
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

R.J. Zayed, in his Capacity as Court-Appointed
Receiver for Trevor G. Cook et al.,

Petitioner,

Case No: 11-cv-01042 SRN/FLN

v.

David Buysse, Steven and Pamela Cheney,
Walter Defiel, John Dzik, Terry Frahm,
Steven and Jenene Fredell, William Harris,
Michael and Jennifer Heise,
Michael and Cynthia Hillesheim, Larry Hopfenspirger,
Steven Kautzman, James McIntosh,
George and Karen Morrisset, Reynold Sundstrom, and
Dot Anderson,

Respondents.

**RECEIVER’S OBJECTIONS AND RESPONSES TO RESPONDENTS’
SECOND SET OF INTERROGATORIES (NOS. 8-21)**

The Receiver, R.J. Zayed, (“the Receiver”), pursuant to Fed. R. Civ. P. 33, responds to Respondents Steven and Pamela Cheney, David Buysse, Walter Defiel, Steven and Jenene Fredell, Michael and Jennifer Heise, Michael and Cynthia Hillesheim, Larry Hopfenspirger, Steven Kautzman, James McIntosh, George and Karen Morisset, Terry Frahm, and Reynold and Judith Sundstrom’s (“the Respondents”) Second Set of Interrogatories to the Receiver, as follows:

GENERAL OBJECTIONS

The General Objections set forth in this section shall apply to each of the Respondents' interrogatories regardless of whether these objections are specifically stated in the Receiver's responses and objections to them.

1. The Receiver objects to the Interrogatories to the extent that they assume or imply that Trevor Cook ("Cook") and his co-conspirators were running a legitimate investment program. At all times relevant to these Requests, Cook and his co-conspirators were running a Ponzi scheme, using the Receivership Entities to defraud hundreds of victims through numerous materially false and misleading statements, representations, promises, and omissions. Any funds given to Cook, his co-conspirators, or any salesperson or employee of the Receivership Entities were neither "investments" in any legitimate foreign currency program or any other legitimate investment program nor "loans" to the Receivership Entities. Rather the money was stolen by Cook and his co-conspirators immediately upon receipt. The stolen money was used by Cook and his co-conspirators to further the scheme by, among other things, paying earlier victims; paying salaries and commissions of salespersons and employees used by Cook and his co-conspirators to lure in more victims; paying operating expenses associated with maintaining the appearance of legitimacy; funding promotional activities to lure more victims; paying the personal expenses of Cook and his co-conspirators; and paying for the extravagant lifestyles of Cook and his co-conspirators.

2. The Receiver objects to the characterization of the Respondents as

“lenders,” because no Respondent was a “lender.”

3. The Receiver objects to the Interrogatories to the extent that they seek information subject to attorney-client privilege, work product immunity, or any other privilege, whether based upon statute or recognized at common law.

4. The Receiver objects to the definitions and instructions set forth in the Interrogatories to the extent they purport to impose duties on the Receiver beyond the duties required by the Federal Rules of Civil Procedure or applicable case law.

5. The Receiver objects to the Interrogatories to the extent they are not reasonably calculated to lead to the discovery of admissible evidence and to the extent they otherwise exceed the permissible scope of discovery under the Federal Rules of Civil Procedure.

6. Some of the Interrogatories are specifically objected to as being vague and ambiguous because they do not describe with reasonable particularity the items or categories of information being sought. Because the scope of those Interrogatories is in question, the Receiver reserves the right to object to those Interrogatories as being overbroad and unduly burdensome and calling for information that is not relevant. To the extent the Interrogatories contain vague and ambiguous terms, the Receiver will in good faith respond based on the ordinary usage and meaning of those terms. If the Respondents subsequently assert any interpretation of its Interrogatories that differ from the Receiver’s understanding, the Receiver reserves the right to alter, amend, or supplement its

objections and responses.

7. The Receiver objects to each Interrogatory to the extent it seeks production of confidential or proprietary information of any individual or entity that is not a party to this action.

**RESPONSES AND OBJECTIONS TO
INTERROGATORIES (NOS. 8-21)**

Interrogatory No. 8:

Identify each and every fact relating to the extent of Clifford Berg's knowledge on June 26, 2009 of the SEC investigation of the Receivership entities.

Response:

The Receiver objects to this Interrogatory as vague and ambiguous because it seeks the identity of all facts “relating to” the extent of Clifford Berg’s knowledge.

Subject to the foregoing general and specific objections, the Receiver states that Cook testified as follows: At some point prior to June 29, 2009, Clifford Berg (“Berg”) tried to call him because Berg had heard about an investigation. Cook was not available when Berg called, so Berg talked to Eric Erickson, who lied to Berg and said it was not an investigation—rather, the SEC was doing an audit. (Cook Dep. July 20, 2011, at 77:14-78:4; Cook Dep. Oct. 5, 2010, at 168:17-169:2.) Then either later that same day or the next day, Berg spoke with Cook and asked whether it was a routine audit or an investigation. Cook then told Berg that it was an investigation, not an audit, because “[y]ou know, I wasn’t going to lie to him.” (Cook Dep. July 20, 2011, at 78:4-6, 78:20-21, 181:6-182:1; Cook Dep.

Oct. 5, 2010, at 169:3-11; Cook Dep. Oct. 6, 2010, at 295:3-6.) Berg then told Cook that he wanted all of his clients' accounts closed. (Cook Dep. July 20, 2011, at 78:21-23, 138:18-20, 144:22-23; Cook Dep. Oct. 5, 2010, at 169:12-13.) Cook also testified that Berg knew that there was an investigation, and that after Berg found out about this investigation, he requested that his clients' money be taken out. (Cook Dep. July 20, 2011, at 78:16-21; Cook Dep. October 6, 2010, at 294:23-295:2.) Cook also testified that he physically delivered the cashiers checks that Berg requested to Berg's house. (Cook Dep. July 20, 2011, at 148:24-25.)

The Receiver further states that Clifford Berg told at least Respondents Fredells, Frahm, Heise, Buysse, Kautzman, Hillesheims, Sundstrom, and McIntosh, as well as William Harris, that he had closed their accounts because there was an "investigation" or "audit" going on. (Cook Dep. July 20, 2011, at 116:2-10; S. Fredell Dep. Tr. at 75:4-9; J. Fredell Dep. Tr. at 32:13-21; T. Frahm Dep. Tr. at 114:16-115:5, 115:21-116:4; J. Frahm Dep. Tr. at 48:15-20; M. Heise Dep. Tr. at 79:13-19; D. Buysse Dep. Tr. at 20:7-12; 19:13-14; 18:24; S. Kautzman Dep. Tr. at 52:4; 164:14-16; C. Hillesheim Dep. Tr. at 149:14-20; M. Hillesheim Dep. Tr. at 78:22-79:10; R. Sundstrom Dep. Tr. at 198:8-13; J. McIntosh Dep. Tr. at 163:24-164:2; W. Harris Dep. Tr. at 135:6-8.)

The Receiver further states that Respondent Harris testified that Berg told Harris that Cook stopped over to Berg's house on the Sunday night immediately following the SEC's investigation and that Cook told Berg that "there was an investigation of one of Trevor's partners." (Harris Dep. Tr. at 138:20-139:4.)

The Receiver further states that on June 30, 2009 Berg went to American Bank's Apple Valley branch location and indicated that he wanted to deposit several large checks into his savings account and in so doing made the comment that he was "trying to help his son-in-law." (Hearing Tr., 09-cv-3333, Docket No. 207, at 36-38 (Dec. 4, 2009)¹; *see also* IR016909-IR016911.)

The Receiver further states that since at least January 2011 he has made available for inspection and copying all documents and things seized from the Receivership Entities.

Interrogatory No. 9:

Identify each and every fact supporting your allegation in paragraph 31 of the Petition that "each Respondent received at least one preferential transfer... after Cook became aware that Crown Forex SA was in liquidation and that his Ponzi scheme had been discovered by the SEC.... "

Response:

Subject to the foregoing general and specific objections, the Receiver states that beginning by at least January 2007, and continuing through at least July 2009, Trevor Cook and his co-conspirators, aided and abetted by others, knowingly and intentionally created, devised, executed, and attempted to execute a scheme and artifice to defraud, and to obtain money and other things of value, by means of materially false and misleading statements and representations.

The Receiver further states that during the course of the scheme, Cook and his co-conspirators, aided and abetted by others, raised at least \$190 million by

¹ This transcript is available from Chief Judge Davis' court reporter, Lori Simpson, who can be reached at 612-664-5104.

selling purported “investments” in a purported “foreign currency trading program.”

The Receiver further states that Cook and his co-conspirators caused false statements to be made in furtherance of the scheme, including but not limited to promises that the purported foreign currency trading program would generate guaranteed annual returns of approximately 10% to 12% and that the purported currency trading program involved little or no risk to “investors” principal. Cook and his co-conspirators told potential investors that the investment generated the promised rate of return through an “arbitrage” strategy that took advantage of differences in the interest rates of foreign currencies through split-second trading. Cook and his co-conspirators further explained that the Receivership Entities’ strategy involved investing in a long position in one currency pair and a mirror short position in a second currency pair. As described by Cook and his co-conspirators, one position allegedly earned more interest than the other position paid, such that the investment involved little to no risk.

The Receiver further states that, in furtherance of the scheme, Cook and his co-conspirators caused material information to be withheld from investors, including but not limited to: the precarious financial position of Crown Forex, SA in Switzerland, an entity through which Cook purportedly was placing currency trades; the fact that currency trading conducted by Cook, his co-conspirators, and their agents from July 1, 2006 through August 31, 2009 at PFG in Chicago generated trading losses in excess of \$35 million; and the fact that tens of millions

of investors' dollars were used for purposes such as gambling, casino and other land deals, purported ownership interests in other ventures, acquisition of the Van Dusen mansion, funding personal, travel, and entertainment expenses of Cook and his co-conspirators, paying off earlier "investors" in the "currency trading program" and providing funds to Crown Forex, SA. in an effort to deceive Swiss regulators.

The Receiver further states that, in furtherance of the scheme, Cook and his co-conspirators caused statements to be sent to victim "investors" that misrepresented the use and status of the funds they thought they invested in the currency trading program. Cook and his co-conspirators caused fictitious account statements to be generated and checks to be issued to certain "investors" on a monthly basis that purported to be based on "returns" on "investment."

