Dkt #287, 289] at 2.

In support of this argument, Barrera offers no new evidence to rebut the emails and deposition testimony previously submitted by the SEC. This previously submitted evidence establishes: (a) Sellers offered to pay Barrera half of what Sellers made in commissions from Barrera's introductions to potential investors; (b) Barrera set up a meeting between Sellers and Moore to discuss Moore/Lacova's potential investment in Vendetta; (c) Sellers subsequently copied Barrera on emails to Moore about Vendetta and on an email solicitation offering Moore a second investment opportunity, the "Vesta" portfolio (in which Moore/Vendetta never invested); and (d) Barrera actually received over $200,000 as a result of Moore/Lacova's investment in Vendetta. *See* Summary Judgment Order at 13-17 and citations to record evidence therein. The Court previously found, based on this evidence, that Barrera should be held liable as an unregistered broker because, "[a]lthough it could be argued that Barrera was not necessarily participating in securities transactions 'regularly,' he was hired by Sellers to conduct these types of negotiations 'regularly.'" *Id.* at 33. Barrera's unsupported argument to the contrary does not undercut the Court's analysis because, "as a general matter, 'unsupported allegations or affidavits setting forth ultimate or conclusory facts and conclusions of law are insufficient to either support or defeat a motion for summary judgment.'" *Serna v. Law Office of Joseph Onwuteaka, P.C.*, No. 14-20574, 2015 U.S App. LEXIS 9432, * 15 (5th Cir. June 5, 2015) (quoting *Galindo*, 754 F.2d at 1216).

Additionally and in the alternative, the Court previously found that Barrera's "central role in securing a hefty $3,050,000.00 investment from Lacova" was enough to support unregistered broker liability. *Id.* (citing *SEC v. Kenton Captial, Ltd.*, 69 F. Supp. 2d 1, 12-13 (D.D.C. 1998)). Barrera does not dispute that he introduced Moore to Sellers and received a commission in excess of $200,000 for Moore/Lacova's investment in Vendetta. Mot. Reconsider [Dkt. #287,

289] at 2-6; *see also* Mot. Summ. J. [Dkt. # 260] Ex. 2, Barrera Deposition at 40. Barrera does assert that his role was not ongoing or central, in that he did not increase his interactions with Moore for the purposes of selling the Vendetta securities. Mot. Reconsider [Dkt. #287, 289] at 2-6. He attaches evidence, such as Facebook pages, supporting his contention that his interactions with Moore were the product of a longstanding friendship, not a business solicitation effort. *Id.* at Ex. B.

Essentially, Barrera contends he was paid a mere "finder's fee" and that his ongoing involvement with Moore was a function of their friendship, not an effort to close the Vendetta deal. While a person who acts as a mere "finder in bringing together the parties to transactions" may not be required to register as a broker/dealer, this exception is very limited. *Cornhusker Energy Lexingon, LLC v. Prospect St. Ventures*, No. 8:04CV586, 2006 U.S. Dist. LEXIS 68959, *18-19 (D. Neb. Sept. 12, 2006). A "finder" must register as a broker dealer if he is "performing the functions of a broker-dealer." *Id.* These functions, among other things, include involvement in negotiations. *Id.* Such involvement may include "answer[ing] questions . . . or provid[ing] assistance to customers in resolving problems with a particular broker-dealer or with respect to particular transactions with a participating broker-dealer" and "charg[ing] fees . . . based, directly or indirectly, on . . . the size, value, or occurrence of any securities transactions." *Globaltec Solutions, LLP, and CommandTRADE, LP*, 2005 SEC No-Act. LEXIS 868 (Dec. 28, 2005). In particular, "[t]ransaction-based compensation, or commissions are one of the hallmarks of being a broker-dealer." *Cornhusker Energy*, 2006 U.S. Dist. LEXIS 68959 at *19 (quoting *John Woods. Loofbourrow Associates, Inc.*, 2006 SEC No-Act. LEXIS 523 (June 29, 2006)).

The undisputed facts in this case establish Barrera was not merely paid a "finders' fee" for providing Moore as an investment lead. Barrera was paid a commission when Moore/Lacova

actually invested in Vendetta.[1] Barrera set up and attended the meeting introducing Moore to Sellers and the Vendetta offering. Mot. Summ. J. [Dkt. # 260] Ex. 2, Barrera Deposition at 40. This was not the sum total of his involvement, however. Moore and Barrera exchanged multiple email communications concerning the Vendetta investment. Mot. Reconsider [Dkt. #287, 289], Ex. C. Barrera stated, in deposition, that Moore "talked about it [the Vendetta investment] every time I seen him [*sic*]" after that first meeting. *Id.* at 86-87. On at least one occasion, Barrera conveyed Moore's questions about the investment to Sellers. *Id.* at 85-86. Ultimately, after the investment deal closed, Barrera gave Moore at least $5,000 in cash from the proceeds of Barrera's commission. *Id.* at 71-72. These undisputed facts establish Barrera did more than simply introduce Moore to Sellers—he capitalized on his friendship with Moore to solicit and help close the investment deal between Lacova and Vendetta. Therefore, while he may be a "finder," he also performed the functions of a broker and thereby breached the Broker Provisions of the Exchange Act. *Cornhusker Energy*, 2006 U.S. Dist. LEXIS 68959 at *19.

B. Barrera Fraudulently Concealed the Amount of His Commission

The Court previously granted summary judgment on Barrera's fraud liability under the Exchange Act. Summary Judgment Order [Dkt. #275] at 15-17, 29-31. Barrera seeks reconsideration of this issue on the grounds that he had no actual knowledge of the terms of the Vendetta investment deal or the relationship between his commission and the investment deal. Mot. Reconsider [Dkt. #287, 289] at 2-6.

In his deposition, however, Barrera admitted that Moore asked him after the initial meeting whether Barrera "was going to get anything" in connection with a Lacova investment.

[1] Barrera argues, in the alternative, that he is entitled to the protection of the "safe harbor" for Associated Persons of an Issuer set out in 17 C.F.R § 240.3a4-1. A prerequisite for the application of the safe harbor, however, is that the associated person is "not compensated by the payment of commissions based either directly or indirectly on transactions in securities." *Id.* As Barrerra received a commission of over $200,000 for the sale of the Vendetta investment to Lacova, he is not entitled to invoke the safe harbor provisions. *Id.*

Mot. Summ. J. [Dkt. #260] at Ex. 2, Barrera Depo. at 65-66. Barrera considered this information "none of his business" and replied that Sellers "was going to take care of [him]" without disclosing Sellers' promise to split any commission received on the deal. *Id.* Barrera further testified that he never told Moore the amount of his commission after he received it. *Id.* at 87-88.

Barrera, as a broker—even an unregistered broker—had a fiduciary duty to the investor to disclose material facts. *SEC v. Randy,* 38 F. Supp. 2d 657, 670 N.D. Ill. 1999); *Dirks v. SEC*, 463 U.S. 646, 658 (1983). Barrera's failure to read the terms of the securities offering is, at best, reckless disregard for this duty. *Randy*, 38 F. Supp. 2d at 670. Furthermore, Barrera's conduct in withholding information about the structure and amount of his compensation, even after Moore asked him a direct question about it, amounts to an intentional breach of this fiduciary duty. Mot. Summ. J. Ex. 2, Barrera Depo at 65-66; *id.* at 85-88; *see also Kaufman & Enzer Joint Venture v. Dedman*, 680 F. Supp. 805, 812 (W.D. La. 1987) (finding "commission arrangement" material). Thus, the argument and evidence presented in Barrera's Motion to Reconsider [Dkt. #287, 289] cannot raise a material fact issue as to whether Barrera violated the Antifraud Provisions of the Exchange Act by failing to disclose the structure and amount of his commission to Moore.

III. CONCLUSION

Barrera's Motion to Reconsider [Dkt. #287, 289] does not raise a material fact issue as to his liability in this case. Therefore, the Court reaffirms its August 21, 2015 grant of summary judgment against him.

For the reasons stated above,

IT IS ORDERED that the Motion to Reconsider [Dkt. #287, 289] is DENIED.

SIGNED on October 20, 2015.

MARK LANE
UNITED STATES MAGISTRATE JUDGE

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.	§	
	§	**Civil Action No.:**
Defendants,	§	**1:13-cv-1036-ML**
	§	
and	§	
	§	
WILLIAM L. BARLOW, ET AL.,	§	
	§	
Relief Defendants, solely for the purposes of equitable relief.	§	
	§	

FINAL JUDGMENT AS TO DEFENDANTS ROBERT A. HELMS, JANNIECE S. KAELIN, DEVEN SELLERS, AND ROLAND BARRERA

The Court entered Summary Judgment against Defendants Robert A. Helms, Janniece S. Kaelin, Devin Sellers, and Roland Barrera (collectively, "Defendants") on August 21, 2015. Therefore:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that each and all of the Defendants are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any 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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise:

(a) Defendants' officers, agents, servants, employees, and attorneys; and

(b) other persons in active concert or participation with Defendants or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that each and all of the Defendants are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) 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

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise:

(a) Defendants' officers, agents, servants, employees, and attorneys; and

(b) other persons in active concert or participation with Defendants or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Deven Sellers and Roland Barrera are permanently restrained and enjoined from violating Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)] by directly or indirectly making use of the mails or means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce, the purchase or sale of securities (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills), without being registered as a broker or dealer, or being associated with a registered broker or dealer in accordance with Section 15(a)(b) of the Exchange Act [15 U.S.C. § 78o(b)]—unless exempted from registration pursuant to Section 15(a)(2) of the Exchange Act [15 U.S.C. § 78o(a)(2)].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise:

(a) Defendant Barrera's officers, agents, servants, employees, and attorneys and Defendant Sellers' officers agents, servants, employees, and attorneys; and

(b) other persons in active concert or participation with Defendant Barrera and/or Sellers or with anyone described in (a).

