
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff(s)

Case No: 09-cv-3332 MJD/JJK

v.

TREVOR COOK d/b/a CROWN
FOREX, LLC, PATRICK KILEY d/b/a
CROWN FOREX, LLC, UNIVERSAL
BROKERAGE FX and UNIVERSAL
BROKERAGE FX DIVERSIFIED, OXFORD
GLOBAL PARTNERS, LLC, OXFORD
GLOBAL ADVISORS, LLC, UNIVERAL
BROKERAGE FX ADVISORS, LLC f/k/a
UBS DIVERSIFIED FX ADVISORS, LLC,
UNIVERSAL BROKERAGE FX
GROWTH, L.P. f/k/a UBS DIVERSIFIED FX
GROWTH L.P., UNIVERSAL BROKERAGE
FX MANAGEMENT, LLC f/k/a UBS
DIVERSIFIED FX MANAGEMENT, LLC
and UBS DIVERSIFIED GROWTH, LLC,

Defendant(s)

R.J. ZAYED,

Receiver

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Case No: 09-cv-3333 MJD/JJK

Plaintiff(s)

v.

TREVOR G. COOK,
PATRICK J. KILEY,
UBS DIVERSIFIED GROWTH, LLC,
UNIVERSAL BROKERAGE FX
MANAGEMENT, LLC,
OXFORD GLOBAL ADVISORS, LLC,
and OXFORD GLOBAL PARTNERS, LLC,

Defendants

and

BASEL GROUP, LLC,
CROWN FOREX, LLC,
MARKET SHOT, LLC,
PFG COIN AND BULLION,
OXFORD DEVELOPERS, S.A.,
OXFORD FX GROWTH, L.P.,
OXFORD GLOBAL MANAGED
FUTURES FUND, L.P., UBS DIVERSIFIED
FX ADVISORS, LLC, UBS DIVERSIFIED
FX GROWTH, L.P., UBS DIVERSIFIED
FX MANAGEMENT, LLC, CLIFFORD
BERG, and ELLEN BERG,

Relief Defendants.

R.J. ZAYED,

Receiver.

**PETITION FOR RETURN OF RECEIVERSHIP ASSETS FROM INVESTOR
RESPONDENTS**

Pursuant to this Court's Orders dated November 23, 2009, and July 20, 2010, Receiver R. J. Zayed, (“Receiver”) hereby brings this Petition for Return of Receivership Assets from Investor Respondents against 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 (collectively, the “Respondents”) on behalf of the Defendants and Relief-Defendants in *SEC v. Cook et al.*, 09-cv-3333, and *CFTC v. Cook et al.*, 09-cv-3332, to recover funds properly belonging to all the defrauded investors who were victims of Trevor Cook's Ponzi scheme (“the scheme”).

Specifically, the Receiver seeks an order (1) requiring each Respondent to disgorge all Receivership funds transferred to him or her on or after June 29, 2009 and (2) entering judgment against each Respondent in an amount equal to all of such Receivership funds he or she received. In support of this Petition, the Receiver states as follows:

PROCEDURAL BACKGROUND

1. On November 23, 2009, the Securities and Exchange Commission (“SEC”) and the Commodities Futures Trading Commission (“CFTC”) filed separate lawsuits against Trevor Cook, Patrick Kiley, and various entities controlled by them (collectively referred to as the “Receivership Entities”). *Complaint*, No. 09-cv-3333, Docket No. 1

(Nov. 23, 2009) (“SEC case”); *Complaint for Injunctive and Other Equitable Relief and For Penalties under the Commodity Exchange Act*, No. 09-cv-3332, Docket No. 1 (Nov. 23, 2009) (“CFTC case”).

2. Trevor Cook has since admitted to, among other things, knowingly and intentionally creating and executing a scheme and artifice to defraud. *See United States v. Trevor Gilson Cook*, No. 10-cr-00075, Docket No. 7, at 1–3 (April 13, 2010). Victims of the scheme include over 1,000 investors who were defrauded of over \$190,000,000. *Id.*

3. On November 23, 2009, the Court established a Receivership in the related SEC and CFTC cases, appointed R.J. Zayed as Receiver, and froze all assets of the Receivership Entities. *See Order Appointing Receiver*, SEC Docket No. 13 (Nov. 23, 2009); *see also Amended Order Appointing Receiver*, SEC Docket No. 18 (Nov. 24, 2009); *Second Amended Order Appointing Receiver*, SEC Docket No. 68 (Dec. 11, 2009); *Order Imposing Asset Freeze and Other Ancillary Relief*, SEC Docket No. 14 (Nov. 23, 2009); *Order Identifying Frozen Accounts*, SEC Docket No. 15 (Nov. 23, 2009); *Ex Parte Statutory Restraining Order*, CFTC Docket No. 21 (Nov. 23, 2009); *Order Continuing Appointment of Temporary Receiver*, CFTC Docket No. 96 (Dec. 11, 2009).