Although these statements purported to reflect positive investment returns, in fact, the statements were not based on any underlying reality. Instead, they were produced through simple arithmetic by individuals working on behalf of the Receivership Entities. Specifically, employees of the Receivership Entities multiplied an investor's "investment" by the promised rate of return to identify the monthly investment return amount. The employees then used that number in creating the monthly lulling checks that were sent to investors and which purported to reflect the return on the investment. In reality, these returns reflected on the statements and checks bore no relationship to actual returns on any "investment" through the Receivership Entities. The monthly checks that were

issued to certain “investors” were paid from money stolen from other “investors.”

The Receiver further states that, in furtherance of the scheme, Cook and his co-conspirators caused an account to be opened in the name of Crown Forex LLC at Associated Bank, account number XXXX-1705, which account was used to collect and commingle funds from victim investors. Those commingled funds were then diverted for the personal use of Cook and his co-conspirators, to promote the Ponzi scheme, and to keep it going.

The Receiver further states that, in furtherance of the scheme, Cook and his co-conspirators caused a bank account to be opened in the name of UBS Diversified Growth LLC at Wells Fargo, account number XXX-XXX2710, which account was used to collect and commingle funds from victim investors, and that those commingled funds were then diverted for the personal use of Cook and his co-conspirators, to promote the Ponzi scheme, and to keep it going.

The Receiver further states that, in furtherance of the scheme, Cook and his co-conspirators caused a bank account to be opened in the name of Basel Group LLC at Associated Bank, account number XXX-5214, which account was used to collect and commingle funds from victim investors, and that those commingled funds were then diverted for the personal use of Cook and his co-conspirators to promote the Ponzi scheme, and to keep it going.

The Receiver further states that, in furtherance of the scheme, Cook and his co-conspirators caused a purported due diligence letter to be prepared falsely representing that Oxford Global Advisors had in excess of \$4 billion in assets

under management and that all accounts were 100% liquid. Neither of these representations had any basis in reality.

The Receiver further states that in February 2008 Cook and/or his co-conspirators were advised that Crown Forex S.A. was “illiquid” and that the management of Crown Forex, SA, did not have the company under control financially. Plea Agreement, *USA v. Pettengill*, 11-cr-192, at para. n (Docket No. 6) (D. Minn. June 21, 2011). To prop up Crown Forex, SA, as well as the Receivership Entities’ existing investment therein, Cook and his co-conspirators agreed to provide approximately \$4 million to Crown Forex, SA, in a transaction that purported to include an option for Oxford Global Advisors to assume control over the majority of Crown Forex SA's operations. Plea Agreement, *USA v. Pettengill*, 11-cr-192, at para. o. Specifically, Cook testified that he represented to the Swiss Financial Market Supervisory Authority (“FINMA”) that he was an owner of Crown Forex SA. Cook further testified that he participated in a plan to “cook [the] books” of Crown Forex SA. Cook created false statements that purported to show that Crown Forex SA had an account with Receivership Entity UBS Diversified and had deposited gold worth over \$2 million into that account. The investigators who were in control of Crown Forex SA then demanded that the UBS Diversified account be closed and the “gold” on deposit be sold. The investigators further demanded that UBS Diversified wire the value of the account to Crown Forex SA. To maintain the ruse, Cook then simply wired \$2,422,000, consisting of funds stolen from “investors” in his Ponzi scheme, to Crown Forex

SA. (Cook Dep. Tr. at 138:16-142:22 (Oct. 5, 2010).)

The Receiver further states that on December 9, 2008 FINMA ordered that Crown Forex S.A. customers would not be able to withdraw funds without FINMA's consent and that Crown Forex S.A. could no longer accept clients. FINMA also appointed two attorneys as "investigation agents" to take control of Crown Forex, SA and conduct an investigation into its operations for illegal acceptance of customer deposits and illegal activity as a foreign currency trader. Cook was notified of the decision to appoint the "investigation agents" to take control of Crown Forex SA on December 11, 2008. Complaint, *CFTC v. Cook et al.*, 09-cv-3332, at para. 31 (Docket No. 1) (D. Minn. Nov. 23, 2011); *see also* Exhibit 1-2, *CFTC v. Cook et al.*, 09-cv-3332, at para. 6 (Docket No. 19) (D. Minn. Nov. 23, 2011). Cook sent a signed letter, dated December 16, 2008, to FINMA expressing the views of Crown Forex SA on FINMA's December 9, 2008 decision. Exhibit 1-2, *CFTC v. Cook et al.*, 09-cv-3332, at para. 26. Cook also corresponded via email with the "investigation agents" regarding the status of the Crown Forex investigation. On February 23, 2009, FINMA ordered the liquidation of Crown Forex SA. Exhibit 1-2, *CFTC v. Cook et al.*, 09-cv-3332, at 1-19. On May 18, 2009 FINMA determined Crown Forex S.A. to be insolvent and formally declared the firm bankrupt. Exhibit 1-2, *CFTC v. Cook et al.*, 09-cv-3332, at 20-40; *see also* Complaint, *SEC v. Cook et al.*, 09-cv-3333, at para. 151-154 (Docket No. 1) (D. Minn. Nov. 23, 2009). As the majority shareholder in Crown Forex S.A., Cook was notified by FINMA about all of these events at or

about the time they occurred. Complaint, *SEC v. Cook et al.*, 09-cv-3333, at para. 155.

Cook also testified that he received a fax from Laurent Winkelman, one of the “investigators” appointed by FINMA, informing Cook that FINMA now controlled Crown Forex SA. (Cook Dep. Tr. at 705:24-706:7 (Oct. 28, 2010).) Cook further testified that “[w]e were continually defending, you know, the problems with Crown Forex [to internal sales staff.]” (Cook Dep. Tr. at 1558:2-4 (Dec. 1, 2010).) Cook further testified that some clients were calling in concerned by what they were reading about Crown Forex. (Cook Dep. Tr. at 1558:12-22 (Dec. 1, 2010).)

Clifford Berg is Trevor Cook’s father-in-law. Berg was, and is, a carpet salesman. To the Receiver’s knowledge, he has never had any formal training nor did he have any prior experience in investment management of any kind, let alone Forex trading. Nonetheless, he began working for Cook as an “investment broker” by at least June 2007. But unlike the other “brokers” working for Cook, Berg did not sign any sort of formal agreement. Rather, Berg relied on his family connection to Cook, and Cook made sure that Berg received “commission” payments for funds that he brought into the scheme, despite the absence of a formal agreement that entitled Berg to such “commissions.” (*E.g.* IR009740; IR012201.)

Berg and Cook also entered into an “agreement” where Cook promised Berg that if there ever were any problems, he would shut down the accounts of

Berg and Berg’s clients and send the money back. (Cook Dep. Tr. Oct. 5, 2010, at 168:5-8) Cook testified that he “had always had an agreement with Cliff” and explained that “Cliff had stated to me that when he opened his own account, that he wanted his [and his clients’] money out if there was ever a possibility that anything would go wrong.” (Cook Dep. Tr. July 20, 2011, at 89:9-10, 180:4-13.) Based on this “agreement” with Cook and Berg’s unique family connection to Cook, Berg was able to get all of his “clients” out of the scheme as soon as he found out about the SEC investigation. Moreover, each of Berg’s clients received payouts not only of their “principle”, but also money equal to the fictitious “profits” that they were promised.

Berg also had similar agreements with many of his clients, the Respondents—Berg represented that he would use his inside position to “monitor” the Receivership Entities and have funds sent to the Respondents if he ever had any “concerns.” *Amended Responses to Petitioner’s Discovery Requests*, at pg. 19, para. xiii (May 23, 2011). Specifically:

- Respondent Steven Fredell and his wife are lifelong friends of Berg and his wife Ellen. (S. Fredell Dep. Tr. at 40:14-23; J. Fredell Dep. Tr. at 14:1-7.) Fredell further testified that he made a “handshake deal” over the telephone with Cook: “It was understood that for any reason, big or small, cash me out, no questions asked.” (S. Fredell Dep. Tr. at 72:20-21, 73:12-14.) Fredell further testified that he also had an in-person “handshake deal” with Berg—“I said: You know, between you and Trevor, I’m counting on you to, you know, get my butt out of there if things are not up to snuff for any reason.” (S. Fredell Dep. Tr. at 73:20-23.) Fredell further testified that Berg knew about Fredell’s handshake deal with Cook and Cook knew about Fredell’s handshake deal with Berg. (S. Fredell Dep. Tr. at 74:7-12.) Fredell further testified that he trusted Berg to “be the point man, keep - keep an eye on things” from the inside, and that is exactly what Fredell

understood Berg to be doing when he closed Fredell's account. (S. Fredell Dep. Tr. at 147:19-148:4.)

- Respondent Michael Heise testified that Cliff Berg “was under my instructions in the past if anything did go backwards or whatever, to liquidate my accounts.” (M. Heise Dep. Tr. at 76:10-12; 252:4-17.) As part of this “agreement,” Berg was to be on the lookout for “a whole realm of possibilities, from theft, cheating, stealing, bad markets, bad decisions.” (M. Heise Dep. Tr. at 266:18-22.)
- Respondent Michael Hillesheim testified that “[w]e had an agreement with Cliff that when we opened these accounts up, we told Cliff: If there's something ever going on and we don't get the return we're supposed to be getting, then get our money out of there, because I did not want to lose that money.” (M. Hillesheim Dep. Tr. at 83:2-7.) Hillesheim further testified that up until Cliff Berg suddenly and unexpectedly closed the Hillesheims' accounts in June 2009, the Hillesheims *were* getting the return they were supposed to. (M. Hillesheim Dep. Tr. at 194:4-19.) Hillesheim further testified that he understood that based on this agreement, Cliff Berg would continue to monitor the Hillesheims' accounts (M. Hillesheim Dep. Tr. at 191:1-15) and send funds to the Hillesheims if Berg had any “concerns.” (M. Hillesheim Dep. Tr. at 193:15-20.)
- Respondent Cynthia Hillesheim testified that she had an “understanding” with Berg where Berg “was supposed to watch our money so that if we thought he would -- we would lose it, you know, or something was going wrong, we would -- we'd be able to get it out.” (C. Hillesheim Dep. Tr. at 31:15-25, 71:24-72:1.) Cynthia Hillesheim further testified that when Berg suddenly and unexpectedly closed the Hillesheims' accounts, she assumed that he had some “concerns” about the Receivership Entities and was acting on the “understanding” that they had. (C. Hillesheim Dep. Tr. at 63:17-23, 138:2-6, 138:21-24.)
- Respondent Steven Kautzman testified that he told Berg that “you need to protect me here and make darn sure that -- you know, that, you know, if you -- that we got to get out of this thing if there's ever anything going on.” (Kautzman Dep. Tr. at 19:10-15.) Kautzman also told Berg “you got to take care of me;” “watch out for my butt;” and “I need you to get my money clear if something happened.” (Kautzman Dep. Tr. at 55:25-56:1, 160:6-8, 160:20-21.) Kautzman testified that Berg “performed” on this agreement when he sent funds back to Kautzman. (Kautzman Dep. Tr. at 160:23-24, 161:6, 53:25-54:4, 55:23-56:7.)