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Robert A. Helms and Janneice S. Kaelin are jointly and severally liable for disgorgement of $31,422,861, representing proceeds gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $3,873,043.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Robert A. Helms is individually liable for a civil penalty in the amount of $4,221,058 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Janneice S. Kaelin is individually liable for a civil penalty in the amount of $4,221,058 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Deven Sellers and Roland Barrera are jointly and severally liable for disgorgement of $423,500,

representing proceeds gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $36,243.87.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Deven Sellers is also individually liable for a civil penalty in the amount of $150,000 pursuant to Section 20(d) of the Securities Act [15U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Roland Barrera is individually liable for a civil penalty in the amount of $150,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §
78u(d)].

Each and all of the Defendants shall satisfy their obligations by paying the Securities and Exchange Commission within THIRTY ONE (31) days after entry of this Final Judgment as follows:

A. Helms and Kaelin shall jointly and severally pay $35,295,904;

B. Helms shall individually pay an additional $4,221,058;

C. Kaelin shall individually pay an additional $4,221,058;

D. Sellers and Barrera shall jointly and severally pay $459,743.87;

E. Sellers shall individually pay an additional $150,000; and

F. Barrera shall individually pay an additional $150,000.

Each Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov at http://www.sec.gov/about/offices/ofm.htm. Each

Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; identifying the Defendant by name as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Each Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after THIRTY ONE (31) days following entry of this Final Judgment. Each Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

The Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, no Defendant shall, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that Defendant is entitled to, nor shall Defendant further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against any or all Defendants by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

V

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment. There being no just reason for delay, however, the Clerk is ordered to enter this Final Judgment forthwith and without further notice. This Final Judgment is intended to terminate and dispose of all claims as to Defendants Robert A. Helms, Janniece S. Kaelin, Devin Sellers, and Roland

Barrera and to render this Court's August 21, 2015 Summary Judgment Order final and appealable, pursuant to Rule 54(b) of the Federal Rules of CivilProcedure.

SIGNED October 21, 2015.

MARK LANE
UNITED STATES MAGISTRATE JUDGE

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17004

In the Matter of DEVEN SELLERS and ROLAND BARRERA, Respondents.	JOINT PREHEARING CONFERENCE STATEMENT

On January 5, 2016, the Hearing Officer ordered the Division of Enforcement and Respondents Deven Sellers and Roland Barrera to hold an initial prehearing conference without the Hearing Officer and to file a joint statement on the prehearing conference by January 22, 2016. The Hearing Officer specified that the joint statement should address each item in Rule 221(c), include proposed dates where applicable, and state whether the parties have different information regarding service of the Order Instituting Proceedings ("OIP"). The parties having conferred as ordered on January 8, 2016, submit this joint statement.

First, the parties have no information different from that set out in the Hearing Officer's Order of January 5, 2016, regarding service of the OIP.

Second, as to each item in Rule 221(c), the parties state[1] as follows:

1. Simplification and clarification of the issues.

This is a "follow-on" administrative proceeding to determine what, if any, remedial sanction is appropriate in the public interest following permanent injunctions imposed in a Final Judgment on August 28, 2015, against Sellers and Barrera by a United States district court.

[1] Where the parties' views differ on a particular matter, each party's view is set out separately as to that matter.

In Sellers and Barrera's view, the Final Judgment entered against them is unjust because it is based on unfounded findings of fact. They are considering whether to file an appeal to have the district court's Final Judgment, along with its injunctions against them, overturned.

In the Division's view, any such appeal is irrelevant to this proceeding: The injunctions giving rise to it have been entered and remain in effect. The Division further asserts that, because no genuine issue of material fact is present in this proceeding, it should be resolved based on a motion for summary disposition by the Division.

2. Exchange of witness and exhibit lists and copies of exhibits.

The parties consider it premature at this stage to exchange witness and exhibit lists and copies of exhibits. The parties propose that, if the Hearing Officer sets a hearing date in this proceeding, another prehearing conference be convened to determine dates and resolve any issues regarding exchange of witness and exhibit lists and copies of exhibits

3. Stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents.

A. The parties stipulate to the facts alleged in Section II. B. of the OIP.

B. The parties stipulate that the Division served Barrera the OIP on December 23, 2015.

C. The parties stipulate that the Division served Sellers the OIP on December 26, 2015.

D. The parties stipulate the admissibility into evidence for all purposes the following documents on the docket of *SEC v. Robert A. Helms, et al.* Case No. 1:13-cv-01036-ML in the United States District Court for the Western District of Texas:

i. Memorandum Opinion and Order on Motion for Summary Judgment, identified as Document 275.

ii. Defendants Motion to Reconsider Summary Judgment Order & Dispositive motion, identified as Document 289.

iii. Order Denying Motion for Reconsideration, identified as Document 291.

iv. Final Judgment as to Defendants Robert A. Helms, Janniece S. Kaelin, Deven Sellers, and Roland Barrera, identified as Document 292.

4. Matters of which official notice may be taken.

The parties agree that the Hearing Officer may take judicial notice of the documents described in Item 3, above.

5. The schedule for exchanging prehearing motions or briefs, if any.

A. Motions for summary disposition: February 29, 2016.

B. Oppositions are due: March 15, 2016.

C. Replies: March 25, 2016.

The parties request that, if this matter is not resolved on a motion for summary disposition and the matter is set for hearing, that the hearing officer allow convene a prehearing conference for scheduling the exchange of any other prehearing motions.

6. **The method of service for papers other than Commission orders.**

A. On the Division by mail or by email to McColeT@sec.gov and JusticeT@sec.gov.

B. On Sellers by mail or by email to DevenSellers@gmail.com.

C. On Barrera by mail or by email to Barrera.Roland@gmail.com.

7. Summary disposition of any or all issues.

The Division asserts that all issues may be resolved by summary disposition.

8. Settlement of any or all issues.

No.

9. Determination of hearing dates.

The parties propose May 24-27, 2016, in the SEC's Los Angeles Regional Office or within a suitable location nearby.

10. Amendments to the order instituting proceedings or answers thereto.

None.

11. Production of documents as set forth in Rule 230, and prehearing production of documents in response to subpoenas duces tecum as set forth in Rule 232.

All such documents have been available for review by Respondents in the SEC's Fort Worth Regional Office since January 14, 2016.

12. Specification of procedures as set forth in Rule 202.

This is an enforcement proceeding. This item therefore does not apply.

13. Such other matters as may aid in the orderly and expeditious disposition of the proceeding.

Both Respondents are *pro se*. Respondent Barrera requests that the hearing officer convene an in-person prehearing conference to allow opportunity for him to raise certain issues directly with the hearing officer. In particular, Mr. Barrera is interested in getting a better understanding of the relationship between this proceeding and the civil action in United States district court and the extent to which proceeding will afford him any opportunity to challenge the findings of the district court its final judgment.

Dated: January 22, 2016

Respectfully submitted,

s/Timothy S. McCole
Timothy S. McCole
Mississippi Bar No. 10628

Attorney for Division of Enforcement
Securities and Exchange Commission
Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
Fort Worth, Texas 76102-6882
E-mail: McColeT@sec.gov
Telephone: (817) 978-6453
Facsimile: (817) 978-4927
DIVISION COUNSEL

s/Roland Barrera
Roland Barrera
RESPONDENT, *Pro Se*

s/Deven Sellers
Deven Sellers
RESPONDENT, *Pro Se*

FILED
2013 DEC -3 AM 11: 38
CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY ______ DEPUTY

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,	§ A13CV1036 LY
VESTA ROYALTY MANAGEMENT, LLC,	§
IRON ROCK ROYALTY PARTNERS, LP,	§ Civil Action No.:
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.	§
	§

COMPLAINT

For its Complaint, Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

I. Summary

1. Defendants Robert A. Helms and Janniece S. Kaelin are engaged in fraudulent securities offerings from an office in Austin, Texas. Since at least July 2011, they have offered investors securities issued by Defendant Vendetta Royalty Partners, Ltd. ("Vendetta Partners"), a limited partnership they control. Through December 31, 2012, they have raised at least $17.9 million from at least 80 investors in at least 13 states, promising them that Vendetta Partners would use more than 99% of the investment proceeds to acquire a lucrative portfolio of oil-and-gas royalty interests.

2. In reality, Helms and Kaelin misappropriated the vast majority of the Vendetta Partners offering proceeds, using the funds to cover personal expenses, payments to Relief Defendants William L. Barlow and Global Capital Ventures, LLC ("Global Capital"), payments to other entities they control—Haley Oil Company, Inc. ("Haley Oil"), Technicolor Minerals, G.P., ("Technicolor Minerals"), and Barefoot Minerals, G.P. ("Barefoot")—and payments to investors of approximately $5.9 million in so-called "Partnership income." They derived the so-called Partnership income, however, primarily from offering proceeds. In other words, Helms and Kaelin operated a Ponzi scheme through Vendetta Partners.