4. The purpose of the Receivership is to marshal, preserve, account for, and liquidate the assets of the Receivership. *Order Continuing Appointment of Temporary Receiver*, CFTC Docket No. 96, at 3. To accomplish this, the Receiver must take control of all assets of the Receivership—“wherever located”—including investor money

transferred to third parties.

5. On July 20, 2010, the Court entered an Order authorizing the Receiver to commence summary proceedings within the SEC and CFTC cases to recover Receivership funds transferred to third parties. The Court retained jurisdiction of this matter for all purposes. *See Order of Preliminary Injunction, Asset Freeze, and Other Ancillary Relief*, SEC Docket No. 51, at 15 (Dec. 8, 2009); *Order Allowing Summary Proceedings*, SEC Docket No. 380 (July 20, 2010); *Order Allowing Summary Proceedings*, CFTC Docket No. 350 (July 20, 2010).

PARTIES

6. The Petitioner is Receiver R.J. Zayed.

7. Each Respondent received disbursements in the State of Minnesota and/or has a Minnesota bank account. Upon information and belief, each Respondent is a Minnesota resident or was a Minnesota resident during the time relevant to this action:

- a. Respondent David Buysse resides in Goodhue County, Minnesota;
- b. Respondents Steven and Pamela Cheney reside in Clearwater County, Minnesota;
- c. Respondent Walter Defiel resides in Ramsey County, Minnesota;
- d. Respondent John Dzik resides in Hennepin County, Minnesota;
- e. Respondent Terry Frahm resides in Dakota County, Minnesota;
- f. Respondents Steven and Jenene Fredell reside in Dakota County, Minnesota;
- g. Respondent William Harris resides in Wright County, Minnesota;

- h. Respondents Michael and Jennifer Heise reside in Scott County, Minnesota;
- i. Respondents Michael and Cynthia Hillesheim reside in Brown County, Minnesota;
- j. Respondent Larry Hopfenspirger resides in Hennepin County, Minnesota;
- k. Respondent Steven Kautzman resides in Sherburne County, Minnesota;
- l. Respondent James McIntosh resides in Orange County, California.
- m. Respondents George and Karen Morrisset reside in Ramsey County, Minnesota;
- n. Respondent Reynold Sundstrom resides in Sherburne County, Minnesota;
- o. Respondent Dot Anderson resides in Stearns County, Minnesota.

8. Each Respondent will be served with this Petition pursuant to Rule 4 of the Federal Rules of Civil Procedure, through his or her attorney of record, or by other means approved by order of this Court.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action, and venue is proper, under Section 22(a) of the Securities Act (15 U.S.C. § 77v(a)), Section 27 of the Exchange Act (15 U.S.C. § 78aa), Section 6d of the Commodity Exchange Act (7 U.S.C. § 13a-2(2)), Chapter 49 of Title 28, Judiciary and Judicial Procedure (28 U.S.C. § 754), Chapter 113

of Title 28, Judiciary and Judicial Procedure (28 U.S.C. § 1692), and Chapter 85 of Title 28, Judiciary and Judicial Procedure (28 U.S.C. § 1367(a)).

10. Further, as the Court that appointed the Receiver, this Court has jurisdiction over any claim brought by the Receiver in furtherance of his Receivership powers and duties, including Summary Proceedings as per the Court's July 20, 2010 Order. *See Order of Preliminary Injunction, Asset Freeze, and Other Ancillary Relief*, SEC Docket No. 51, at 15 (Dec. 8, 2009); *Order Allowing Summary Proceedings*, SEC Docket No. 380 (July 20, 2010); *Order Allowing Summary Proceedings*, CFTC Docket No. 350 (July 20, 2010).

11. Further, within ten days of his appointment, the Receiver filed the original Complaint and Order Appointing the Receiver in all United States District Courts pursuant to 28 U.S.C. §§ 754 and 1692, giving this Court *in rem* and *in personam* jurisdiction in each district where the Complaint and Order have been filed.

12. This Court is the proper venue because a substantial part of the events resulting in the transfer of the property that is the subject of this petition occurred in Minnesota.