- Respondent James McIntosh testified that Berg told him that Berg would “watch out for me and take care of me.” (McIntosh Dep. Tr. at 214:14-15, 216:18-19.) McIntosh further testified that Berg did ultimately “watch out” for him because Berg let McIntosh know about his concerns regarding the investigation of the Receivership Entities and sent funds to McIntosh. (McIntosh Dep. Tr. at 217:7-15.)

The Receiver further states that at least Buysse, Cheneys, Defiel, Frahms, Fredells, Harrises, Heises, Hillesheims, Kautzman, McIntosh, and Sundstrom knew that Berg was Cook’s father-in-law. (D. Buysse Dep. Tr. at 20:7-12, 21:2-7; S. Cheney Dep. Tr. at 28:12-6; P. Cheney Dep. Tr. at 31:2-7, 69:8-22, 70:7-12; W. Defiel Dep. Tr. at 41:1-7, 47:19-21, 55:21-4; T. Frahm Dep. Tr. at 43:18-20; J. Frahm, Dep. Tr. at 13:8-16, 23:5-8, 26:10-24; S. Fredell Dep. Tr. at 44:16-8; J. Fredell Dep. Tr. at 17:9-21, 28:10-2; W. Harris Dep. Tr. at 31:2-6; S. Harris Dep. Tr. at 24:2-4; M. Heise Dep. Tr. at 26:20-5; J. Heise Dep. Tr. at 73:12-4; M. Hillesheim Dep. Tr. at 19:20, 20:2-8, C. Hillesheim Dep. Tr. at 15:17-16:2; S. Kautzman Dep. Tr. at 40:16-8; J. McIntosh Dep. Tr. at 41:17-24; R. Sundstrom Dep. Tr. at 47:4-5, 58:21-5). The Receiver further states that at least Respondents Buysse, Cheney, Defiel, Fredells, Heises, Hillesheims, Kautzman, McIntosh, and Sundstrom knew that Berg was a carpet salesman by trade, not an investment advisor. (D. Buysse Dep. Tr. at 48:21-23, 50:21-23; S. Cheney Dep. 27:20-25; Defiel Dep. 29:1-5; J. Fredell Dep. 79:3-15; S. Fredell Dep. 44:7-18; M. Heise Dep. 27:1-14; J. Heise Dep. 21:19-25, 22:1-12; C. Hillesheim Dep. Tr. at 16:12-16; M. Hillesheim Dep. Tr. at 18:12-22; S. Kautzman Dep. Tr. at 29:4-18; J. McIntosh Dep. 37:2-8, 86:17-22; R. Sundstrom Dep. 31:1-11; J. Sundstrom Dep.

13:2-6.) Many Respondents knew that Berg had little or no knowledge of investments or investment strategy or considered Berg to have little or no knowledge of investments or investment strategy.

- Respondent Buysse testified that he knew that Berg was not an investment advisor and did not have investment experience. Buysse further testified that he knew Berg did not have experience in the investment world. (D. Buysse Dep. Tr. at 50:21-51:4.)
- Respondent Steven Fredell testified that Berg “doesn't know anything about investments any more than the guy -- average guy walking down the street.” (S. Fredell Dep. Tr. at 46:11-25.)
- Respondent Heise testified that Berg was his “account executive,” but that it did not seem like Berg understood the investment strategy. (M. Heise Dep. Tr. at 37:8-25.) Heise further testified that Berg “was my account representative. I trusted that he knew what he was doing. I trusted that he knew what his son-in-law was doing.” (M. Heise Dep. 258:18-25.) Heise further testified that Berg “kept us informed about what was going on. If we needed to know something, he could at least give us an answer, but we relied on the fact -- just like I relied that UBS knew what they were doing, Credit Suisse knew what they were doing.” (M. Heise Dep. 260:2-15.)
- Respondent McIntosh testified that he “understood that [Berg] had an association with his son-in-law, you know, when he was helping his son-in-law find investors.” (J. McIntosh Dep. Tr. at 197:8-12.)
- Respondent Kautzman testified that he was not aware that Berg had ever been an investment advisor, but nonetheless “I trusted it on faith that Cliff had been in it for X, Y, Z, and I'd known him for whatever we're talking, you know, and I -- he had a lot of respect in the [carpet] industry, and I just, you know, went with that.” (S. Kautzman Dep. Tr. at 35:5, 33:20-24.)
- Respondent Michael Hillesheim testified that he considered Berg to be an “investment advisor,” but he also knew at the time he “invested” that Berg was a carpet salesman by trade. (M. Hillesheim Dep. Tr. at 19:1-9, 20:22-24.)

The Receiver further states that many of the Respondents considered Berg's

inside position with the Receivership Entities and/or his family connection to

Cook to give Berg a unique ability to effectively “look out” for them:

- Respondent Jenene Fredell testified that she thought Berg was looking out for their money because she knew that he had an inside connection to Cook and because she knew that Cook was Berg’s son-in-law—if there were any developments in Cook’s businesses, Berg would be among the first to know. (J. Fredell Dep. Tr. at 23:16-24.)
- Respondent Michael Heise testified that Berg told him that Berg would continue to monitor Heise’s accounts—Heise was comfortable investing through Berg because he “knew that [Berg] had an inside track of watching what was taking place [at Cook’s headquarters].” (M. Heise Dep. Tr. at 258:11-14; 259:9-11.)
- Respondent Steve Kautzman testified that he felt assured that Berg could effectively look out for his money because of the “familial relationship he had” with Cook—because Berg was “family.” (Kautzman Dep. Tr. at 35:15-25, 158:25-159:13.)
- Respondent McIntosh testified that he felt “more comfortable with” investing through Berg because he was “family” with Cook (McIntosh Dep. Tr. at 61:2-23), and that Berg would “be able to [keep an eye on the money] being it was his son-in-law that was involved as the principal of the business.” (McIntosh Dep. Tr. at 215:19-216:6.)
- Respondent Steve Cheney testified that “we probably wouldn't have invested the -- if it hadn't have been for (Berg) being a family member and - - you know, that just gave us a little more comfort knowing that.” (S. Cheney Dep. Tr. at 108:6-24.) Cheney further testified that “I think other people just had some comfort knowing that Cliff was connected to the -- to the family, and I mean we didn’t think he had any power. He wasn’t an officer or anything like that. He was just a salesman, but, you know --” (S. Cheney Dep. Tr. 111:6-11.)

The Receiver further states that several Respondents specifically testified that it was their personal connection to Berg that allowed them to get funds equivalent to their entire “investment” plus fictitious “profits” out of the scheme when over 700 other investors were unable to:

- Respondent Michael Heise testified that he was able to get money out of the scheme “because I had Cliff Berg as my rep, and he did the right thing, got my money out.” (M. Heise Dep. Tr. at 274:24-275:2.)
- Respondent Jennifer Heise testified that she and her husband Michael were able to get money out of the scheme “because of our relationship with Cliff Berg” and “assume[s]” that Berg was able to get their money out before anyone else’s. (J. Heise Dep. Tr. at 85:14-17, 86:1-4.)
- Respondent Michael Hillesheim testified that he was able to get money out of the scheme because he “had a good agent” – because Berg was watching out for the Hillesheims’ money. (M. Hillesheim Dep. Tr. at 197:1-10.)
- Respondent Cynthia Hillesheim testified that she was able to get money out of the scheme “because Cliff was watching out for us.” (C. Hillesheim Dep. Tr. at 151:6-9.)
- Respondent McIntosh testified that he was able to get money out of the scheme “because Cliff called me -- and had said to -- you know, under the circumstances, you should go ahead and, you know, take your money out.” (McIntosh Dep. Tr. at 210:24-211:3.)
- Respondent Sundstrom testified that he was able to get money out of the scheme because “Cliff was watching out for me.” (Sundstrom Dep. Tr. at 133:11; 134:16-18; 135:4.)

The Receiver further states that on June 19, 2009 the SEC sent letters to Trevor Cook informing him of the SEC’s intention to perform a non-public investigation. On June 22, 2009, the SEC served subpoenas on Cook and his entities and began an on-site investigation at the Van Dusen Mansion at 1900 La Salle Avenue of Trevor Cook and the Receivership Entities that he and his co-conspirators controlled and operated. (Cook Dep. July 20, 2011, at 78:7-12.) The SEC’s on-site investigation lasted through at least Thursday, June 25, 2009. Trevor Cook knew that the investigation related to the currency trading entities

that he and his co-conspirators were operating. (Cook Dep. July 20, 2011, at 88:18-20.) Cook also knew that the SEC investigation was not a routine audit. (Cook Dep. July 20, 2011, at 78:21.)

At some point prior to June 29, 2009, Berg learned of the SEC investigation. Berg then tried to call Cook, but Cook was not available. Berg instead talked to Eric Erickson, who lied to Berg by telling him that it was not an investigation—rather, the SEC was doing an audit. (Cook Dep. July 20, 2011, at 77:14-78:4; Cook Dep. Oct. 5, 2010, at 168:17-169:2.) Later that same day, Berg got a hold of Cook and asked whether it was a routine audit or an investigation. Cook then told Berg that it was an investigation, not an audit, because “[y]ou know, I wasn’t going to lie to him.” (Cook Dep. July 20, 2011, at 78:4-6, 78:20-21, 181:6-182:1; Cook Dep. Oct. 5, 2010, at 169:3-11; Cook Dep. Oct. 6, 2010, at 295:3-6.) Berg then told Cook that he wanted all of his clients’ accounts closed. (Cook Dep. July 20, 2011, at 78:21-23, 138:18-20, 144:22-23; Cook Dep. Oct. 5, 2010, at 169:12-13.) Cook also testified that Berg knew that there was an investigation, and that after he found out about this investigation, he requested that his clients’ money be taken out, along with his own money. (Cook Dep. July 20, 2011, at 78:16-21; Cook Dep. October 6, 2010, at 294:23-295:2.)