3. In the course of the scheme, Helms and Kaelin misrepresented and omitted to disclose material facts to investors. They grossly understated bank-loan payments made with offering proceeds. They concealed Vendetta Partners' imminent bank-loan default. And they represented that there were no material legal proceedings pending against them or Vendetta Partners when, in fact, they and Vendetta Partners were defendants in a civil case alleging they

defrauded the plaintiff of $1.2 million, and were subject to other legal proceedings.

4. In addition, Helms and Kaelin paid combined commissions totaling $423,500 to Defendants David Sellers and Roland Barrera, who sold Vendetta Partnership securities to an investor for $3,050,000. Sellers and Barrera falsely represented to the investor that they would receive only "small" commissions—in keeping with Vendetta Partners offering documents stating that promotional expenses would not exceed $50,000—when their actual commission was nearly 14% of the purchase price.

5. After Vendetta Partners, Helms and Kaelin launched two more fraudulent offerings, Vesta Royalty Partners, LP ("Vesta Partners") in 2012 and Iron Rock Royalty Partners LP ("Iron Rock Partners") in 2013. For each of these limited partnerships, they control the general partner, Vesta Royalty Management, LLC ("Vesta Management") and Iron Rock Royalty Management, LLC ("Iron Rock Management"), respectively. In the Vesta Partners offering, they have touted potential investment returns ranging from 300% to 500% to be achieved in just five to seven years. In reality, their return projections are baseless.

6. They are promoting the Iron Rock Partners offering through Iron Rock Management and other companies they control, specifically Defendants SeBud Minerals, LLC ("SeBud Minerals"), Lake Rock, LLC ("Lake Rock"), G3 Minerals, LLC (G3 Minerals), and Arcady Resources, LLC ("Arcady Resources"). In the Iron Rock Partners offering, they describe their intent to raise $300 million by April 2014 and tout their "honesty and trustworthiness" and Vendetta Partners' "successful performance." In reality, Vendetta Partners is a Ponzi scheme, and they are dishonest and untrustworthy.

7. By committing the acts alleged in this Complaint, the Defendants directly and indirectly engaged in, and unless restrained and enjoined by the Court will continue to engage in,

acts, transactions, practices, and courses of business that violate the anti-fraud provisions of the federal securities laws, specifically Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. Defendants Sellers and Barrera also violated Exchange Act Section 15(a) [15 U.S.C. § 78o(a)] by being unregistered brokers in the offerings described herein.

8. The Commission brings this action seeking permanent injunctions, disgorgement plus prejudgment interest, and civil penalties, as to each Defendant and disgorgement as to each Relief Defendant and all other equitable and ancillary relief to which the Court determines the Commission is entitled.

II. Jurisdiction and Venue

9. The Court has jurisdiction over this action under Section 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(d) and 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78(aa)]. Venue is proper because the Defendants and Relief Defendants reside in, and a substantial part of the events and omissions giving rise to the claims occurred in, the Western District of Texas.

III. The Parties

10. Plaintiff Commission is an agency of the United States government.

11. Defendant Robert A. Helms is a natural person residing in Austin, Texas.

12. Defendant Janniece S. Kaelin is a natural person residing in Austin, Texas.

13. Defendant Deven Sellers is a natural person residing in Arvada, Colorado.

14. Roland Barrera is a natural person residing in Costa Mesa, California.

15. Defendant Vendetta Partners is a Texas limited partnership in Austin, Texas.

16. Defendant Vendetta Management is a Texas limited liability company in Austin, Texas.

17. Defendant Vesta Partners is a Texas limited partnership in Austin, Texas.

18. Defendant Vesta Management is a Texas limited liability company in Austin, Texas.

19. Defendant Iron Rock Partners is a Delaware limited partnership principally operating in Austin, Texas.

20. Defendant Iron Rock Management is a Delaware limited liability company principally operating in Austin, Texas.

21. Defendant Arcady Resources is a Texas limited liability company in Austin, Texas.

22. Defendant Barefoot Minerals is a Texas general partnership in Austin, Texas.

23. Defendant G3 Minerals is a Texas limited liability company in Austin, Texas.

24. Defendant Haley Oil is an Illinois corporation principally operating in Austin, Texas.

25. Defendant Lake Rock is a Texas limited liability company in Austin, Texas.

26. Defendant SeBud Minerals is a Texas limited liability company in Austin, Texas.

27. Defendant Technicolor Minerals is a Texas general partnership in Austin, Texas.

28. Relief Defendant William Barlow is a natural person residing in Austin, Texas.

29. Relief Defendant Global Capital is a Texas limited liability company in Austin, Texas.

V. Facts

A. Background

30. 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. Helms and Kaelin control each entity through its general partner—Defendants Vendetta Management, Vesta Management, and Iron Rock Management, respectively.

31. Helms and Kaelin operate each limited partnership from an office at 8101 Cameron Rd. Suite 109, in Austin, Texas. 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. Helms and Kaelin also directly offer and sell the securities to investors in person at the Austin office and through emails and phone calls.

B. The Vendetta Partners Offering

32. Helms and Kaelin formed Vendetta Partners in 2009. 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. From January 1, 2011, through December 31, 2012, Vendetta Partners' royalty interests generated income totaling approximately $1.4 million.

33. 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. The Form D falsely stated that Vendetta Partners had not yet sold any securities in the offering. In reality, Vendetta Partners sold securities to two investors on July 29 and 30, 2011, in exchange for $275,000 combined. 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. 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. 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.

34. 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. 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."

35. 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." 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.

36. Under the heading, "Accounting," the PPM also falsely stated that Vendetta Management would furnish investors periodic reports on Vendetta Partners' property acquisitions and operational results. In fact, it never furnished investors such reports.

37. Finally, under the heading "Litigation," the PPM falsely stated: "There are no material pending legal proceedings against the Partnership, the General Partner or its Affiliates." 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. 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. The Illinois EPA initiated action against Haley Oil in May 2012, alleging illegal "release incidents." And the IRS initiated action against Kaelin in October 2012, relating to a tax liability.

38. 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. 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%

39. 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 in at least 13 states. 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. 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.

40. Helms and Kaelin controlled and oversaw the use of all funds that came into Vendetta Partners. They shared signatory authority on its bank accounts and on the bank accounts of Vendetta Management. 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. 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.

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

42. Vendetta Partners, at the direction of Helms and Kaelin, also used approximately $5.9 million to make so-called partnership-income distributions to investors. They used money from later investors to pay these distributions to earlier investors. 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.

43. 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. Neither Barlow nor Global Venture had any legitimate claim to the

proceeds. Barlow and Global Venture acquired at least some of these proceeds in round-trip transactions with companies that Helms and Kaelin controlled. Helms orchestrated these transactions was to create fictitious income to support the fraudulent partnership-income distributions.

44. For example, on November 17, 2011, Helms and Kaelin transferred $2,208,800 from Vendetta Partners to Barlow. The next day, Barlow transferred $2,200,300 to Defendant Haley Oil, a company that Helms controlled, retaining $8,500. 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. 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. Helms and Kaelin distributed the nearly $2 million from the roundtrip transactions to Vendetta Partners investors, falsely characterizing these payments as partnership-income distributions. Haley Oil retained investor funds totaling $245,300 that it received in the roundtrip transactions.

45. On several occasions, Helms and Kaelin provided investors tours of their Austin office to promote their securities offerings. 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. They falsely represented that the investors would earn a return of 150% to 200% on the investment within several months. 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. 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.

46. During office tours, Helms and Kaelin 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. Helms and Kaelin falsely stated to potential investors that the financial analyst had a degree from the University of Texas. Helms and Kaelin prohibited the financial analyst, under threat of demotion, from telling investors that he did not actually have a degree.

47. 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 in **paragraph 45**, above. When offering the investment, Sellers and Barrera represented to the investors that they would split a "small" commission. 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. 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

48. Since at least, July 2012, Helms, Kaelin, Sellers, and Barrera have offered to sell investors securities issued by Defendant Vesta Partners. 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. 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. It described Vesta Partners management—including Helms and

Kaelin—as having a "Proven track record of consistent investor cash-flows and overall market performance." And it said that Helms and Kaelin had experience "managing and successfully exiting royalty . . . interest investments, including . . . Vendetta Royalty Partners, Ltd."

49. 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

50. 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. The Form D indicates that Iron Rock Partners seeks to raise $300 million over a period not to exceed one year. 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. It further says that the offering will only be solicited in Florida, New York, North Carolina, and Pennsylvania.

51. 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. 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.

52. On March 1, 2013, Sellers emailed an investor located in California, attaching a "Proposal" in which Sellers offered for sale Iron Rock Partners securities. The Proposal falsely

stated that investors could expect a 300% to 500% return in five to seven years. As is evident in Helms and Kaelin's disastrous Vendetta Partners oil-and-gas project, these earnings projections were baseless. It further said the Iron Rock Partners management team—including Helms and Kaelin—has an "industry reputation of honesty and trustworthiness." 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.

FIRST CLAIM
Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5thereunder [17 C.F.R. § 240.10b-5]

53. Plaintiff Commission realleges and incorporates by reference paragraphs 1 through 54 of this Complaint as if set forth verbatim.

54. Each Defendant, by engaging in the conduct described above, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, knowingly or severely recklessly:

a. employed a device, scheme, or artifice to defraud;

b. made an untrue statement of a material fact or omitted 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. engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit upon a person.

55. By engaging in the conduct described above, each Defendant violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM
Violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]

56. Plaintiff Commission realleges and incorporates by reference paragraphs 1 through 54 of this Complaint as if set forth verbatim.