FACTS

A. Trevor Cook Operated a Ponzi Scheme.

13. From on or about a date unknown through about November 2009, Trevor Gilson Cook, 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. *United States v. Trevor Gilson Cook*, No. 10-cr-00075, Docket No. 7, at 1–3.

14. On April 13, 2010, Trevor Gilson Cook pled guilty to one count of mail fraud (18 U.S.C. § 1341) and one count of tax evasion (26 U.S.C. § 7201) in connection with his role in the Ponzi scheme. *Id.* at 1.

15. During the course of the scheme, Cook, using the Receivership Entities, raised at least \$190,000,000 from at least 1,000 investors by selling investments in a purported foreign currency trading program (“Trading Program”). *Id.* at 2. Investments in the Trading Program generated substantially all of the income for the Receivership Entities. *Id.*

16. In furtherance of the scheme, Cook caused false statements to be made to investors, including but not limited to, promising that the Trading Program would generate annual returns of 10% to 12% and that the currency trading involved little or no risk to the investors' principal. *Id.* at 2.

17. In furtherance of the scheme, Cook caused material information to be withheld from investors, including his knowledge of the precarious financial position—and eventual bankruptcy—of Crown Forex, SA, a Swiss entity through which Cook was purportedly placing currency trades.

18. In furtherance of the scheme, Cook caused an account to be opened in the name of Crown Forex LLC at Associated Bank, where he caused investor funds to be deposited and then diverted for his personal use. *Id.* at 2.

19. In furtherance of the scheme, Cook caused statements to be sent to investors that misrepresented the value of their investments in the Trading Program. *Id.* at 2-3.

20. In furtherance of the scheme, Cook withheld from the investors the fact that he was using their money for non-investment purposes, including, but not limited to paying off other investors in the scheme. *Id.* at 3. *See also Order Allowing Summary Proceedings*, SEC Docket No. 380 (July 20, 2010); *Order Allowing Summary Proceedings*, CFTC Docket No. 350 (July 20, 2010).

21. All assets transferred from or by any Receivership entity named in the above-captioned lawsuits, at least through November 23, 2009, were transferred pursuant to the Ponzi scheme. *Order Allowing Summary Proceedings*, SEC Docket No. 380, at 3 (July 20, 2010); *Order Allowing Summary Proceedings*, CFTC Docket No. 350, at 3 (July 20, 2010).

22. All assets transferred from or by Cook, from at least August 2005 through at least November 23, 2009, were transferred pursuant to the Ponzi scheme. *Order Allowing Summary Proceedings*, SEC Docket No. 380, at 3 (July 20, 2010); *Order Allowing Summary Proceedings*, CFTC Docket No. 350, at 3 (July 20, 2010).

B. At All Relevant Times Trevor Cook Was Aware that His Ponzi Scheme Was Under Investigation By Authorities

23. By no later than in or about January 2008 Trevor Cook was aware that Crown Forex S.A. was insolvent and incapable of paying its investors.

24. By no later than in or about December 2008 Cook was aware that Swiss

authorities were investigating Crown Forex SA and were shutting down its operations.

25. Cook was aware that FINRA visited his scheme's headquarters to investigate one of his partners in April 2009.

26. By no later than in or about May 2009 Cook was aware that Swiss authorities had placed Crown Forex SA into liquidation.

27. On June 22, 2009, the SEC conducted a surprise investigation of the scheme's headquarters and personally served Cook with a subpoena.

28. The SEC's investigation continued for five days during which up to six SEC attorneys and accountants were on the premises.

29. Thus by no later than June 22, 2009 Cook was aware that the SEC was investigating the scheme and the Receivership Entities.

30. Upon information and belief, Clifford Berg ("Berg")—Cook's father-in-law—was aware of the SEC investigation by no later than by June 26, 2010.

C. Each Respondent Received Preferential Transfers of Receivership Funds Pursuant to the Scheme After Mid-June, 2009.

31. Upon information and belief, each Respondent received at least one preferential transfer pursuant to the scheme and consisting of Receivership funds, as detailed in Exhibits 1 and 2 (attached) and below, after Cook became aware that Crown Forex SA was in liquidation and that his Ponzi scheme had been discovered by the SEC:

a. Upon information and belief, Respondent David Buisse was a personal acquaintance of Berg from his involvement in the carpet industry. Through Berg, Buisse invested \$147,233.00 in the Trading Program. Buisse did not request any

withdrawal, but in late June, 2009, he received a call from Berg during which Berg told him that his account would be closed and that he would receive a check. Buysse received a check for \$360,700.00, dated June 29, 2009. Buysse received a total of \$360,700.00 on or after June 29, 2009.