The Receiver further states that Clifford Berg told at least Respondents Fredells, Frahm, Heise, Buysse, Kautzman, Hillesheims, Sundstrom, and McIntosh, as well as William Harris, that he had closed their accounts because there was an “investigation” or “audit” going on. (Cook Dep. July 20, 2011, at

116:2-10; S. Fredell Dep. Tr. at 75:4-9; J. Fredell Dep. Tr. at 32:13-21; T. Frahm Dep. Tr. at 114:16-115:5, 115:21-116:4; J. Frahm Dep. Tr. at 48:15-20; M. Heise Dep. Tr. at 79:13-19; D. Buysse Dep. Tr. at 20:7-12; 19:13-14; 18:24; S. Kautzman Dep. Tr. at 52:4; 164:14-16; C. Hillesheim Dep. Tr. at 149:14-20; M. Hillesheim Dep. Tr. at 78:22-79:10; R. Sundstrom Dep. Tr. at 198:8-13; J. McIntosh Dep. Tr. at 163:24-164:2; W. Harris Dep. Tr. at 135:6-8.)

On or about June 30, 2009, pursuant to Cook's agreement with Berg, Cook directed Julia Smith to go to an Associated Bank branch location to withdraw funds from the account of Receivership Entity Crown Forex LLC, account number XXX-XXX1705 and divide the funds into fourteen cashiers' checks payable to certain Respondents. (Cook Dep. July 20, 2011, at 154:23-25, 155:1-9.) On or about June 30, 2009, pursuant to Cook's agreement with Berg, Cook also directed Patrick Kiley to go to a Wells Fargo Bank branch location and withdraw funds from the account of Receivership Entity UBS Diversified Growth LLC, account number XXX-XXX2710 and divide the funds into eleven cashiers' checks payable to certain other Respondents and to Cliff Berg and his wife Ellen Berg. (Cook Dep. Nov. 8, 2010, at 942:2-22.) On or about July 1, 2009, pursuant to Cook's agreement with Clifford Berg, Cook directed Julia Smith to go to an Associated Bank branch location to withdraw additional funds from the account of Receivership Entity Crown Forex LLC, account number XXX-XXX1705 and divide the funds into two cashiers' checks payable to certain other Respondents.

Trevor Cook then physically delivered money that Berg requested, in the

form of these cashiers' checks, to Berg's house. (Cook Dep. July 20, 2011, at 148:24-25.). Berg then distributed the cashiers' checks that Cook had given him to each of the Respondents. The Respondents testified that Berg distributed the checks as follows:

- Berg personally delivered the checks to Respondents Fredells, Frahm, Cheneys, and Heise. (S. Fredell Dep. Tr. at 75:1-2; J. Fredell Dep. Tr. at 32:3-34:2; T. Frahm Dep. Tr. at 115:11-13; J. Frahm Dep. Tr. at 48:12-50:6; S. Cheney Dep. Tr. at 59:2-4; M. Heise Dep. Tr. at 76:20-77:5; J. Heise Dep. Tr. at 36:10-19.)
- Berg sent the checks via FedEx, UPS, or U.S. Mail to Respondents Buysse, Kautzman, Hillesheims, Sundstrom, and McIntosh. (D. Buysse Dep. Tr. at 14:1-7, 24:14-17; S. Kautzman Dep. Tr. at 53:5-8; C. Hillesheim Dep. Tr. at 61:17-25; R. Sundstrom Dep. Tr. at 111:1-8; J. McIntosh Dep. Tr. at 162:12-16.)
- Berg personally delivered a check for Respondent Hopfenspirger to Steve Cheney. Cheney then mailed the check to Hopfenspirger. (L. Hopfenspirger Dep. Tr. at 125:7-9.)
- Berg personally delivered checks for the Morissets and Walter Defiel to John Dzik. (G. Morisset Dep. Tr. at 70:6-19, 73:21-23; K. Morisset Dep. Tr. at 33:1-3.) Dzik gave the checks to Defiel (W. Defiel Dep. Tr. at 59:7-9) and Defiel personally delivered the Morissets' checks. (G. Morisset Dep. Tr. at 69:1-25; K. Morisset Dep. Tr. at 22:16-21.)

Thus, pursuant to earlier agreements and Berg's personal request to Cook pursuant to those agreements that Cook close Berg's clients' accounts and provide them with funds equivalent to their principal "investment" plus "interest," Cook caused funds from entities controlled by himself and his and his co-conspirators to be transferred to the Respondents through Berg.

The Receiver further states that least the following Respondents did not at any time request the funds they received on or after June 30, 2009 and did not at

any time request that their accounts be closed:

- Steven Fredell (S. Fredell Dep. Tr. at 72:13-16)
- Jenene Fredell (J. Fredell Dep. Tr. at 30:19-31:9)
- George Morisset (G. Morisset Dep. Tr. at 77:1-2)
- Karen Morisset (K. Morisset Dep. Tr. at 40:9-11)
- Walter Defiel (W. Defiel Dep. Tr. at 59:11-18)
- Michael Heise (M. Heise Dep. Tr. at 71:6-9)
- Jennifer Heise (J. Heise Dep. Tr. at 34:15)
- David Buysse (D. Buysse Dep. Tr. at 14:8-17)
- Steve Kautzman (S. Kautzman Dep. Tr. at 43:17-22, 59:4-60:15)
- Michael Hillesheim (M. Hillesheim Dep. Tr. at 83:25-84:3)
- Cynthia Hillesheim (C. Hillesheim Dep. Tr. at 61:22-23)
- Reynold Sundstrom (R. Sundstrom Dep. Tr. at 113:9-13)
- James McIntosh (McIntosh Dep. Tr. at 163:8-9)

The Receiver further states that any funds given to Cook, his co-conspirators, or any salesperson or employee of the Receivership Entities by the Respondents were not “investments” in any legitimate “foreign currency program” or any other legitimate “investment program.” Rather the Respondents’ original “investments” were stolen by Cook and his co-conspirators immediately upon receipt. The Receiver further states that each Respondent received funds equating to 100% of the funds that were stolen from them by Cook and his co-conspirators plus large amounts of accumulated fictitious “interest” or “profits”.

The Respondents have asserted that they were merely repaid their original “investment,” and that by doing so the Receivership Entities were able to extinguish a liability dollar-for-dollar. But when each Respondent received the funds that are the subject of this action, he or she possessed only a claim against a Receivership Entity for the original “investment” amount. That claim was worth

substantially less than the funds each Respondent received because the money the Respondent “invested,” along with all other “investments” in the Ponzi scheme, was stolen by Cook and his co-conspirators upon receipt. Because this was a Ponzi scheme, the Receivership Entities were insolvent from the onset and unable to satisfy all victims’ claims on a dollar-for-dollar basis. Thus the funds the Respondents received were far more than the value of their claims against a Receivership Entity. The value of each Respondent’s claim is his or her *pro rata* share of the stolen funds that are recovered from this fraud for the benefit of the Receivership Entities. As of today’s date, each Respondent’s *pro rata* share is approximately 2.5% of the amount stolen by Cook. The Receiver notes that over 700 other defrauded investors who lacked the Respondents’ insider connection to Cook and inside information about the SEC investigation have thus far received funds equating to about 2.5% of the funds that were stolen from them by Cook and his co-conspirators. The Receiver further states that the funds that Cook caused to be preferentially transferred to the Respondents through his father-in-law, Clifford Berg, on or after June 30, 2009, drastically decreased the Receivership Entities’ ability to compensate other defrauded investors. *See Order, Zayed v. Buysse et al.*, 11-cv-1042, at 10 (Docket No. 108) (D. Minn. June 1, 2011) (“The payment to Anderson undoubtedly dissipated the assets of the Receivership Entities and, in turn, made less money available to other defrauded investors.”). In fact, Respondents received more than has been paid out by the Receiver to **all other victims** of the Ponzi scheme to date.

The Receiver further states that prior to June 30, 2009 other investors in the fraudulent currency investment program run by Cook and his co-conspirators were trying to close their accounts and retrieve the money they had invested, but Cook refused to return the money. These investors include at least the following individuals: Howard and Sharon Phillips (asked to close their account on June 4, 2009); David Phillips (asked to close his account on June 4, 2009); Kenneth and Judy Hale (asked to close their account on June 24, 2009); and Kim and Joel Von Ende (began trying to close their account as far back as January 2009). The Receiver further refers the Respondents to the following document: Third Amended Complaint, *Phillips et al. v. Cook et al.*, 09-cv-1732 (D. Minn. Nov. 4, 2009). The Receiver further states that many other investors unsuccessfully attempted to close their accounts with the Receivership Entities during the summer of 2009 and refers the Respondents to the following documents: Complaint, *Phillips et al. v. Cook et al.*, 09-cv-1732 (D. Minn. Nov. 4, 2009); Exhibit 2 to Declaration of Scott J. Hlavacek, *SEC v. Cook et al.*, 09-cv-3333 (Docket No. 4) (D. Minn. Nov. 23, 2009); Receiver's First Amended Final Claims List, SEC Docket No. 851-1, CFTC Docket No. 817-1 & Beckman Docket No. 133-1 (Jul. 1, 2011).

The Receiver further refers the Respondents to the following documents: Order Allowing Summary Proceedings, *SEC v. Cook et al.*, 09-cv-3333 (Docket No. 380) (D. Minn. July 20, 2010); Plea Agreement, *USA v. Cook*, 10-cr-75 (Docket No. 7) (D. Minn. April 13, 2010); Plea Agreement, *USA v. Pettengill*, 11-

cr-192 (Docket No. 6) (D. Minn. June 21, 2011); *Receiver's Disclosures Under Rule 26(a)(1) of the Federal Rules of Civil Procedure* (December 1, 2010); and the *Receiver's First Amended Disclosures Under Rule 26(a)(1) of the Federal Rules of Civil Procedure* (July 1, 2011). The Receiver further states that since at least January 2011 he has made available for inspection and copying all documents and things seized from the Receivership Entities.