57. Each Defendant, by engaging in the conduct above, singly or in concert with others, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

a. knowingly or severely recklessly employed a device, scheme, or artifice to defraud, or

b. (b) knowingly, recklessly, or negligently obtained money or property by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

c. (c) knowingly, recklessly, or negligently engaged in a transaction, practice, or course of business which operated or would operate as a fraud or deceit upon the purchaser.

58. By reason of the foregoing, each Defendant violated, and unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

THIRD CLAIM
Violations of Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)]

59. Plaintiff Commission realleges and incorporates by reference paragraphs 1 through 54 of this Complaint as if set forth verbatim.

60. Defendants Sellers and Barrera, by engaging in the conduct described above, directly or indirectly made use of the mails or means or instrumentalities of interstate commerce

to effect transactions in, or to induce or attempt to induce, the purchase or sale of securities, without being registered as a broker or dealer, or being associated with a registered broker or dealer in accordance with Section 15(a) (1) of the Exchange Act [15 U.S.C. § 78o(a) (1)].

61. Accordingly, Defendants Sellers and Barrera were brokers within the definition of that term in Section 3(a)(4) of the Exchange Act which defines "broker" as any person "engaged in the business of effecting transactions in securities for the account of others." Defendants Sellers and Barrera were never so registered and, acted as brokers which included: (1) solicitation of investors to purchase securities; (2) involvement in negotiations between the issuer and the investor; and (3) receipt of transaction-related compensation.

62. By reason of the foregoing, Defendants Rizvi and Strategy Partners violated and, unless enjoined, will continue to violate Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a) (1)].

REQUEST FOR RELIEF

Plaintiff respectfully requests that this Court:

I.

Permanently enjoin each Defendant from violating Section 17(a) of the Securities Act [15 U.S.C. § 77e(a)] and Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

II.

Permanently enjoin Defendants Sellers and Barrera from violating Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)(1)].

III.

Order each Defendant and Relief Defendant to disgorge an amount equal to the funds and

benefits obtained illegally, or to which that Defendant or Relief Defendant otherwise has no legitimate claim, as a result of the violations alleged, plus prejudgment interest on that amount.

IV.

Order each Defendant to pay a civil penalty in an amount determined by the Court pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] for the violations alleged herein.

V.

Order such other relief as this Court may deem just and proper.

December 3, 2103

Respectfully submitted,
/s/Timothy S. McCole
TIMOTHY S. McCOLE
Plaintiff's Lead Attorney
Mississippi Bar No. 10628
United States Securities and Exchange Commission
Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, Texas 76102
Telephone: (817) 978-6453
FAX: (817) 978-4927
E-mail: McColeT@SEC.gov

EXHIBIT E

Case 1:13-cv-01036 [redacted]

Deven <[redacted]> 9/14/13
to me

Read that over. Just some info for you. They are gonna buy the guys out in a few weeks is what I'm hearing. Inside of a month. We can chat about it if you want

D

Sent from my iPhone

Begin forwarded message:

> **From:** Janniece Kaelin <Janniece@vendettaroyalty.com>
> **Date:** September 13, 2013, 8:37:47 PM MDT
> **To:** [redacted] <[redacted]>
> **Subject:** FW: FW: Vendetta Royalty Partners

1)

Janniece Kaelin <Janniece@vendettaroyalty.com> 9/27/13
to Deven, me, Robert

Dear Deven and Roland:

Robert is working on this. We would like to talk hopefully sometime tomorrow regarding the emails and messages. Is there a time tomorrow that would work for everyone. I will set up a conference call line for everyone to call into. Don't want you guys worrying. I believe Robert and Katherine have plan to address them. Hope you are having a great time in Mexico.

Love
Janniece

From: Deven Sellers [redacted]
Sent: Friday, September 27, 2013 5:32 PM
To: Robert Helms
Cc: deven; Janniece Kaelin
Subject: Re: FW: Fwd:

Hey Robert. I'm down in Mexico. No cell service but I can make calls from my room. Let me know a good time to call or just fill me in via email. If you could email me some directions for Roland to follow that'd be great. I can then forward them on to him

Let me know what to do

Sent from my iPad

On Sep 27, 2013, at 8:38 AM, Robert Helms <Robert@vendettaroyalty.com> wrote:

> Deven - working on this and how to best proceed, in the meantime don't do anything, and be sure Roland doesn't do anything. I will call in a few hours. - Robert A. Helms

2)

Re: RE: FW: Fwd: Inbox

Janniece Kaelin <Janniece@vendettaroyalty.com> 9/28/13
to me, Robert

Hi Roland:

How about 4:30 Pacific Time? Also, can you give us your phone number?

Thanks,
Janniece

From my Android phone on T-Mobile. The first nationwide 4G network.

Roland Barrera wrote:

Anytime between 1p and 5pm pacific works for me.

Sent from my iPhone

On Sep 27, 2013, at 3:41 PM, Deven Sellers <g> wrote:

3)

Name (Investor)	Initial Investment	Wiring Instructions
Richard E. Tauber	500,000.00	Prosperity Bank 58 Waugh Dr. Houston TX 77007 713 For the account of Richard E. Tauber & Anne M. Tauber
David W. Tauber	250,000.00	Trustmark Bank 4200 Westheimer, Suite 101 Houston, TX 77027 713 407 1251 ABA Fedwire For the Account of David and Lynda Tauber Account Number 433
Mike Pickens	500,000.00	North Dallas Bank and Trust 12900 Preston Road Dallas, Texas 75230 972-716-7100 Red Oak Equities Ltd Routing Acct # 08-9
Pickens Trust	250,000.00	North Dallas Bank and Trust 12900 Preston Road Dallas, Texas 75230 972-716-7100 Kenney Marie Dixon Grantor Trust Routing Acct 177-7
Larry Taylor	100,000.00	Larry K Taylor Velocity Federal Credit Union ABA routing # 314092128 Account # 600494
Terry Lidstell	100,000.00	Citibank NA 111 Wall Street NY, NY 10005 ABA#: 0089 Account: Charles Schwab & Co., Inc. Account #: Detail: Brush Creek Interests, LLC, Acct # 6547
Britt Brookshire	500,000.00	Texas Bank & Trust 300 E Whaley Longview TX 75602 ABA 236 acct # 035 For the account of Britton P. Brookshire & Susan F. Brookshire
Robert & Carolyn Feather	100,000.00	American Bank 1601 North I-35 Waco, TX 78715 ABA# 0034 Account 3011 For the account of Robert C. Feather & Carolyn G. Feather
John Duffie	100,000.00	JP Morgan Chase Routing 0021

4a)

Case 1:13-cv-01036 [redacted]

		One Chase Manhattan Plaza New York, NY 10006 For credit to National Financial Services Acct [redacted]6-221 For final credit to acct of John C Duffie [redacted]040
Patsy Bell	50,000.00	Bank Name: UBS AG Address: 677 Washington Blvd Stamford, CT 06901 ABA [redacted]7693 For credit to: UBS Bank USA Account #101-WA792479-000 TTEE Account [redacted]0540
John Ratcliffe	100,000.00	Bank of America ABA# [redacted]5693 Acct# [redacted]3516 Merrill Lynch Account# [redacted]0038 For the account of John A. Ratcliffe
	2,550,000.00	

			Initial Investment	3rd Quarter Distribution	4th Quarter Distribution
Red Oak Equities LTD	Mike Pickens		500,000.00	20,854.81	34,195.64
Kerney Marie Dixon Grantor Trust	Pickens Trust		250,000.00	16,327.30	17,083.32
Richard Tauber			500,000.00	20,694.61	34,156.64
Larry Taylor			100,000.00	4,130.92	6,833.33
David Tauber			250,000.00	0.00	12,344.34
John Duffie			100,000.00	0.00	4,937.74
Brush Creek Interest	Terry Lofland		100,000.00	0.00	4,937.74
John & Peggy Ratcliff			100,000.00	0.00	4,937.74
Bural & Dedi Brookshire			500,000.00	0.00	24,688.65
Robert & Carolyn Fechter			100,000.00	0.00	4,937.74
Patsy Bell	(500,000)	50,000	550,000.00	0.00	0.00
			3,050,000.00	55,707.44	148,033.91

4b)

EXHIBIT F

Case 1:13-cv-01036

John Morally

From:	Emmanuel Salter [redacted]
Sent:	Friday, July 19, 2013 6:28 PM
To:	jmoore@lacovacapital.com; [redacted]
Subject:	VRP/VRM Quickbooks

Here are the QuickBooks files for VRPartners & VRManagement. From the partners file you will see how much management expenses was transferred to the management acct. From the management acct you will see all of the hidden office expenses the partners don't see. Much of the "promotional expenses" in the VRP acct and "VRP payables" in the VRM acct are advances to the Grady Vaughn family for "future" raised capital. Pay attention to the coding.. There are a lot of expenses coded under JSK and/or RAH. These are personal expenses for Robert and Janniece. The VRM acct wont say that a check was cut to Haley Oil every time, rather it may say that a check was cut to one of the employees or Robert to cash at Austin Telco FCU and further credit to Haley Oil at Bank of America. These transaction will also be coded and noted accordingly.