b. Upon information and belief, Respondent Steven Cheney was a personal acquaintance of Berg from his involvement in the carpet industry. Through Berg, Cheney invested \$1,519,999.51 in the Trading Program and his wife Pamela invested \$100,963.00 in the Trading Program. Before late June 2009, the Cheneyes received periodic withdrawals totaling \$196,350.00. Cheney called Trevor Cook during the last week in June 2009, to inquire about investing more money for his nephew. Cook told Cheney that there were problems in “another part” of the company. The next day, Cheney called Cook and requested withdrawal of his money. Cheney never completed any withdrawal paperwork. Several days later, Berg delivered to Cheney's place of business a check made out to Steven Cheney in the amount of \$1,535,300.00, dated June 29, 2009, and a check made out to Pamela Cheney in the amount of \$101,000.00, dated June 29, 2009. The Cheneyes received a total of \$1,636,300.00 on or after June 29, 2009.

c. Upon information and belief, Respondent Walter Defiel was a personal acquaintance of Berg from his involvement in the carpet industry. Through Berg, Defiel invested \$80,000.00 in the Trading Program. Defiel did not complete paperwork requesting withdrawal of his investment. Defiel received a check for \$94,950.00 dated June 29, 2009. Defiel received a total of \$94,950.00 on or after June 29, 2009.

d. Upon information and belief, Respondent John Dzik was a personal acquaintance of Berg from his involvement in the carpet industry. Through Berg, Dzik invested \$618,000.00 in the Trading Program. Dzik did not request any withdrawal, but in late June 2009, he received a call from Berg during which Berg told him that there were “problems with the company.” Berg also mentioned a possible investigation. Dzik then went to Berg's house to pick up a check for \$747,500.00, dated June 29, 2009. Dzik also received three additional checks—one for \$2,100.00, dated July 15, 2009, a second for \$2,100.00, dated July 23, 2009, and a third for \$2,200.00, dated August 1, 2009. Dzik received a total of \$753,900.00 on or after June 29, 2010.

e. Upon information and belief, Respondent Terry Frahm learned about the Trading Program through his wife, who is Berg's dental hygienist and who learned about the Trading Program from Berg. Frahm invested \$785,162.44 in the scheme. Frahm never completed official paperwork for withdrawal. Frahm received two checks—one for \$793,370.00, dated June 29, 2009 and a second for \$123,200.00, also dated June 29, 2009. Frahm received a total of \$916,570.00 on or after June 29, 2009.

f. Upon information and belief, Respondents Steven and Jenene Fredell were personal acquaintances of Berg. Through Berg, the Fredells invested \$243,500.00 in the Trading Program. The Fredells did not request any withdrawal, but in late June 2009, Steven Fredell received a call from Berg during which Berg told him that accounts had been closed and that checks were in the mail. The Fredells received one check for \$25,700.00, dated June 29, 2009, a second check for \$243,250.00, also dated

June 29, 2009, and a third check for \$12,000.00, dated July 1, 2009. The Fredells received a total of \$280,950.00 on or after June 29, 2009.

g. Upon information and belief, Respondent William Harris was a personal acquaintance of Berg from his involvement in the carpet industry. Through Berg, Harris invested \$375,000.00 in the Trading Program. Harris did not complete paperwork requesting withdrawal of his money. On June 28, 2009, Harris received a call from Berg during which Berg told Harris that there was going to be “some sort of investigation.” Harris received a check for \$413,600.00, dated June 29, 2009, several days later. Harris received a total of \$413,600.00 on or after June 29, 2009.

h. Upon information and belief, Respondent Michael Heise became a personal acquaintance of Berg when he bought carpet for his company from Berg. Through Berg, Heise invested \$752,134.00 in the Trading Program. Heise requested and received a withdrawal of \$2,770.00 before June 2009. In late June 2009, Heise received a call from Berg during which Berg told Heise that there was some kind of investigation and that Berg had “cashed everyone out.” Berg then delivered to Heise's company a first check for \$728,700.00, dated June 29, 2009 and a second check for \$67,211.53, dated July 1, 2009. Heise received a total of \$795,911.53 on or after June 29, 2009.

i. Upon information and belief, Respondent Cynthia Hillesheim became a personal acquaintance of Berg through her job at a carpet store for which Berg was a sales representative. Through Berg, Hillesheim and her husband Michael invested \$220,079.00 in the Trading Program. The Hillesheims did not request any withdrawals, but in late June 2009, Hillesheim received a call from Berg during which Berg told