Interrogatory No. 10:

Identify each and every fact supporting your allegation in paragraph 32 of the Petition that "the money used to pay the Respondents came from the Receivership Entities funded with the money of victims of the scheme "

Response:

The Receiver objects to this Interrogatory because the Receiver has produced relevant documents from which this information can be readily ascertained by the Respondents and since at least January 2011 has made available for inspection and copying all documents and things seized from the Receivership Entities. Subject to the foregoing general and specific objections, the Receiver states that at all times relevant to this Interrogatory, Cook and his co-conspirators were running a Ponzi scheme and were using the Receivership Entities to defraud hundreds of victims through numerous materially false and misleading statements, representations, promises, and omissions. Any funds given to Cook, his co-conspirators, or any salesperson or employee of the Receivership Entities were not "investments" in any legitimate "foreign currency program" or any other legitimate "investment program." Rather the Respondents' original "investments"

were stolen by Cook and his co-conspirators immediately upon receipt and used to support the scheme and for their personal expenses. The stolen money was commingled among various bank accounts held in the name of Receivership Entities and controlled by Cook and his co-conspirators, including at least the following: account number XXX-XXX2710, held at Wells Fargo in the name of UBS Diversified FX Growth, account number XXX-XXX5214, held at Associated Bank in the name of Basel Group LLC, account number XXX-XXX1705, held at Associated Bank in the name of Crown Forex LLC, account numbers XXX-XXX5606 and XXX-XXX5598, both held at Wells Fargo in the name of Oxford Global Advisors, and account number XXX-XXX5601, held at Associated Bank in the name of Universal Brokerage FX Management. The commingled funds were used by Cook and his co-conspirators to further the scheme by, among other things, paying earlier victims; paying salaries and commissions of salespersons and employees who Cook and his co-conspirators used to lure in more victims; paying operating expenses associated with maintaining the appearance of legitimacy; funding promotional activities to lure more victims; paying the personal expenses of Cook and his co-conspirators; and using the money to support their extravagant lifestyles. Thus the funds the Respondents received were not the funds they transferred to the Receivership Entities; rather, the funds they received consisted of commingled funds stolen from other investors.

The Receiver further states that Cook has admitted under oath to, among other things, “diverting investor funds to make payments of interest and principal

to other investors and to pay personal expenses.” Order Allowing Summary Proceedings, *SEC v. Cook et al.*, 09-cv-3333, at para. C (Docket No. 380) (D. Minn. July 20, 2011). The Receiver further states that this Court has found that “All assets transferred from or by any Receivership entity named in the above-captioned lawsuits, through November 2009, were transferred pursuant to [Cook’s] Ponzi scheme.” *Id.* at para. D. The Receiver further refers the Respondents to the Declaration of Scott J. Hlavacek, *SEC v. Cook et al.*, 09-cv-3333, at para. 21, 22, and 35 (Docket No. 4) (D. Minn. Nov. 23, 2009).

Subject to the foregoing general and specific objections, and without limiting the Receiver’s right to supplement this response after a reasonable opportunity for further discovery, the Receiver further identifies the following documents pursuant to Federal Rule of Civil Procedure 33(d): IR012476-IR018228.

Interrogatory No. 11:

Identify each and every fact supporting your allegation in paragraph 33 of the Petition that "each Respondent received Receivership funds," including an explanation of how any funds received by any individual Lender Respondent from the Receivership entities before the institution of the Receivership over the Receivership entities could be classified as "Receivership funds."

Response:

The Receiver objects to this Interrogatory because it calls for a legal conclusion. The Receiver further objects to the characterization of the Respondents as “lenders,” because no Respondent was a “lender.” Subject to the foregoing general and specific objections, the Receiver refers the Respondents to

his response to Interrogatory No. 10.

Interrogatory No. 12:

Identify each and every fact supporting your allegation in paragraph 34 of the Petition that "Cook initiated the transfers to each Respondent on or after June 29, 2009 with actual intent to avoid, hinder, or delay payments to other creditors of Cook and the Receivership Entities."

Response:

The Receiver objects to this Interrogatory because it calls for a legal conclusion. Subject to the foregoing specific and general objections, the Receiver refers the Respondents to his response to Interrogatory No. 9.

Interrogatory No. 13:

Identify each and every fact supporting your allegation in paragraph 35 of the Petition that "each Respondent knew or should have known that the transfers they received on or after June 29, 2009, were fraudulent conveyances."

Response:

The Receiver objects to this Interrogatory because it calls for a legal conclusion. Subject to the foregoing general and specific objections, the Receiver states that each Respondent received the funds that are the subject of this action in the form of one or more cashiers' checks. Exhibit 2 to Petition for Return of Receivership Assets from Investor Respondents, *Zayed v. Buysse*, 11-cv-1042 (Docket No. 1-2) (D. Minn. July 23, 2010).

The Receiver further states that at least the following Respondents did not at any time request the funds they received on or after June 30, 2009 and did not at any time request that their accounts be closed:

- Steven Fredell (S. Fredell Dep. Tr. at 72:13-16)
- Jenene Fredell (J. Fredell Dep. Tr. at 30:19-31:9)
- George Morisset (G. Morisset Dep. Tr. at 77:1-2)
- Karen Morisset (K. Morisset Dep. Tr. at 40:9-11)
- Walter Defiel (W. Defiel Dep. Tr. at 59:11-18)
- Michael Heise (M. Heise Dep. Tr. at 71:6-9)
- Jennifer Heise (J. Heise Dep. Tr. at 34:15)
- David Buysse (D. Buysse Dep. Tr. at 14:8-17)
- Steve Kautzman (S. Kautzman Dep. Tr. at 43:17-22, 59:4-60:15)
- Michael Hillesheim (M. Hillesheim Dep. Tr. at 83:25-84:3)
- Cynthia Hillesheim (C. Hillesheim Dep. Tr. at 61:22-23)
- Reynold Sundstrom (R. Sundstrom Dep. Tr. at 113:9-13)
- James McIntosh (McIntosh Dep. Tr. at 163:8-9)

The Receiver further states that Berg represented that he would use his inside position to “monitor” the Receivership Entities and have funds sent to the Respondents if he ever had any “concerns.” *Amended Responses to Petitioner’s Discovery Requests*, at pg. 19, para. xiii (May 23, 2011). Specifically:

- Respondent Steven Fredell and his wife are lifelong friends of Berg and his wife Ellen. (S. Fredell Dep. Tr. at 40:14-23; J. Fredell Dep. Tr. at 14:1-7.) Fredell further testified that he made a “handshake deal” over the telephone with Cook: “It was understood that for any reason, big or small, cash me out, no questions asked.” (S. Fredell Dep. Tr. at 72:20-21, 73:12-14.) Fredell further testified that he also had an in-person “handshake deal” with Berg—“ I said: You know, between you and Trevor, I'm counting on you to, you know, get my butt out of there if things are not up to snuff for any reason.” (S. Fredell Dep. Tr. at 73:20-23.) Fredell further testified that Berg knew about Fredell’s handshake deal with Cook and Cook knew about Fredell’s handshake deal with Berg. (S. Fredell Dep. Tr. at 74:7-12.) Fredell further testified that he trusted Berg to “be the point man, keep - keep an eye on things” from the inside, and that is exactly what Fredell understood Berg to be doing when he closed Fredell’s account. (S. Fredell Dep. Tr. at 147:19-148:4.)
- Respondent Michael Heise testified that Cliff Berg “was under my instructions in the past if anything did go backwards or whatever, to liquidate my accounts.” (M. Heise Dep. Tr. at 76:10-12; 252:4-17.) As part of this “agreement,” Berg was to be on the lookout for “a whole realm

of possibilities, from theft, cheating, stealing, bad markets, bad decisions.” (M. Heise Dep. Tr. at 266:18-22.)

- Respondent Michael Hillesheim testified that “[w]e had an agreement with Cliff that when we opened these accounts up, we told Cliff: If there's something ever going on and we don't get the return we're supposed to be getting, then get our money out of there, because I did not want to lose that money.” (M. Hillesheim Dep. Tr. at 83:2-7.) Hillesheim further testified that up until Cliff Berg suddenly and unexpectedly closed the Hillesheims' accounts in June 2009, the Hillesheims *were* getting the return they were supposed to. (M. Hillesheim Dep. Tr. at 194:4-19.) Hillesheim further testified that he understood that based on this agreement, Cliff Berg would continue to monitor the Hillesheims' accounts (M. Hillesheim Dep. Tr. at 191:1-15) and send funds to the Hillesheims if Berg had any “concerns.” (M. Hillesheim Dep. Tr. at 193:15-20.)
- Respondent Cynthia Hillesheim testified that she had an “understanding” with Berg where Berg “was supposed to watch our money so that if we thought he would -- we would lose it, you know, or something was going wrong, we would -- we'd be able to get it out.” (C. Hillesheim Dep. Tr. at 31:15-25, 71:24-72:1.) Cynthia Hillesheim further testified that when Berg suddenly and unexpectedly closed the Hillesheim's accounts, she assumed that he had some “concerns” about the Receivership Entities and was acting on the “understanding” that they had. (C. Hillesheim Dep. Tr. at 63:17-23, 138:2-6, 138:21-24.)
- Respondent Steven Kautzman testified that he told Berg that “you need to protect me here and make darn sure that -- you know, that, you know, if you -- that we got to get out of this thing if there's ever anything going on.” (Kautzman Dep. Tr. at 19:10-15.) Kautzman also told Berg “you got to take care of me;” “watch out for my butt;” and “I need you to get my money clear if something happened.” (Kautzman Dep. Tr. at 55:25-56:1, 160:6-8, 160:20-21.) Kautzman testified that Berg “performed” on this agreement when he sent funds back to Kautzman. (Kautzman Dep. Tr. at 160:23-24, 161:6, 53:25-54:4, 55:23-56:7.)
- Respondent James McIntosh testified that Berg told him that Berg would “watch out for me and take care of me.” (McIntosh Dep. Tr. at 214:14-15, 216:18-19.) McIntosh further testified that Berg did ultimately “watch out” for him because Berg let McIntosh know about his concerns regarding the investigation of the Receivership Entities and sent funds to McIntosh. (McIntosh Dep. Tr. at 217:7-15.)

The Receiver further states that at least Buysse, Cheneys, Defiel, Frahms, Fredells, Harrises, Heises, Hillesheims, Kautzman, McIntosh, and Sundstrom knew that Berg was Cook's father-in-law. (D. Buysse Dep. Tr. at 20:7-12, 21:2-7; S. Cheney Dep. Tr. at 28:12-6; P. Cheney Dep. Tr. at 31:2-7, 69:8-22, 70:7-12; W. Defiel Dep. Tr. at 41:1-7, 47:19-21, 55:21-4; T. Frahm Dep. Tr. at 43:18-20; J. Frahm, Dep. Tr. at 13:8-16, 23:5-8, 26:10-24; S. Fredell Dep. Tr. at 44:16-8; J. Fredell Dep. Tr. at 17:9-21, 28:10-2; W. Harris Dep. Tr. at 31:2-6; S. Harris Dep. Tr. at 24:2-4; M. Heise Dep. Tr. at 26:20-5; J. Heise Dep. Tr. at 73:12-4; M. Hillesheim Dep. Tr. at 19:20, 20:2-8, C. Hillesheim Dep. Tr. at 15:17-16:2; S. Kautzman Dep. Tr. at 40:16-8; J. McIntosh Dep. Tr. at 41:17-24; R. Sundstrom Dep. Tr. at 47:4-5, 58:21-5).