Click on the Link to download the files:
https://www.dropbox.com/sh/2g8mj6qzs2g7woe/TsMe0186m

Emmanuel

1)

CAUSE NO. D-1-GN-13-001120

LACOVA CAPITAL GROUP, LLC Plaintiff(s), VS. VENDETTA ROYALTY PARTNERS, LTD.; VENDETTA ROYALTY MANAGEMENT, LLC; HALEY OIL COMPANY, INC., TECHNICOLOR MINERALS, G.P., BAREFOOT MINERALS, G.P., GLOBAL CAPITAL VENTURES, LLC, IRON ROCK INVESTMENTS, LLC, IRON ROCK ROYALTY PARTNERS, LP., IRON ROCK ROYALTY MANAGEMENT, LLC, SEBUD MINERALS, LLC, 03 MINERALS, LLC, LAKE ROCK, LLC, ROBERT ALLEN HELMS, JANNIECE STANFORD KAELIN, DEVEN SELLERS, AND WILLIAM BARLOW. Defendant(s).	§	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 261ST JUDICIAL DISTRICT

PLAINTIFF'S SECOND AMENDED PETITION AND APPLICATION FOR RECEIVERSHIP

TO THE HONORABLE JUDGE OF SAID COURT;

COMES NOW, LaCova Capital Group, LLC, in the above entitled and number suit, and file this its Second Amended Petition and Application for Receivership, respectfully showing unto the Court as follows:

I. DISCOVERY

1. This case will proceed under a Level 3 Discovery Plan under Rule 190.4(a), Texas Rules of Civil Procedure.

2)

II. PARTIES AND PROCESS

2. Lacova Capital Group, LLC is a limited liability company incorporated in California with its principal place of business in California.

3. Vendetta Royalty Partners, Ltd., is a Texas limited liability partnership that has been served with process and filed an answer in this suit.

4. Vendetta Royalty Management, LLC, is a Texas limited liability company that has been served with process and filed an answer in this suit.

5. Robert Allen Helms is an individual that has been served with process and filed an answer in this suit.

6. Janniece Stanford Kaelin is an individual that has been served with process and filed an answer in this suit.

7. Haley Oil Company, Inc., is a former Illinois corporation that has forfeited its existence and may be served with process by serving Robert Allen Helms at his work address at 8101 Cameron Road, Suite 109, Austin, Travis County, Texas 78754 or at his home address at Austin, Texas .

8. Technicolor Minerals, G.P., is a Texas general partnership that may be served with process by serving Robert Allen Helms at his work address at 8101 Cameron Road, Suite 109, Austin, Travis County, Texas 78754 or at his home address at , Austin, Texas

9. Barefoot Minerals, G.P. is a Texas general partnership that may be served with process by serving Robert Allen Helms at his work address at 8101 Cameron Road, Suite 109, Austin, Travis County, Texas 78754 or at his home address at Austin, Texas .

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

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, V. ROBERT A. HELMS, ET AL., Defendants, and WILLIAM L. BARLOW and GLOBAL CAPITAL VENTURES, LLC, Relief Defendants, solely for the purpose of equitable relief.	§ § § § § § § § § § § § § § § § § § § §	A-13-CV-01036 ML

ORDER DENYING MOTION FOR RECONSIDERATION

On this day the Court considered Defendants [*sic*] Motion to Reconsider Summary Judgment Order & Dispositive Motion, [Dkt. #287], filed October 2, 2015 by Defendant, Roland Barrera, the Corrected (Redacted) version of this Motion [Dkt. #289] filed October 9, 2015, and Plaintiff's Response in Opposition to Defendants' Motion for Reconsideration [Dkt. #288], filed October 7, 2015 in this matter.

I. BACKGROUND

The SEC brought this civil suit against multiple defendants, alleging that over 100 investors were duped into a large-scale Ponzi scheme. On August 21, 2015, this Court entered summary judgment against some of those defendants, and in particular against Roland Barrera.

("Summary Judgment Order," [Dkt. #275]). Barrera had received a commission of over $200,000 for his role in soliciting a $3,050,000 investment from a company run by his personal friend, Jamie Moore. Based on his conduct in soliciting this investment and failing to disclose the size of his commission, the Court found Barrera liable for violations of the Exchange Act's Broker-Dealer and Anti-fraud provisions.

Barrera, although he filed an answer and sat for deposition in this matter, filed no response to the SEC's motion for summary judgment against him. After the entry of the Summary Judgment Order, however, Barrera moved this Court for reconsideration. Barrera asserts he was not an unregistered broker, because he was only tangentially involved in one securities transaction, and he never engaged in securities fraud because he never made any knowing misrepresentations to investors.

II. STANDARD OF REVIEW

As a threshold matter, the Court notes the standard for reconsideration on an interlocutory order such as this one is not, as the SEC suggests, set out by Federal Rule of Civil Procedure 59(e) or 60(b). Because the Court's August 21, 2015 Summary Judgment Order [Dkt. #275] was not a final order within the meaning of 28 U.S.C. § 1291, this Court retains plenary power to review its decision and "'afford such relief . . . as justice requires.'" *McKay v. Novartis Pharm. Corp.*, 751 F.3d 694, 701 (5th Cir. 2014) (quoting *Zimzores v. Veterans Admin.*, 778 F.2d 264, 266 (5th Cir. 1985)). The Court therefore considers Barrera's arguments and evidence under the ordinary standard applicable to a nonmovant resisting a motion for summary judgment. *Zimzores*, 778 F.2d at 267 (citing *Galindo v. Precision American Corp.*, 754 F.2d 1212, 1216 (5th Cir. 1985)).

The summary judgment standard requires the moving party to bear the initial burden of demonstrating that judgment is appropriate as a matter of law. *Davis v. Fort Bend Cty.*, 765 F.3d 480, 484 (5th Cir. 2014). For the reasons outlined in the Court's August 21, 2015 Order, the SEC has met this initial burden. *See generally* Summary Judgment Order [Dkt. #275]. In opposing summary judgment, Barrera now bears the burden to establish the existence of a genuine issue of material fact for trial. *Celtic Marine Corp. v. James C. Justice Co., Inc.*, 760 F.3d 477, 481 (5th Cir. 2014). The Court will view the summary judgment evidence in the light most favorable to Barrera as the nonmovant. *Distribuidora Mari Jose, S.A. de C.V. v. Transmaritime, Inc.*, 738 F.3d 703, 706 (5th Cir. 2013).

III. ANALYSIS

Even under this generous standard, the argument and evidence presented by Barrera in opposition to the SEC's motion for summary judgment fails to raise any issue of material fact with regard to Barrera's liability. *See generally* Motion and Corrected Motion to Reconsider [Dkt. #287, 289].

A. Barrera Acted as an Unregistered Broker

The Court previously found Barrera violated the Broker Provisions of the Exchange Act by soliciting the investment of Lacova Capital LLC ("Lacova") in Vendetta Royalty Partners ("Vendetta") and by acting as a link between Lacova's agent, Jamie Moore, and Vendetta's agent, Deven Sellers, during the negotiation of the investment. Summary Judgment Order [Dkt #275] at 13-15, 31-34. In his Motion to Reconsider, Barrera admits he was involved in soliciting Moore to invest Lacova's money in Vendetta. He nevertheless argues he should not be considered an unregistered broker because he was only involved in one transaction. Mot. Reconsider [Dkt #287, 289] at 2.

In support of this argument, Barrera offers no new evidence to rebut the emails and deposition testimony previously submitted by the SEC. This previously submitted evidence establishes: (a) Sellers offered to pay Barrera half of what Sellers made in commissions from Barrera's introductions to potential investors; (b) Barrera set up a meeting between Sellers and Moore to discuss Moore/Lacova's potential investment in Vendetta; (c) Sellers subsequently copied Barrera on emails to Moore about Vendetta and on an email solicitation offering Moore a second investment opportunity, the "Vesta" portfolio (in which Moore/Vendetta never invested); and (d) Barrera actually received over $200,000 as a result of Moore/Lacova's investment in Vendetta. *See* Summary Judgment Order at 13-17 and citations to record evidence therein. The Court previously found, based on this evidence, that Barrera should be held liable as an unregistered broker because, "[a]lthough it could be argued that Barrera was not necessarily participating in securities transactions 'regularly,' he was hired by Sellers to conduct these types of negotiations 'regularly.'" *Id.* at 33. Barrera's unsupported argument to the contrary does not undercut the Court's analysis because, "as a general matter, 'unsupported allegations or affidavits setting forth ultimate or conclusory facts and conclusions of law are insufficient to either support or defeat a motion for summary judgment.'" *Serna v. Law Office of Joseph Onwuteaka, P.C.*, No. 14-20574, 2015 U.S App. LEXIS 9432, * 15 (5th Cir. June 5, 2015) (quoting *Galindo*, 754 F.2d at 1216).

Additionally and in the alternative, the Court previously found that Barrera's "central role in securing a hefty $3,050,000.00 investment from Lacova" was enough to support unregistered broker liability. *Id.* (citing *SEC v. Kenton Captial, Ltd.*, 69 F. Supp. 2d 1, 12-13 (D.D.C. 1998)). Barrera does not dispute that he introduced Moore to Sellers and received a commission in excess of $200,000 for Moore/Lacova's investment in Vendetta. Mot. Reconsider [Dkt. #287,

289] at 2-6; *see also* Mot. Summ. J. [Dkt. # 260] Ex. 2, Barrera Deposition at 40. Barrera does assert that his role was not ongoing or central, in that he did not increase his interactions with Moore for the purposes of selling the Vendetta securities. Mot. Reconsider [Dkt. #287, 289] at 2-6. He attaches evidence, such as Facebook pages, supporting his contention that his interactions with Moore were the product of a longstanding friendship, not a business solicitation effort. *Id.* at Ex. B.