Hillesheim that there was going to be an investigation, that he had closed the accounts, and that he would send the Hillesheims a check. In a second call, Berg told Hillesheim that there was an investigation and that he did not want her money to be locked up in the investigation. The Hillesheims received five checks—a first check for \$44,250.00 dated June 29, 2009, a second check for \$48,900.00 dated June 29, 2009, a third check for \$156,000.00 dated June 29, 2009, a fourth check for \$3,500.00 dated June 29, 2009, and a fifth check for \$3,500.00 dated June 29, 2009. The Hillesheims received a total of \$256,150.00 on or after June 29, 2009.

j. Upon information and belief, Respondent Larry Hopfenspirger learned about the scheme through Respondent Steven Cheney. Hopfenspirger invested \$500,500.00 in the Trading Program. Before late June 2009, Hopfenspirger requested and received periodic withdrawals totaling \$453,500.00. Hopfenspirger never completed paperwork to request any of these withdrawals. During a conversation with Cheney on June 30, 2009, Cheney mentioned to Hopfenspirger that Cheney was withdrawing his money because Cook had told Cheney there was “some kind of question with the brokerage and [Cook's partner].” Cheney offered to get Hopfenspirger's money out as well. Cheney mailed Hopfenspirger, and Hopfenspirger received, a check for \$202,000.00, dated June 29, 2009. Hopfenspirger received a total of \$202,000.00 on or after June 29, 2009.

k. Upon information and belief, Respondent Steven Kautzman became a personal acquaintance of Berg when he purchased carpet from Berg for his company. Through Berg, Kautzman invested \$116,469.00 in the Trading Program. Kautzman

never requested any withdrawal, but in late June 2009, Kautzman received a voicemail from Berg stating that “there was a check on the way” and that “Trevor said [something] is going on with his partner.” Kautzman received a check for \$119,550.00, dated June 29, 2009, by FedEx. Kautzman received a total of \$119,550.00 on or after June 29, 2009.

l. Upon information and belief, Respondent James McIntosh was a personal acquaintance of Berg and was Berg's supervisor. Through Berg, McIntosh invested \$250,000.00 in the Trading Program. Before late June 2009, McIntosh received periodic withdrawals totaling \$30,456.00. Without requesting a withdrawal, McIntosh received a \$250,000.00 check, dated June 29, 2009. McIntosh received a total of \$250,000.00 on or after June 29, 2009.

m. Upon information and belief, Respondents George and Karen Morrisset learned of the Trading Program from their personal acquaintance Respondent Walter Defiel. The Morrissets invested \$55,735.00 in the Trading Program. The Morrissets never completed paperwork to request a withdrawal. The Morrissets received two checks from Defiel—a first check for \$22,000.00, dated June 29, 2009, and a second check for \$39,050.00, dated June 29, 2009. The Morrissets received a total of \$61,050.00 on or after June 29, 2009.

n. Upon information and belief, Respondent Reynold Sundstrom became a personal acquaintance of Berg when he purchased carpet from Berg for his company. Through Berg, Sundstrom invested \$75,000.00 in the Trading Program. Sundstrom never requested any withdrawal, but in late June 2009, Sundstrom received a call from Berg stating that there were some problems and an investigation, and that

Sundstrom would get a check in the mail. Sundstrom received a check for \$85,450.00, dated June 29, 2009. Sundstrom received a total of \$85,450 on or after June 29, 2009.

o. Upon information and belief, Respondent Dot Anderson is the grandmother of Cook employee Grant Grysbowski. Through Grysbowski, Anderson invested \$102,000 in the Trading Program. On July 15, 2009, after she saw a newspaper article regarding the Receivership Entities and mentioning lawsuits filed against them, Anderson called Grysbowski and told him to get her money out. Anderson never completed paperwork to request a withdrawal. On July 15, 2010 Anderson received a first wire transfer for \$1,000.00 and a second wire transfer for \$101,000.00. Anderson received a total of \$102,000.00 on or after June 29, 2009.