The Receiver further states that at least Respondents Buysse, Cheney, Defiel, Fredells, Heises, Hillesheims, Kautzman, McIntosh, and Sundstrom knew that Berg was a carpet salesman by trade, not an investment advisor. (D. Buysse Dep. Tr. at 48:21-23, 50:21-23; S. Cheney Dep. 27:20-25; Defiel Dep. 29:1-5; J. Fredell Dep. 79:3-15; S. Fredell Dep. 44:7-18; M. Heise Dep. 27:1-14; J. Heise Dep. 21:19-25, 22:1-12; C. Hillesheim Dep. Tr. at 16:12-16; M. Hillesheim Dep. Tr. at 18:12-22; S. Kautzman Dep. Tr. at 29:4-18; J. McIntosh Dep. 37:2-8, 86:17-22; R. Sundstrom Dep. 31:1-11; J. Sundstrom Dep. 13:2-6.) Many Respondents knew that Berg had little or no knowledge of investments or investment strategy or considered Berg to have little or no knowledge of investments or investment strategy.

- Respondent Buysse testified that he knew that Berg was not an investment advisor and did not have investment experience. Buysse further testified that he knew Berg did not have experience in the investment world. (D. Buysse Dep. Tr. at 50:21-51:4.)
- Respondent Steve Cheney testified that “Cliff is a poster boy for a carpet peddler, and I should know after 41 years. He's just kind of an old-fashioned carpet peddler. And I mean he wasn't able to answer any questions beyond the interest rate and much.” (S. Cheney Dep. Tr. at 28:1-11.)
- Respondent Steven Fredell testified that Berg “doesn't know anything about investments any more than the guy -- average guy walking down the street.” (S. Fredell Dep. Tr. at 46:11-25.)
- Respondent Heise testified that Berg was his “account executive,” but that it did not seem like Berg understood the investment strategy. (M. Heise Dep. Tr. at 37:8-25.) Heise further testified that Berg “was my account representative. I trusted that he knew what he was doing. I trusted that he knew what his son-in-law was doing.” (M. Heise Dep. 258:18-25.) Heise further testified that Berg “kept us informed about what was going on. If we needed to know something, he could at least give us an answer, but we relied on the fact -- just like I relied that UBS knew what they were doing, Credit Suisse knew what they were doing.” (M. Heise Dep. 260:2-15.)
- Respondent McIntosh testified that he “understood that [Berg] had an association with his son-in-law, you know, when he was helping his son-in-law find investors.” (J. McIntosh Dep. Tr. at 197:8-12.)
- Respondent Kautzman testified that he was not aware that Berg had ever been an investment advisor, but nonetheless “I trusted it on faith that Cliff had been in it for X, Y, Z, and I'd known him for whatever we're talking, you know, and I -- he had a lot of respect in the [carpet] industry, and I just, you know, went with that.” (S. Kautzman Dep. Tr. at 35:5, 33:20-24.)
- Respondent Michael Hillesheim testified that he considered Berg to be an “investment advisor,” but he also knew at the time he “invested” that Berg was a carpet salesman by trade. (M. Hillesheim Dep. Tr. at 19:1-9, 20:22-24.)

The Receiver further states that many of the Respondents considered Berg's

inside position with the Receivership Entities and/or his family connection to Cook to give Berg a unique ability to effectively “look out” for the funds:

- Respondent Jenene Fredell testified that she thought Berg was looking out for their money because she knew that he had an inside connection to Cook and because she knew that Cook was Berg’s son-in-law—if there were any developments in Cook’s businesses, Berg would be among the first to know. (J. Fredell Dep. Tr. at 23:16-24.)
- Respondent Michael Heise testified that Berg told him that Berg would continue to monitor Heise’s accounts—Heise was comfortable investing through Berg because he “knew that [Berg] had an inside track of watching what was taking place [at Cook’s headquarters].” (M. Heise Dep. Tr. at 258:11-14; 259:9-11.)
- Respondent Steve Kautzman testified that he felt assured that Berg could effectively look out for his money because of the “familial relationship he had” with Cook—because Berg was “family.” (Kautzman Dep. Tr. at 35:15-25, 158:25-159:13.)
- Respondent McIntosh testified that he felt “more comfortable with” investing through Berg because he was “family” with Cook (McIntosh Dep. Tr. at 61:2-23), and that Berg would “be able to [keep an eye on the money] being it was his son-in-law that was involved as the principal of the business.” (McIntosh Dep. Tr. at 215:19-216:6.)
- Respondent Steve Cheney testified that “we probably wouldn't have invested the -- if it hadn't have been for (Berg) being a family member and - - you know, that just gave us a little more comfort knowing that.” (S. Cheney Dep. Tr. at 108:6-24.) Cheney further testified that “I think other people just had some comfort knowing that Cliff was connected to the -- to the family, and I mean we didn't think he had any power. He wasn't an officer or anything like that. He was just a salesman, but, you know --” (S. Cheney Dep. Tr. 111:6-11.)

The Receiver further states that several Respondents specifically testified that it was their personal connection to Berg that allowed them to get funds equivalent to their entire “investment” plus fictitious “profits” out of the scheme when over 700 other investors were unable to:

- Respondent Michael Heise testified that he was able to get money out of the scheme “because I had Cliff Berg as my rep, and he did the right thing, got my money out.” (M. Heise Dep. Tr. at 274:24-275:2.)
- Respondent Jennifer Heise testified that she and her husband Michael were able to get money out of the scheme “because of our relationship with Cliff Berg” and “assume[s]” that Berg was able to get their money out before anyone else’s. (J. Heise Dep. Tr. at 85:14-17, 86:1-4.)
- Respondent Michael Hillesheim testified that he was able to get money out of the scheme because he “had a good agent” – because Berg was watching out for the Hillesheim’s money. (M. Hillesheim Dep. Tr. at 197:1-10.)
- Respondent Cynthia Hillesheim testified that she was able to get money out of the scheme “because Cliff was watching out for us.” (C. Hillesheim Dep. Tr. at 151:6-9.)
- Respondent McIntosh testified that he was able to get money out of the scheme “because Cliff called me -- and had said to -- you know, under the circumstances, you should go ahead and, you know, take your money out.” (McIntosh Dep. Tr. at 210:24-211:3.)
- Respondent Sundstrom testified that he was able to get money out of the scheme because “Cliff was watching out for me.” (Sundstrom Dep. Tr. at 133:11; 134:16-18; 135:4.)

The Receiver further states that at least Respondents Buysse, Cheneys, Defiel, Fredels, Heises, Hillesheims, Kautzman, McIntosh, Morissets, and Sundstrom did not make any written request to close accounts purportedly held with the Receivership Entities and did not make any written request for the funds they received on or after June 29, 2009. Respondent Frahm produced a letter dated May 5, 2009, but the letter is unsigned and Frahm has no specific recollection of ever having sent it. (T. Frahm Dep. Tr. at 173:16-175:12.)

The Receiver further states that none of the Respondents received any

account closing documents, receipts, final statements, or paperwork of any kind with the cashiers checks they received on or after June 29, 2009.

The Receiver further states that all Respondents signed Crown Forex, Oxford Global Advisors, Oxford Global Partners, or UBS Diversified agreements requiring that the party who terminates the purported “account” provide prior written notice:

- At least Respondents Buysse, Frahm, Fredells, Heise, Hillesheims, Kautzman, McIntosh, Morissets, and Sundstrom signed Crown Forex agreements requiring the party terminating the account to give written notice to the other party. (Buysse Dep. Ex. 8; T. Frahm Ex. 26; J. Fredell Dep. Ex. 26; S. Fredell Dep. Ex. 12; M. Heise Dep. Exs. 9, 10; M. Hillesheim Dep. Ex. 36; C. Hillesheim Dep. Ex. 17; Kautzman Dep. Ex. 9; McIntosh Dep. Ex. 5; G. Morisset Dep. Ex. 4; K. Morisset Dep. Ex. 28; Sundstrom Dep. Ex. 11.)
- At least Respondents Buysse, S. Cheney, Defiel, Frahm, Heise, and Sundstrom signed Oxford Global Advisors agreements requiring the party who terminates the purported “account” to provide 30 days written notice to the other party. (Buysse Dep. Ex. 4; IR002745-IR002750 (S. Cheney); Defiel Dep. Ex. 5; T. Frahm Ex. 16-18; M. Heise Dep. Ex. 8; Sundstrom Dep. Ex. 8.)
- At least Respondents Fredells, Heise, Hillesheims, Kautzman, McIntosh, and Sundstrom signed Oxford Global Advisors agreements requiring the party who terminates the purported “account” to provide written notice to the other party. (S. Fredell Dep. Ex. 16; J. Fredell Dep. Ex. 30; M. Heise Dep. Ex. 15; M. Hillesheim Dep. Exs. 40-41; C. Hillesheim Ex. 20; Kautzman Ex. 11; McIntosh Dep. Ex. 7; Sundstrom Dep. Ex. 10.)
- At least Repondents Frahm, Fredells, and Hillesheims signed UBS Diversified agreements requiring the party terminating the account to provide written notice to the other party. (Frahm Dep. Ex. 8; S. Fredell Dep. Ex. 10; J. Fredell Dep. Ex. 24; M. Hillesheim Dep. Ex. 42; C. Hillesheim Dep. Ex. 9.)
- Respondent Hopfenspirger also signed an agreement with Oxford Global Advisors requiring 30 days written notice to terminate the “account” but

made a hand-written change so that the contract required only two days written notice to terminate the account. (Hopfenspirger Dep. Ex. 12; IR0073812.) However Hopfenspirger provided no such written notice.

The Receiver further states that none of the Respondents were charged any fees associated with the “closing” or “cashing out” of their accounts.

The Receiver further states that at least Respondents Defiel, Frahm, Fredells, Heise, Kautzman, McIntosh, and Sundstrom signed purported agreements that imposed a “Contingent Deferred Sales Charge” or “Redemption fee” on account closings within four years of opening the account. (Defiel Dep. Ex. 6; T. Frahm Dep. Ex. 17; J. Fredell Dep. Ex. 31; S. Fredell Dep. Ex. 17; M. Heise Dep. Ex. 8; Kautzman Dep. Ex. 11; McIntosh Dep. Ex. 7; R. Sundstrom Dep. Ex. 7.)