Essentially, Barrera contends he was paid a mere "finder's fee" and that his ongoing involvement with Moore was a function of their friendship, not an effort to close the Vendetta deal. While a person who acts as a mere "finder in bringing together the parties to transactions" may not be required to register as a broker/dealer, this exception is very limited. *Cornhusker Energy Lexingon, LLC v. Prospect St. Ventures*, No. 8:04CV586, 2006 U.S. Dist. LEXIS 68959, *18-19 (D. Neb. Sept. 12, 2006). A "finder" must register as a broker dealer if he is "performing the functions of a broker-dealer." *Id.* These functions, among other things, include involvement in negotiations. *Id.* Such involvement may include "answer[ing] questions . . . or provid[ing] assistance to customers in resolving problems with a particular broker-dealer or with respect to particular transactions with a participating broker-dealer" and "charg[ing] fees . . . based, directly or indirectly, on . . . the size, value, or occurrence of any securities transactions." *Globaltec Solutions, LLP, and CommandTRADE, LP*, 2005 SEC No-Act. LEXIS 868 (Dec. 28, 2005). In particular, "[t]ransaction-based compensation, or commissions are one of the hallmarks of being a broker-dealer." *Cornhusker Energy*, 2006 U.S. Dist. LEXIS 68959 at *19 (quoting *John Woods. Loofbourrow Associates, Inc.*, 2006 SEC No-Act. LEXIS 523 (June 29, 2006)).

The undisputed facts in this case establish Barrera was not merely paid a "finders' fee" for providing Moore as an investment lead. Barrera was paid a commission when Moore/Lacova

actually invested in Vendetta.[1] Barrera set up and attended the meeting introducing Moore to Sellers and the Vendetta offering. Mot. Summ. J. [Dkt. # 260] Ex. 2, Barrera Deposition at 40. This was not the sum total of his involvement, however. Moore and Barrera exchanged multiple email communications concerning the Vendetta investment. Mot. Reconsider [Dkt. #287, 289], Ex. C. Barrera stated, in deposition, that Moore "talked about it [the Vendetta investment] every time I seen him [*sic*]" after that first meeting. *Id.* at 86-87. On at least one occasion, Barrera conveyed Moore's questions about the investment to Sellers. *Id.* at 85-86. Ultimately, after the investment deal closed, Barrera gave Moore at least $5,000 in cash from the proceeds of Barrera's commission. *Id.* at 71-72. These undisputed facts establish Barrera did more than simply introduce Moore to Sellers—he capitalized on his friendship with Moore to solicit and help close the investment deal between Lacova and Vendetta. Therefore, while he may be a "finder," he also performed the functions of a broker and thereby breached the Broker Provisions of the Exchange Act. *Cornhusker Energy*, 2006 U.S. Dist. LEXIS 68959 at *19.

B. Barrera Fraudulently Concealed the Amount of His Commission

The Court previously granted summary judgment on Barrera's fraud liability under the Exchange Act. Summary Judgment Order [Dkt. #275] at 15-17, 29-31. Barrera seeks reconsideration of this issue on the grounds that he had no actual knowledge of the terms of the Vendetta investment deal or the relationship between his commission and the investment deal. Mot. Reconsider [Dkt. #287, 289] at 2-6.

In his deposition, however, Barrera admitted that Moore asked him after the initial meeting whether Barrera "was going to get anything" in connection with a Lacova investment.

[1] Barrera argues, in the alternative, that he is entitled to the protection of the "safe harbor" for Associated Persons of an Issuer set out in 17 C.F.R § 240.3a4-1. A prerequisite for the application of the safe harbor, however, is that the associated person is "not compensated by the payment of commissions based either directly or indirectly on transactions in securities." *Id.* As Barrerra received a commission of over $200,000 for the sale of the Vendetta investment to Lacova, he is not entitled to invoke the safe harbor provisions. *Id.*

Mot. Summ. J. [Dkt. #260] at Ex. 2, Barrera Depo. at 65-66. Barrera considered this information "none of his business" and replied that Sellers "was going to take care of [him]" without disclosing Sellers' promise to split any commission received on the deal. *Id.* Barrera further testified that he never told Moore the amount of his commission after he received it. *Id.* at 87-88.

Barrera, as a broker—even an unregistered broker—had a fiduciary duty to the investor to disclose material facts. *SEC v. Randy,* 38 F. Supp. 2d 657, 670 N.D. Ill. 1999); *Dirks v. SEC*, 463 U.S. 646, 658 (1983). Barrera's failure to read the terms of the securities offering is, at best, reckless disregard for this duty. *Randy*, 38 F. Supp. 2d at 670. Furthermore, Barrera's conduct in withholding information about the structure and amount of his compensation, even after Moore asked him a direct question about it, amounts to an intentional breach of this fiduciary duty. Mot. Summ. J. Ex. 2, Barrera Depo at 65-66; *id.* at 85-88; *see also Kaufman & Enzer Joint Venture v. Dedman*, 680 F. Supp. 805, 812 (W.D. La. 1987) (finding "commission arrangement" material). Thus, the argument and evidence presented in Barrera's Motion to Reconsider [Dkt. #287, 289] cannot raise a material fact issue as to whether Barrera violated the Antifraud Provisions of the Exchange Act by failing to disclose the structure and amount of his commission to Moore.

III. Conclusion

Barrera's Motion to Reconsider [Dkt. #287, 289] does not raise a material fact issue as to his liability in this case. Therefore, the Court reaffirms its August 21, 2015 grant of summary judgment against him.

For the reasons stated above,

IT IS ORDERED that the Motion to Reconsider [Dkt. #287, 289] is DENIED.

SIGNED on October 20, 2015.

MARK LANE
UNITED STATES MAGISTRATE JUDGE

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.	§	
	§	**Civil Action No.:**
Defendants,	§	**1:13-cv-1036-ML**
	§	
and	§	
	§	
WILLIAM L. BARLOW, ET AL.,	§	
	§	
Relief Defendants, solely for the purposes of equitable relief.	§	
	§	
	§	

FINAL JUDGMENT AS TO DEFENDANTS ROBERT A. HELMS, JANNIECE S. KAELIN, DEVEN SELLERS, AND ROLAND BARRERA

The Court entered Summary Judgment against Defendants Robert A. Helms, Janniece S. Kaelin, Devin Sellers, and Roland Barrera (collectively, "Defendants") on August 21, 2015. Therefore:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that each and all of the Defendants are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any 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.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise:

(a) Defendants' officers, agents, servants, employees, and attorneys; and

(b) other persons in active concert or participation with Defendants or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that each and all of the Defendants are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) 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

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise:

(a) Defendants' officers, agents, servants, employees, and attorneys; and

(b) other persons in active concert or participation with Defendants or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Deven Sellers and Roland Barrera are permanently restrained and enjoined from violating Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)] by directly or indirectly making use of the mails or means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce, the purchase or sale of securities (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills), without being registered as a broker or dealer, or being associated with a registered broker or dealer in accordance with Section 15(a)(b) of the Exchange Act [15 U.S.C. § 78o(b)]—unless exempted from registration pursuant to Section 15(a)(2) of the Exchange Act [15 U.S.C. § 78o(a)(2)].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise:

(a) Defendant Barrera's officers, agents, servants, employees, and attorneys and Defendant Sellers' officers agents, servants, employees, and attorneys; and

(b) other persons in active concert or participation with Defendant Barrera and/or Sellers or with anyone described in (a).

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Robert A. Helms and Janneice S. Kaelin are jointly and severally liable for disgorgement of $31,422,861, representing proceeds gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $3,873,043.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Robert A. Helms is individually liable for a civil penalty in the amount of $4,221,058 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Janneice S. Kaelin is individually liable for a civil penalty in the amount of $4,221,058 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Deven Sellers and Roland Barrera are jointly and severally liable for disgorgement of $423,500,

representing proceeds gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $36,243.87.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Deven Sellers is also individually liable for a civil penalty in the amount of $150,000 pursuant to Section 20(d) of the Securities Act [15U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)].

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Roland Barrera is individually liable for a civil penalty in the amount of $150,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §
78u(d)].

Each and all of the Defendants shall satisfy their obligations by paying the Securities and Exchange Commission within THIRTY ONE (31) days after entry of this Final Judgment as follows:

A. Helms and Kaelin shall jointly and severally pay $35,295,904;

B. Helms shall individually pay an additional $4,221,058;

C. Kaelin shall individually pay an additional $4,221,058;

D. Sellers and Barrera shall jointly and severally pay $459,743.87;

E. Sellers shall individually pay an additional $150,000; and

F. Barrera shall individually pay an additional $150,000.

Each Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov at http://www.sec.gov/about/offices/ofm.htm. Each

Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; identifying the Defendant by name as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Each Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after THIRTY ONE (31) days following entry of this Final Judgment. Each Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

The Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, no Defendant shall, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendant's payment of disgorgement in this action, argue that Defendant is entitled to, nor shall Defendant further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against any or all Defendants by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

V

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment. There being no just reason for delay, however, the Clerk is ordered to enter this Final Judgment forthwith and without further notice. This Final Judgment is intended to terminate and dispose of all claims as to Defendants Robert A. Helms, Janniece S. Kaelin, Devin Sellers, and Roland

Barrera and to render this Court's August 21, 2015 Summary Judgment Order final and appealable, pursuant to Rule 54(b) of the Federal Rules of CivilProcedure.

SIGNED October 21, 2015.

MARK LANE
UNITED STATES MAGISTRATE JUDGE

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17004

In the Matter of

DEVEN SELLERS and
ROLAND BARRERA,

Respondents.