32. The money used to pay the Respondents came from Receivership Entities funded with the money of victims of the scheme, as detailed in Exhibits 1 and 2 and below:

a. On June 29, 2009, \$3,223,600.00 was withdrawn from the Associated Bank account of Receivership Entity Crown Forex, LLC and distributed to Respondents George and Karen Morrisset, Steven and Jenene Fredell, Michael and Cynthia Hillesheim, Reynold Sundstrom, Walter Defiel, Steven Kautzman, James McIntosh, David Buysse, William Harris, Michael Heise, and John Dzik, in the amounts detailed in Exhibit 1 and paragraph 31 above.

b. On July 1, 2009, an additional \$79,211.53 was withdrawn from the Associated Bank account of Receivership Entity Crown Forex, LLC and distributed to Respondents Steven Fredell and Michael Heise, in the amounts detailed in Exhibit 1 and

paragraph 31 above.

c. On June 30, 2009, \$2,917,870.00 was withdrawn from the Wells Fargo account of Receivership Entity UBS Diversified Growth LLC and distributed to Respondents Hopfenspirger, Frahm, Michael and Cynthia Hillesheim, and Steven and Pamela Cheney, in the amounts detailed in Exhibit 1 and paragraph 31 above.

d. On July 15, 2009, \$102,000.00 was withdrawn from the Associated Bank NA account of Receivership Entity Basel Group LLC and distributed to Respondent Anderson.

e. On July 15, 2009, \$2,100.00 was withdrawn from the Associated Bank NA account of Receivership Entity Oxford Global Partners LLC and distributed to Respondent Dzik.

f. On July 23, 2009, \$2,100.00 was withdrawn from the Wells Fargo account of Graham Cook and distributed to Respondent Dzik.

g. The \$2,100.00 distributed to Respondent Dzik from the Wells Fargo account of Graham Cook consisted of Receivership funds.

h. On August 1, 2009, \$2,200.00 was withdrawn from the Wells Fargo account of Receivership Entity PFG Coin and Bullion and distributed to Respondent Dzik.

33. Each Respondent received Receivership funds in an amount equal to or in excess of the amount he or she had invested in the Trading Program.

34. 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.

35. Each Respondent knew or should have known that the transfers they received on or after June 29, 2009, were fraudulent conveyances.

36. Each Respondent received payments preferentially over hundreds of other investors who were defrauded by Cook and unable to withdraw the money they had invested in the Trading Program.

COUNT I
FRAUDULENT TRANSFER (Minn. Stat. §513.41, *et seq.*)

37. The Receiver realleges, and adopts by reference the allegations contained in paragraphs 1 through 36.

38. As discussed above, each Respondent received transfers from the Receivership Entities on or after June 29, 2009.

39. All assets transferred from or by the Receivership Entities, through at least November 23, 2009, were transferred pursuant to the Ponzi scheme.

40. Cook and the Receivership Entities transferred funds to each Respondent with actual intent to hinder, delay, or defraud their creditors.

41. At all relevant times and as a consequence of the transfers, Cook and the Receivership Entities knew that the funds remaining with the Receivership Entities were insufficient to pay creditors of and/or investors in the scheme.

42. Pursuant to Minn. Stat. § 513.41, *et seq.*, each transfer made to Respondents on or after June 29, 2009 was a fraudulent transfer as to the other investors defrauded by the scheme, and the Receiver has the power to avoid such transfers.

**COUNT II
UNJUST ENRICHMENT**

43. The Receiver realleges, and adopts by reference the allegations contained in paragraphs 1 through 36.

44. Each Respondent has been unjustly enriched by the receipt of the preferential transfers from Receivership Entities made on or after June 29, 2009.

45. The Respondents' retention of these funds at the expense of other defrauded investors who did not receive a preference violates fundamental principles of justice, equity, and good conscience.

46. The doctrine of unjust enrichment and the principles of law and equity require that the funds received by each Respondent on or after June 29, 2009 be returned to the Receiver for equitable distribution to all defrauded investors and other creditors.

PRAYER FOR RELIEF

WHEREFORE, the Receiver respectfully requests the Court enter an Order:

- (1) Establishing that funds received by each Respondent from the Receivership Entities on or after June 29, 2009 were the result of a fraudulent transfer, or in the alternative, that each Respondent was unjustly enriched by the funds received from the Receivership Entities on or after June 29, 2009;
- (2) Establishing that the funds received by each Respondent from the Receivership Entities on or after June 29, 2009 are property of the Receivership;
- (3) Establishing the amount of funds each Respondent received;

- (4) Entering judgment against each Respondent in an amount equal to the amount of funds he or she received from the Receivership Entities on or after June 29, 2009;
- (5) Granting such other further relief as the Court deems proper under the circumstances.

Respectfully submitted,

| Dated: July 23, 2010

s/ R.J. Zayed

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