The Receiver further states that at least Respondents Fredells, Frahm, Cheneys, Hopfenspirger, Heise, Buysse, Kautzman, Hillesheims, Sundstrom, McIntosh, and Defiel knew of an “investigation” or “audit” related to Trevor Cook, Bo Beckman, or the Receivership Entities at or about the time he or she received the funds that are the subject of this action. Specifically:

- Respondent Steve Fredell testified that Cliff and Ellen Berg stopped by his house one night, handed him cashiers’ checks, and explained that “the SEC was in doing some checking on Bo, Bo Becker, Beckman, whatever his name was. And [Cliff Berg] said: It just didn't seem right I mean per our agreement. He said: Anything big or little, get you out of there. He says: You're out of there.” (S. Fredell Dep. Tr. at 75:4-9.) Fredell further testified that Berg told him on that same evening that he was concerned because the SEC had come to Trevor Cook’s offices. (S. Fredell Dep. Tr. at 75:4-9.)
- Respondent Jenene Fredell testified that Berg called and asked “are you

guys going to be home tonight?” (J. Fredell Dep. Tr. at 32:8.) Jenene Fredell further testified that when Berg stopped by that night to drop off the cashier’s checks “Cliff just said -- he said: I've got your check for your money here because, he said, there's just a little concern because this man named Bo somebody at the company was going to maybe be investigated. And so Cliff said: So, you know, I knew that if you guys ever had any worries or anything, you'd want your money, you know, back, so, he said, I got a check for you.” (J. Fredell Dep. Tr. at 32:13-21.)

- Respondent Terry Frahm testified that Berg stopped by his house to drop off cashiers’ checks and told his wife Jean that there was an “audit on the other side of the business.” (T. Frahm Dep. Tr. at 114:16-115:5, 115:21-116:4.)
- Jean Frahm testified that when Berg stopped by to drop off the checks, he explained “that Bo's side of the business, that there was an audit going on, okay? . . . There was an audit. They were possibly going to look at the books.” (J. Frahm Dep. Tr. at 48:15-20.)
- Respondent Steven Cheney testified that he called Cook on June 27 or 28, 2009 to ask about investing additional money, but Cook told Cheney “Let's hold off and wait a little bit because we have a problem with a different part of the company that is not involved in our company, but it's still part of the group, and that he was concerned about it.” (S. Cheney Dep. Tr. at 91:11-15, 162:15-17.) Cheney also testified that “At the time that I talked to him, Cliff had told people that there was an audit or investigation in a different part of the company.” (S. Cheney Dep. Tr. at 63:9-12.) Cheney further testified that in a second conversation with Cook the following day Cook said that Berg would bring the checks out to Cheney. (S. Cheney Dep. Tr. at 96:24-25.)
- Respondent Larry Hopfenspirger testified that Cheney mentioned during a telephone call that there “was some kind of inquiry being made on the brokerage part of Oxford” and that Cheney was taking money out (L. Hopfenspirger Dep. Tr. at 124:20-125:1). Cheney had “heard that they're being investigated.” (L. Hopfenspirger Dep. Tr. at 127:8-9.) Cheney then asked “Larry would you like me to, you know, get your money and send it to you?” and Hopfenspirger said “yeah.” (L. Hopfenspirger Dep. Tr. at 132:6-8, 132:11-16).
- Respondent Heise testified that when he returned home from a fishing trip in Canada, several days after Berg had “cashed out” the account and dropped the checks off with Heise’s daughter, he talked to Berg over the

phone and Berg explained that “there had been some investigation in the Bo Beckman side of this whole scenario so they just -- that's -- one thing led to another, and they liquidated the account.” (M. Heise Dep. Tr. at 79:13-19.)

- Respondent Buysse testified that at some point after July 1, 2009, Berg stopped by his store and explained that there was “an ongoing investigation into his -- his son-in-law concerning this Oxford Financial.” (D. Buysse Dep. Tr. at 20:7-12; 19:13-14; 18:24.)
- Respondent Kautzman testified that Berg left a voicemail on Kautzman’s cell phone telling him that one of Cook’s partners was having some “issues” or something was “going on” with Trevor's partner. (S. Kautzman Dep. Tr. at 52:4; 164:14-16.)
- Respondent Cynthia Hillesheim testified that after Berg had mailed the checks, she called him back and he explained that he had closed the accounts because “they were going to investigating--or investigation, and then we were under the understanding that they were investigating over in Switzerland.” (C. Hillesheim Dep. Tr. at 64:13-20; 65:18-24.) Hillesheim testified that it seemed that Cliff Berg “was worried” when he closed the accounts. (C. Hillesheim Dep. Tr. at 64:25.) When Cynthia Hillesheim was interviewed by the Receiver, she recalled that Berg didn't want their money to be “locked up” in an investigation. At her deposition she testified that Berg “could have [mentioned not wanting the money to be ‘locked up’] because I think it was after that that they were thinking maybe they would lock, you know, because of the investigation.” (C. Hillesheim Dep. Tr. at 149:14-20.)
- Respondent Michael Hillesheim testified that Berg explained to his wife that he had closed the accounts because there was going to be “an investigation.” (M. Hillesheim Dep. Tr. at 78:22-79:10.)
- Respondent Sundstrom testified that Berg called him up to tell him that he had closed Sundstrom’s account and told Sundstrom that “somebody was being investigated.” (R. Sundstrom Dep. Tr. at 111:13, 117:16-18.) Berg “wanted to get [the money] out of that -- whatever was going on, get it out of there, and it was back in my hands.” (R. Sundstrom Dep. Tr. at 112:8-10.) Sundstrom testified that Berg was concerned about the “investigation,” and that Berg “thought it was best just to get the money out and when it cooled down, put it back into Charles Schwab.” (R. Sundstrom Dep. Tr. at 198:8-13.)

- Respondent McIntosh testified that on or about June 30, 2009 Berg called him up and “recommended that I get out of the investment, and he said that there was some investigation being done into Bo Beckman, and that he thought that I should get out, and I said, okay.” (J. McIntosh Dep. Tr. at 163:5-9.) McIntosh further testified that Berg told him in that same phone call that “Bo Beckman was being investigated: You know, why take the chance of your money being tied out. I think you should get out.” (J. McIntosh Dep. Tr. at 163:24-164:2.)
- Respondent Defiel stated in response to the Receiver’s Interrogatory No. 8 that when John Dzik personally delivered the cashiers’ check to Defiel, Dzik explained that Berg “was concerned about issues surrounding the investigation of Bo Beckman, who worked for an affiliated Cook entity.”

The Receiver further states that as described above, Berg contacted or attempted to contact at least each of the following Respondents, either in person or via telephone, to let them know why he had closed their accounts: Steven and Jenene Fredell, Terry Frahm, David Buysse, Steve Kautzman, Cynthia Hillesheim, and James McIntosh.

The Receiver further states that at least Respondents Frahm, Fredell, Heise, Hillesheim, Kautzman, McIntosh, and Morisset “invested” qualified money in the Receivership Entities through third party custodians Entrust and/or Millennium Trust but contrary to the agreements they signed, received the fraudulently transferred funds directly from the Receivership Entities. The Receiver further states that, by contrast, any Respondent who received qualified funds from the Receivership Entities *prior to* the late June/early July 2009 fraudulent transfers received funds through the third-party custodian. (Bates numbers 011970-011981.) The Receiver further states that at least Respondent Steven Kautzman received a letter from Todd Grill, owner of Entrust Midwest, explaining that

would be “highly unusual” if the funds Mr. Kautzman received in late on or around June 30, 2009 had bypassed Entrust. (IR024179.) The Receiver further states that Respondent McIntosh testified that he called Entrust after he had received the cashier’s check that Berg mailed to him to “see what the story was,” as his account at Entrust apparently remained open and Entrust continued to send him statements. McIntosh was not able to talk to anyone at Entrust. (McIntosh Dep. Tr. at 173: 4-174:24.) The Receiver further states that Michael Hillesheim testified that he knew qualified money had to go through a custodian such as Millennium or Entrust. (M. Hillesheim Dep. Tr. at 51:20-23, 116:24-117:3.)

The Receiver further states that after the fraudulent transfers occurred, at least Respondents Fredells, Frahm, Heises, Kautzman, Hillesheim, Morissets, and McIntosh continued to receive account statements, tax forms, and bills from Entrust Midwest showing that the qualified funds the Respondents had “invested” remained in the custody of Entrust. (*E.g.* bates numbers 10926-10931 (Frahm); 10333-10353 (Morissets); 11900-11905, IR024132-IR024137 (Fredells); 11985-11987 (Heises); 11955-11964 (McIntosh); 10182-10197 (Hillesheims).) The Receiver further states that Respondent McIntosh continued to receive his monthly distribution payments from Entrust in July and August 2009, *after* Berg had closed McIntosh’s account with the Receivership Entities and sent McIntosh the cashier’s check for the full “value” of his account. (McIntosh Dep. Tr. at 180:23-181:5.) The Receiver further states that Respondent Kautzman testified that he tried to explain to Entrust that the funds were no longer there because they had already

been “returned” to Kautzman, and Entrust told Kautzman that “it’s impossible” that the money was returned. (S. Kautzman Dep. Tr. at 136:5-9.)

The Receiver further states that Karen Morisset testified that she thought it was “kind of odd” that Walter Defiel just showed up at the Morissets’ house with checks for them. (K. Morisset Dep. Tr. at 23:6.) Morisset further testified that she then tried to call someone at the Oxford Global in an attempt to “find out what's -- what's going on.” (K. Morisset Dep. Tr. at 24:4-5.) Morisset testified that “I remember calling the next day to Global to try to get a hold of Ryan [Moeller] because he's the only contact number we had for the place, and I never was able to reach anybody, no answer, no voice mail. There was nothing. It was -- there was no connect -- nobody would answer, so I never did get a hold of them.” (K. Morisset Dep. Tr. at 23:7-14.)

The Receiver further states that Respondent Frahm testified that he did not invest in any company or entity named “Crown.” (T. Frahm Dep. Tr. at 278:8-9.) Notwithstanding, Frahm received account statements from Crown Forex. (IR000847-IR000852.) Frahm also testified that he had requested that his account with the Receivership Entities be rolled over directly into the Oxford PCG equities program, “so I wouldn’t have to deal with it.” (T. Frahm Dep. Tr. at 120:11-15.) But Frahm received cashiers’ checks hand-delivered by Berg instead. (T. Frahm Dep. Tr. at 114:5-7.) The Receiver further states that Frahm stated during a March 2010 interview that he called Cook in the spring of 2009 with questions regarding the tax consequences of his “investments” with the Receivership Entities. Frahm

“got a bad feeling” from the answers Cook gave him and “felt uncomfortable with Cook.” (IR002522.) The Receiver further states that Frahm sent an email to Eric Erickson, an employee of Cook, on March 18, 2009 noting a “red flag” related to the rollover of \$111,000 in IRA money from Frahm’s Smith Barney account. (IR009814-IR009816.)