JOINT PREHEARING CONFERENCE STATEMENT

On January 5, 2016, the Hearing Officer ordered the Division of Enforcement and Respondents Deven Sellers and Roland Barrera to hold an initial prehearing conference without the Hearing Officer and to file a joint statement on the prehearing conference by January 22, 2016. The Hearing Officer specified that the joint statement should address each item in Rule 221(c), include proposed dates where applicable, and state whether the parties have different information regarding service of the Order Instituting Proceedings ("OIP"). The parties having conferred as ordered on January 8, 2016, submit this joint statement.

First, the parties have no information different from that set out in the Hearing Officer's Order of January 5, 2016, regarding service of the OIP.

Second, as to each item in Rule 221(c), the parties state[1] as follows:

1. Simplification and clarification of the issues.

This is a "follow-on" administrative proceeding to determine what, if any, remedial sanction is appropriate in the public interest following permanent injunctions imposed in a Final Judgment on August 28, 2015, against Sellers and Barrera by a United States district court.

[1] Where the parties' views differ on a particular matter, each party's view is set out separately as to that matter.

In Sellers and Barrera's view, the Final Judgment entered against them is unjust because it is based on unfounded findings of fact. They are considering whether to file an appeal to have the district court's Final Judgment, along with its injunctions against them, overturned.

In the Division's view, any such appeal is irrelevant to this proceeding: The injunctions giving rise to it have been entered and remain in effect. The Division further asserts that, because no genuine issue of material fact is present in this proceeding, it should be resolved based on a motion for summary disposition by the Division.

2. Exchange of witness and exhibit lists and copies of exhibits.

The parties consider it premature at this stage to exchange witness and exhibit lists and copies of exhibits. The parties propose that, if the Hearing Officer sets a hearing date in this proceeding, another prehearing conference be convened to determine dates and resolve any issues regarding exchange of witness and exhibit lists and copies of exhibits

3. Stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents.

A. The parties stipulate to the facts alleged in Section II. B. of the OIP.

B. The parties stipulate that the Division served Barrera the OIP on December 23, 2015.

C. The parties stipulate that the Division served Sellers the OIP on December 26, 2015.

D. The parties stipulate the admissibility into evidence for all purposes the following documents on the docket of *SEC v. Robert A. Helms, et al.* Case No. 1:13-cv-01036-ML in the United States District Court for the Western District of Texas:

i. Memorandum Opinion and Order on Motion for Summary Judgment, identified as Document 275.

ii. Defendants Motion to Reconsider Summary Judgment Order & Dispositive motion, identified as Document 289.

iii. Order Denying Motion for Reconsideration, identified as Document 291.

iv. Final Judgment as to Defendants Robert A. Helms, Janniece S. Kaelin, Deven Sellers, and Roland Barrera, identified as Document 292.

4. Matters of which official notice may be taken.

The parties agree that the Hearing Officer may take judicial notice of the documents described in Item 3, above.

5. The schedule for exchanging prehearing motions or briefs, if any.

A. Motions for summary disposition: February 29, 2016.

B. Oppositions are due: March 15, 2016.

C. Replies: March 25, 2016.

The parties request that, if this matter is not resolved on a motion for summary disposition and the matter is set for hearing, that the hearing officer allow convene a prehearing conference for scheduling the exchange of any other prehearing motions.

6. **The method of service for papers other than Commission orders.**

A. On the Division by mail or by email to McColeT@sec.gov and JusticeT@sec.gov.

B. On Sellers by mail or by email to [redacted]

C. On Barrera by mail or by email to [redacted].

7. Summary disposition of any or all issues.

The Division asserts that all issues may be resolved by summary disposition.

8. Settlement of any or all issues.

No.

9. Determination of hearing dates.

The parties propose May 24-27, 2016, in the SEC's Los Angeles Regional Office or within a suitable location nearby.

10. Amendments to the order instituting proceedings or answers thereto.

None.

11. Production of documents as set forth in Rule 230, and prehearing production of documents in response to subpoenas duces tecum as set forth in Rule 232.

All such documents have been available for review by Respondents in the SEC's Fort Worth Regional Office since January 14, 2016.

12. Specification of procedures as set forth in Rule 202.

This is an enforcement proceeding. This item therefore does not apply.

13. Such other matters as may aid in the orderly and expeditious disposition of the proceeding.

Both Respondents are *pro se*. Respondent Barrera requests that the hearing officer convene an in-person prehearing conference to allow opportunity for him to raise certain issues directly with the hearing officer. In particular, Mr. Barrera is interested in getting a better understanding of the relationship between this proceeding and the civil action in United States district court and the extent to which proceeding will afford him any opportunity to challenge the findings of the district court its final judgment.

Dated: January 22, 2016

Respectfully submitted,

s/Timothy S. McCole
Timothy S. McCole
Mississippi Bar No. 10628

Attorney for Division of Enforcement
Securities and Exchange Commission
Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
Fort Worth, Texas 76102-6882
E-mail: McColeT@sec.gov
Telephone: (817) 978-6453
Facsimile: (817) 978-4927
DIVISION COUNSEL

<u>s/Roland Barrera</u>
Roland Barrera
RESPONDENT, *Pro Se*

<u>s/Deven Sellers</u>
Deven Sellers
RESPONDENT, *Pro Se*

FILED
2013 DEC -3 AM 11: 38
WESTERN DISTRICT OF TEXAS
BY ______ DEPUTY

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,	§	**A13CV1036 LY**
IRON ROCK ROYALTY PARTNERS, LP,	§	**Civil Action No.:**
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.	§	
	§	

COMPLAINT

For its Complaint, Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

I. Summary

1. Defendants Robert A. Helms and Janniece S. Kaelin are engaged in fraudulent securities offerings from an office in Austin, Texas. Since at least July 2011, they have offered investors securities issued by Defendant Vendetta Royalty Partners, Ltd. ("Vendetta Partners"), a limited partnership they control. Through December 31, 2012, they have raised at least $17.9 million from at least 80 investors in at least 13 states, promising them that Vendetta Partners would use more than 99% of the investment proceeds to acquire a lucrative portfolio of oil-and-gas royalty interests.

2. In reality, Helms and Kaelin misappropriated the vast majority of the Vendetta Partners offering proceeds, using the funds to cover personal expenses, payments to Relief Defendants William L. Barlow and Global Capital Ventures, LLC ("Global Capital"), payments to other entities they control—Haley Oil Company, Inc. ("Haley Oil"), Technicolor Minerals, G.P., ("Technicolor Minerals"), and Barefoot Minerals, G.P. ("Barefoot")—and payments to investors of approximately $5.9 million in so-called "Partnership income." They derived the so-called Partnership income, however, primarily from offering proceeds. In other words, Helms and Kaelin operated a Ponzi scheme through Vendetta Partners.

3. In the course of the scheme, Helms and Kaelin misrepresented and omitted to disclose material facts to investors. They grossly understated bank-loan payments made with offering proceeds. They concealed Vendetta Partners' imminent bank-loan default. And they represented that there were no material legal proceedings pending against them or Vendetta Partners when, in fact, they and Vendetta Partners were defendants in a civil case alleging they

defrauded the plaintiff of $1.2 million, and were subject to other legal proceedings.

4. In addition, Helms and Kaelin paid combined commissions totaling $423,500 to Defendants David Sellers and Roland Barrera, who sold Vendetta Partnership securities to an investor for $3,050,000. Sellers and Barrera falsely represented to the investor that they would receive only "small" commissions—in keeping with Vendetta Partners offering documents stating that promotional expenses would not exceed $50,000—when their actual commission was nearly 14% of the purchase price.

5. After Vendetta Partners, Helms and Kaelin launched two more fraudulent offerings, Vesta Royalty Partners, LP ("Vesta Partners") in 2012 and Iron Rock Royalty Partners LP ("Iron Rock Partners") in 2013. For each of these limited partnerships, they control the general partner, Vesta Royalty Management, LLC ("Vesta Management") and Iron Rock Royalty Management, LLC ("Iron Rock Management"), respectively. In the Vesta Partners offering, they have touted potential investment returns ranging from 300% to 500% to be achieved in just five to seven years. In reality, their return projections are baseless.

6. They are promoting the Iron Rock Partners offering through Iron Rock Management and other companies they control, specifically Defendants SeBud Minerals, LLC ("SeBud Minerals"), Lake Rock, LLC ("Lake Rock"), G3 Minerals, LLC (G3 Minerals), and Arcady Resources, LLC ("Arcady Resources"). In the Iron Rock Partners offering, they describe their intent to raise $300 million by April 2014 and tout their "honesty and trustworthiness" and Vendetta Partners' "successful performance." In reality, Vendetta Partners is a Ponzi scheme, and they are dishonest and untrustworthy.

7. By committing the acts alleged in this Complaint, the Defendants directly and indirectly engaged in, and unless restrained and enjoined by the Court will continue to engage in,

acts, transactions, practices, and courses of business that violate the anti-fraud provisions of the federal securities laws, specifically Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. Defendants Sellers and Barrera also violated Exchange Act Section 15(a) [15 U.S.C. § 78o(a)] by being unregistered brokers in the offerings described herein.

8. The Commission brings this action seeking permanent injunctions, disgorgement plus prejudgment interest, and civil penalties, as to each Defendant and disgorgement as to each Relief Defendant and all other equitable and ancillary relief to which the Court determines the Commission is entitled.