The Receiver further states that Respondent Defiel testified that his financial advisor had advised him not to invest in the Receivership Entities. Defiel’s financial advisor told him “If it sounds too good, looks too good, something like it just isn't going to happen. You know, [the financial advisor] says that's -- he said he didn't think it was going to -- he didn't think it was legit.” (W. Defiel Dep. Tr. at 35:2-11.)

The Receiver further states that Respondent Sundstrom testified that he thought that the investment opportunity as Berg presented it seemed “awful good,” so Sundstrom gave a brochure that Berg had left him to his attorney and told him “look at this. Tell me - investigate it. Let me know if it is- if there's something wrong with it,” but Sundstrom never heard back from his attorney. (R. Sundstrom Dep. Tr. at 38:19-25, 39:19.)

The Receiver further states that Respondent Hopfenspirger testified that Cheney did not have authority to get money out of the Receivership Entities for him. (L. Hopfenspirger Dep. Tr. at 130:1-3, 131:22-25.) Hopfenspirger also testified that nobody from the Receivership Entities called him to verify that he actually wanted to close the account. (L. Hopfenspirger Dep. Tr. at 130:16-21.)

Hopfenspirger further testified that “I think, you know, based on [the contract language], that [the Cook companies] probably should have gotten authority from me [before closing the account] which I automatically would have given. [But] I don't believe that's what happened.” (L. Hopfenspirger Dep. Tr. at 194:1-5.)

Hopfenspirger further testified that he viewed the “currency program” offered by Cook as completely interchangeable with a savings account at a bank: “In actuality, it was even more stark than that because there was a bank right here, and the Van Dusen mansion is right here, so all I had to do was go to this bank, walk down a block, put it in here for 24 times as much money per month as I did here because that was the Franklin Bank there.” (L. Hopfenspirger Dep. Tr. at 38:16-22.) Hopfenspirger viewed the “currency program” as “Monopoly, free parking.” (L. Hopfenspirger Dep. Tr. at 84:4-5.)

The Receiver further refers the Respondents to the following documents: Petition for Return of Receivership Assets from Investor Respondents (Docket No. 1), at ¶ 31(o); Receiver’s Disclosures Under Rule 26(a)(1) of the Federal Rules of Civil Procedure (December 1, 2010); and the Receiver’s First Amended Disclosures Under Rule 26(a)(1) of the Federal Rules of Civil Procedure (July 1, 2011). The Receiver further states that since at least January 2011 he has made available for inspection and copying all documents and things seized from the Receivership Entities.

Interrogatory No. 14:

Identify each and every fact supporting your allegation in paragraph 36 of

the Petition that Lender Respondents received payments preferentially over hundreds of investors who were unable to withdraw money they had invested in the Receivership Entities, specifically your contention that investors were unable to withdraw money from the Receivership Entities on or before June 30, 2009.

Response:

The Receiver objects to the characterization of the Respondents as “lenders,” because no Respondent was a “lender.” Subject to the foregoing specific and general objections, the Receiver refers the Respondents to his response to Interrogatory No. 9.

Interrogatory No. 15:

Identify each and every fact supporting your allegation in paragraph 39 of the Petition that all funds transferred to Lender Respondents by the Receivership entities were transferred pursuant to a Ponzi scheme.

Response:

The Receiver objects to this Interrogatory because it calls for a legal conclusion. The Receiver further objects to the characterization of the Respondents as “lenders,” because no Respondent was a “lender.” Subject to the foregoing specific and general objections, the Receiver refers the Respondents to his response to Interrogatory No. 9. The Receiver further states that Cook has admitted under oath to, among other things, “diverting investor funds to make payments of interest and principal to other investors and to pay personal expenses.” Order Allowing Summary Proceedings, *SEC v. Cook et al.*, 09-cv-3333, at para. C (Docket No. 380) (D. Minn. July 20, 2011). The Receiver further states that this Court has found that “All assets transferred from or by any

Receivership entity named in the above-captioned lawsuits, through November 2009, were transferred pursuant to [Cook's] Ponzi scheme." *Id.* at para. D. The Receiver further states that since at least January 2011 he has made available for inspection and copying all documents and things seized from the Receivership Entities.

Interrogatory No. 16:

Identify each and every fact supporting your allegation in paragraph 40 of the Petition that Cook and the Receivership Entities transferred funds to the Lender Respondents with actual intent to hinder, delay, or defraud creditors.

Response:

The Receiver objects to this Interrogatory because it calls for a legal conclusion. The Receiver further objects to the characterization of the Respondents as "lenders," because no Respondent was a "lender." Subject to the foregoing specific and general objections, the Receiver refers the Respondents to his response to Interrogatory No. 9. The Receiver further states that Cook has admitted under oath to, among other things, "diverting investor funds to make payments of interest and principal to other investors and to pay personal expenses." Order Allowing Summary Proceedings, *SEC v. Cook et al.*, 09-cv-3333, at para. C (Docket No. 380) (D. Minn. July 20, 2011). The Receiver further states that this Court has found that "All assets transferred from or by any Receivership entity named in the above-captioned lawsuits, through November 2009, were transferred pursuant to [Cook's] Ponzi scheme." *Id.* at para. D. The Receiver further states that since at least January 2011 he has made available for

inspection and copying all documents and things seized from the Receivership Entities.

Interrogatory No. 17:

Identify each and every fact supporting your allegation in paragraph 42 of the Petition that each transfer made to the Lender Respondents was a fraudulent transfer.

Response:

The Receiver objects to this Interrogatory because it calls for a legal conclusion. The Receiver further objects to the characterization of the Respondents as “lenders,” because no Respondent was a “lender.” Subject to the foregoing specific and general objections, the Receiver refers the Respondents to his response to Interrogatory No. 9. The Receiver further states that Cook has admitted under oath to, among other things, “diverting investor funds to make payments of interest and principal to other investors and to pay personal expenses.” Order Allowing Summary Proceedings, *SEC v. Cook et al.*, 09-cv-3333, at para. C (Docket No. 380) (D. Minn. July 20, 2011). The Receiver further states that this Court has found that “All assets transferred from or by any Receivership entity named in the above-captioned lawsuits, through November 2009, were transferred pursuant to [Cook’s] Ponzi scheme.” *Id.* at para. D. The Receiver further states that since at least January 2011 he has made available for inspection and copying all documents and things seized from the Receivership Entities.

Interrogatory No. 18:

Identify each and every fact supporting your allegation in paragraph 44 that each Lender Respondent has been unjustly enriched by the return of their funds from the Receivership entities.

Response:

The Receiver objects to this Interrogatory because it calls for a legal conclusion. The Receiver further objects to the characterization of the Respondents as “lenders,” because no Respondent was a “lender.” The Receiver further objects to this Interrogatory to the extent “return” implies that the funds each Respondent received can somehow be traced to funds they initially transferred to a Receivership Entity, or to the extent “return” implies that any Respondent has any right to retain the funds that were transferred to him or her. Subject to the foregoing specific and general objections, the Receiver refers the Respondents to his responses to Interrogatories Nos. 9, 10, 13 and 14. The Receiver further states that but for each Respondent’s connection to Trevor Cook’s father-in-law, Clifford Berg, he or she would not have received funds equivalent to 100% of “principal” plus fictitious “interest.” Rather, each Respondent would have received only his or her *pro rata* share of any stolen funds that are recovered.

Interrogatory No. 19:

Identify each and every fact supporting your allegation in paragraph 45 of the Petition that Lender Respondents' retention of their funds "violates fundamental principles of justice, equity, and good conscience. "

Response:

The Receiver objects to this Interrogatory because it calls for a legal conclusion. The Receiver further objects to the characterization of the Respondents as “lenders,” because no Respondent was a “lender.” The Receiver further objects to this Interrogatory to the extent “retention” implies that the funds each Respondent received can somehow be traced to funds they initially transferred to a Receivership Entity, or to the extent “retention” implies that any Respondent has any right to retain the funds that were transferred to him or her. Subject to the foregoing specific and general objections, the Receiver refers the Respondents to his responses to Interrogatories Nos. 9, 10, 13, 14, and 18.

Interrogatory No. 20:

Identify each and every fact supporting your allegations in paragraph 46 of the Petition.

Response:

The Receiver objects to this Interrogatory because it calls for a legal conclusion. Subject to the foregoing specific and general objections, the Receiver refers the Respondents to his responses to Interrogatories Nos. 9, 10, 13, 14, and 18. The Receiver further states that the Receivership was established for the purpose of benefiting defrauded investors. *See, e.g.,* Order Continuing Appointment of the Temporary Receiver, *CFTC v. Cook et al.*, 09-cv-3332, at Part I (Docket No. 96) (D. Minn. Dec. 11, 2009); *Second Amended Order Appointing Receiver*, 09-cv-3333, at Part I (Docket No. 68) (Dec. 11, 2009); *see also* Order,

Zayed v. Buysse et al., 11-cv-1042, at 8-9, 10 (Docket No. 108) (D. Minn. June 1, 2011).

Interrogatory No. 21:

Identify each and every fact supporting your allegations that Lender Respondents did not receive the return of their funds from the Receivership Entities in “good faith.”

Response:

The Receiver objects to this Interrogatory because it is Respondent’s burden to prove the affirmative defense of good faith. The Receiver further objects to this Interrogatory because it calls for a legal conclusion. The Receiver further objects to the characterization of the Respondents as “lenders,” because no Respondent was a “lender.” The Receiver further objects to this Interrogatory to the extent “return” implies that the funds each Respondent received can somehow be traced to funds they initially transferred to a Receivership Entity, or to the extent “return” implies that any Respondent has any right to retain the funds that were transferred to him or her. Subject to the foregoing specific and general objections, the Receiver refers the Respondents to his response to Interrogatory No. 13.

Dated: August 22, 2011

Respectfully submitted,

s/Peter M. Kohlhepp

R.J. Zayed (MN Bar No. 309,849)

Tara C. Norgard (MN Bar No. 307,683)

Brian W. Hayes (MN Bar No. 294,585)

Russell J. Rigby (MN Bar No. 323,652)

Peter M. Kohlhepp (MN Bar No. 390,454)

Carlson, Caspers, Vandenburg & Lindquist

225 S. 6th Street, Suite 3200

Minneapolis, MN 55402

Telephone: (612) 436-9600

Facsimile: (612) 436-9605

Email: rzayed@ccvl.com