II. Jurisdiction and Venue

9. The Court has jurisdiction over this action under Section 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(d) and 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78(aa)]. Venue is proper because the Defendants and Relief Defendants reside in, and a substantial part of the events and omissions giving rise to the claims occurred in, the Western District of Texas.

III. The Parties

10. Plaintiff Commission is an agency of the United States government.

11. Defendant Robert A. Helms is a natural person residing in Austin, Texas.

12. Defendant Janniece S. Kaelin is a natural person residing in Austin, Texas.

13. Defendant Deven Sellers is a natural person residing in Arvada, Colorado.

14. Roland Barrera is a natural person residing in Costa Mesa, California.

15. Defendant Vendetta Partners is a Texas limited partnership in Austin, Texas.

16. Defendant Vendetta Management is a Texas limited liability company in Austin, Texas.

17. Defendant Vesta Partners is a Texas limited partnership in Austin, Texas.

18. Defendant Vesta Management is a Texas limited liability company in Austin, Texas.

19. Defendant Iron Rock Partners is a Delaware limited partnership principally operating in Austin, Texas.

20. Defendant Iron Rock Management is a Delaware limited liability company principally operating in Austin, Texas.

21. Defendant Arcady Resources is a Texas limited liability company in Austin, Texas.

22. Defendant Barefoot Minerals is a Texas general partnership in Austin, Texas.

23. Defendant G3 Minerals is a Texas limited liability company in Austin, Texas.

24. Defendant Haley Oil is an Illinois corporation principally operating in Austin, Texas.

25. Defendant Lake Rock is a Texas limited liability company in Austin, Texas.

26. Defendant SeBud Minerals is a Texas limited liability company in Austin, Texas.

27. Defendant Technicolor Minerals is a Texas general partnership in Austin, Texas.

28. Relief Defendant William Barlow is a natural person residing in Austin, Texas.

29. Relief Defendant Global Capital is a Texas limited liability company in Austin, Texas.

V. Facts

A. Background

30. 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. Helms and Kaelin control each entity through its general partner—Defendants Vendetta Management, Vesta Management, and Iron Rock Management, respectively.

31. Helms and Kaelin operate each limited partnership from an office at 8101 Cameron Rd. Suite 109, in Austin, Texas. 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. Helms and Kaelin also directly offer and sell the securities to investors in person at the Austin office and through emails and phone calls.

B. The Vendetta Partners Offering

32. Helms and Kaelin formed Vendetta Partners in 2009. 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. From January 1, 2011, through December 31, 2012, Vendetta Partners' royalty interests generated income totaling approximately $1.4 million.

33. 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. The Form D falsely stated that Vendetta Partners had not yet sold any securities in the offering. In reality, Vendetta Partners sold securities to two investors on July 29 and 30, 2011, in exchange for $275,000 combined. 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. 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. 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.

34. 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. 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."

35. 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." 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.

36. Under the heading, "Accounting," the PPM also falsely stated that Vendetta Management would furnish investors periodic reports on Vendetta Partners' property acquisitions and operational results. In fact, it never furnished investors such reports.

37. Finally, under the heading "Litigation," the PPM falsely stated: "There are no material pending legal proceedings against the Partnership, the General Partner or its Affiliates." 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. 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. The Illinois EPA initiated action against Haley Oil in May 2012, alleging illegal "release incidents." And the IRS initiated action against Kaelin in October 2012, relating to a tax liability.

38. 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. 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%

39. 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 in at least 13 states. 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. 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.

40. Helms and Kaelin controlled and oversaw the use of all funds that came into Vendetta Partners. They shared signatory authority on its bank accounts and on the bank accounts of Vendetta Management. 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. 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.

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

42. Vendetta Partners, at the direction of Helms and Kaelin, also used approximately $5.9 million to make so-called partnership-income distributions to investors. They used money from later investors to pay these distributions to earlier investors. 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.

43. 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. Neither Barlow nor Global Venture had any legitimate claim to the

proceeds. Barlow and Global Venture acquired at least some of these proceeds in round-trip transactions with companies that Helms and Kaelin controlled. Helms orchestrated these transactions was to create fictitious income to support the fraudulent partnership-income distributions.

44. For example, on November 17, 2011, Helms and Kaelin transferred $2,208,800 from Vendetta Partners to Barlow. The next day, Barlow transferred $2,200,300 to Defendant Haley Oil, a company that Helms controlled, retaining $8,500. 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. 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. Helms and Kaelin distributed the nearly $2 million from the roundtrip transactions to Vendetta Partners investors, falsely characterizing these payments as partnership-income distributions. Haley Oil retained investor funds totaling $245,300 that it received in the roundtrip transactions.

45. On several occasions, Helms and Kaelin provided investors tours of their Austin office to promote their securities offerings. 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. They falsely represented that the investors would earn a return of 150% to 200% on the investment within several months. 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. 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.

46. During office tours, Helms and Kaelin 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. Helms and Kaelin falsely stated to potential investors that the financial analyst had a degree from the University of Texas. Helms and Kaelin prohibited the financial analyst, under threat of demotion, from telling investors that he did not actually have a degree.

47. 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 in **paragraph 45**, above. When offering the investment, Sellers and Barrera represented to the investors that they would split a "small" commission. 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. 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

48. Since at least, July 2012, Helms, Kaelin, Sellers, and Barrera have offered to sell investors securities issued by Defendant Vesta Partners. 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. 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. It described Vesta Partners management—including Helms and

Kaelin—as having a "Proven track record of consistent investor cash-flows and overall market performance." And it said that Helms and Kaelin had experience "managing and successfully exiting royalty . . . interest investments, including . . . Vendetta Royalty Partners, Ltd."

49. 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

50. 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. The Form D indicates that Iron Rock Partners seeks to raise $300 million over a period not to exceed one year. 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. It further says that the offering will only be solicited in Florida, New York, North Carolina, and Pennsylvania.

51. 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. 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.

52. On March 1, 2013, Sellers emailed an investor located in California, attaching a "Proposal" in which Sellers offered for sale Iron Rock Partners securities. The Proposal falsely

stated that investors could expect a 300% to 500% return in five to seven years. As is evident in Helms and Kaelin's disastrous Vendetta Partners oil-and-gas project, these earnings projections were baseless. It further said the Iron Rock Partners management team—including Helms and Kaelin—has an "industry reputation of honesty and trustworthiness." 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.

FIRST CLAIM
Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5thereunder [17 C.F.R. § 240.10b-5]

53. Plaintiff Commission realleges and incorporates by reference paragraphs 1 through 54 of this Complaint as if set forth verbatim.

54. Each Defendant, by engaging in the conduct described above, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, knowingly or severely recklessly:

a. employed a device, scheme, or artifice to defraud;

b. made an untrue statement of a material fact or omitted 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. engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit upon a person.

55. By engaging in the conduct described above, each Defendant violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM
Violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]

56. Plaintiff Commission realleges and incorporates by reference paragraphs 1 through 54 of this Complaint as if set forth verbatim.

57. Each Defendant, by engaging in the conduct above, singly or in concert with others, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

a. knowingly or severely recklessly employed a device, scheme, or artifice to defraud, or

b. (b) knowingly, recklessly, or negligently obtained money or property by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

c. (c) knowingly, recklessly, or negligently engaged in a transaction, practice, or course of business which operated or would operate as a fraud or deceit upon the purchaser.

58. By reason of the foregoing, each Defendant violated, and unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

THIRD CLAIM
Violations of Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)]

59. Plaintiff Commission realleges and incorporates by reference paragraphs 1 through 54 of this Complaint as if set forth verbatim.

60. Defendants Sellers and Barrera, by engaging in the conduct described above, directly or indirectly made use of the mails or means or instrumentalities of interstate commerce

to effect transactions in, or to induce or attempt to induce, the purchase or sale of securities, without being registered as a broker or dealer, or being associated with a registered broker or dealer in accordance with Section 15(a) (1) of the Exchange Act [15 U.S.C. § 78o(a) (1)].

61. Accordingly, Defendants Sellers and Barrera were brokers within the definition of that term in Section 3(a)(4) of the Exchange Act which defines "broker" as any person "engaged in the business of effecting transactions in securities for the account of others." Defendants Sellers and Barrera were never so registered and, acted as brokers which included: (1) solicitation of investors to purchase securities; (2) involvement in negotiations between the issuer and the investor; and (3) receipt of transaction-related compensation.

62. By reason of the foregoing, Defendants Rizvi and Strategy Partners violated and, unless enjoined, will continue to violate Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a) (1)].

REQUEST FOR RELIEF

Plaintiff respectfully requests that this Court:

I.

Permanently enjoin each Defendant from violating Section 17(a) of the Securities Act [15 U.S.C. § 77e(a)] and Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

II.

Permanently enjoin Defendants Sellers and Barrera from violating Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)(1)].

III.

Order each Defendant and Relief Defendant to disgorge an amount equal to the funds and

benefits obtained illegally, or to which that Defendant or Relief Defendant otherwise has no legitimate claim, as a result of the violations alleged, plus prejudgment interest on that amount.

IV.

Order each Defendant to pay a civil penalty in an amount determined by the Court pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] for the violations alleged herein.

V.

Order such other relief as this Court may deem just and proper.

December 3, 2103

Respectfully submitted,
/s/Timothy S. McCole

TIMOTHY S. McCOLE
Plaintiff's Lead Attorney
Mississippi Bar No. 10628
United States Securities and Exchange Commission
Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, Texas 76102
Telephone: (817) 978-6453
FAX: (817) 978-4927
E-mail: McColeT@SEC.gov