UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

R.J. Zayed, In His Capacity
As Court-Appointed Receiver
For Oxford Global Partners, LLC,
Universal Brokerage FX, and Other
Receiver Entities,

Plaintiff Case No: 013-cv-1896 SRN/ SER

v.

David and Dao Allen, Judith Averett, Patricia and Jasper Calandra, Rose Furner, Mark Hanby, Adel ("A.K.") Hilal, Geraldine Jackman, Norma Johnson, Willis Wayne King, Don and Pamela Labbee, Andrew Lyon, Jeffrey Lyon, Jeffrey Maki, Steven Perkins, Richard Plantan, Douglas Reed, David Sherman, John Sterback, Mark Stoltenberg, Jane Wamsley as trustee for the Glen Van Lehn Living Trust, Michael ("Bruce") Wu, Robert and Dianne Birk, Margaret Anderson, Mary Francoeur, George and Shirley Janssen, Joseph Koehnen, and Katherine Sobieck,

Defendants.

MEMORANDUM IN SUPPORT OF
RECEIVER'S MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

These cases stem from the second largest Ponzi scheme in Minnesota history. The masterminds of this fraud, Trevor Cook, Jason Bo-Alan Beckman, Patrick Kiley, Gerald Durand and Christopher Pettengill ("Ponzi Felons"), stole over $160 million from more than 700 investors in a foreign currency program that was entirely fake. As with any Ponzi scheme, early "investors" in the scheme were paid with money that was taken from later "investors."

Chief Judge Michael J. Davis appointed R.J. Zayed as the Receiver ("Receiver") to return assets to defrauded investors. As part of his investigation, the Receiver identified nearly 200 investors who profited from this Ponzi scheme ("Winning Investors"). In stark contrast, the vast majority of investors were left with staggering losses, which in many cases, wiped out entire life savings, homes, and retirement accounts.

The law is clear that profits from a Ponzi scheme are not legitimate and must be returned for equitable distribution to all victims. The vast majority of Winning Investors returned their profits when the Receiver reached out to them to explain that their profits from the Ponzi scheme were really stolen funds. Only a handful of Winning Investors refused. The Receiver filed the present action against those remaining Winning Investors, asserting claims for fraudulent transfer and unjust enrichment, for return of their fraudulent profits from this Ponzi scheme. Since the case was filed, sixteen defendants have settled or been dismissed, and another seven failed to answer resulting in an entry of default against them. This summary judgment motion is made against the

following individuals who remain as defendants in this action: Adel Hilal, Robert and Dianne Birk, Mark Stoltenberg, and George and Shirley Janssen (collectively "Winning Investor Defendants").

As to each of these remaining Winning Investor Defendants, there are no material fact disputes and the law is clear that the profits they received were fraudulent transfers and resulted in unjust enrichment and therefore must be returned for equitable distribution to all victims. Accordingly, the Receiver respectfully seeks summary judgment on the following issues:

A. As to Count I (fraudulent transfer):

1. The Ponzi Felons made the transfers in question with actual intent to defraud the Receiver Estates' creditors. (Part IV(A))

2. The Winning Investor Defendants cannot show that they provided reasonably equivalent value for the transfers they received in excess of any deposits making their 'good faith' irrelevant. (Part IV(B))

B. As to Count II (unjust enrichment): the Winning Investor Defendants were unjustly enriched by the transfers in question. (Part V(B))

C. The Winning Investor Defendants' other defenses fail as a matter of law. (Part VI)

I. Background

A. Procedural History

Beginning by at least January 1, 2007, the Ponzi Felons perpetrated a massive fraud on hundreds of innocent victims. *See Information*, 10-cr-75 Docket 1 (Mar. 30,

2010). In June 2009, a group of investors filed suit when the Ponzi Felons refused to return the investors' funds. As a result of that lawsuit, the Court froze bank accounts known to be associated with the fraud. *See generally Phillips et al. v. Cook et al.*, 09-cv-1732 (D. Minn. 2009). Government action followed. On the civil side, in November 2009, the U.S. Securities and Exchange Commission ("SEC") and the U.S. Commodities Futures Trading Commission ("CFTC") filed lawsuits against Cook, Kiley, and various entities controlled by them, for perpetrating a massive Ponzi scheme premised on a fictional foreign currency investment program. *Complaint*, 09-cv-3333 Docket 1 (Nov. 23, 2009) ("SEC Case"); *Complaint for Injunctive and Other Equitable Relief and For Penalties under the Commodity Exchange Act*, 09-cv-3332 Docket 1 (Nov. 23, 2009) ("CFTC Case"). In March 2011, the SEC filed a lawsuit against Beckman and his entities for his role in the scheme. *Complaint*, 11-cv-574 Docket 1 (Mar. 7, 2011) ("Beckman Case").

Chief Judge Michael J. Davis appointed Plaintiff R.J. Zayed as Receiver in all three civil cases. The Receivership covers the estates of the individual defendants, as well as their fraudulent entities, including UBS Diversified Growth, LLC d/b/a UBS Diversified, Market Shot, LLC, Oxford Global Advisors, LLC, Oxford Global Partners, LLC, Oxford Global FX, LLC, Oxford FX Growth, L.P., The Oxford Private Client Group, LLC, and various other entities controlled by them (collectively, the "Receiver Estates"). *Order Appointing Receiver*, SEC Docket 13 (Nov. 23, 2009); Ex Parte *Statutory Restraining Order*, CFTC Docket 21 (Nov. 23, 2009); *Second Amended Order Appointing Receiver*, SEC Docket 68 (Dec. 11, 2009); *Order Continuing Appointment of*

the Temporary Receiver, CFTC Docket 96 (Dec. 11, 2009); *Order Appointing Receiver*, Beckman Docket 10 (Mar. 8, 2011). The Receiver's mandate is to marshal, preserve, account for, and liquidate the assets of the Receivership and return them to the victims of this fraud. *Order Continuing Appointment of Temporary Receiver*, CFTC Docket 96 at 3.

Criminal actions proceeded in parallel with the civil suits and the Receivership, resulting in guilty pleas or guilty verdicts for all five of the Ponzi Felons, who are now serving lengthy prison terms.[1]

B. The Scheme

During its heyday, the Ponzi Felons pitched a purported foreign currency trading program whereby the Ponzi Felons advertised steady and guaranteed profits by leveraging supposedly interest free loans and minute differentials in the foreign currency market. *See United States v. Cook*, 10-cr-75 Docket 1, ¶¶ 2-3; *United States v. Pettengill*, 11-cr-192 Docket 6, ¶ 3(h). The Ponzi Felons set up a number of shell companies and bank accounts under variations of familiar names, such as, UBS Diversified Growth, LLC d/b/a UBS Diversified, Oxford Global Advisors, LLC, Oxford Global Partners, LLC, Oxford Global FX, LLC, Oxford FX Growth, L.P. *United States v. Pettengill*, 11-cr-192 Docket 6, ¶ 3(a)-(b); *see also Second Superseding Indictment*, 11-cr-228 Docket 162, ¶¶ 6-10 (Feb. 22, 2012). Through these entities and accounts, the Ponzi Felons

[1] Cook and Pettengill pleaded guilty in connection with the scheme. *See United States v. Cook*, 10-cr-75 Docket 7 (Apr. 13, 2010); *United States v. Cook*, 10-cr-75 Docket 17 (Aug. 24, 2010); *United States v. Pettengill*, 11-cr-192 Docket 6 (Jun. 21, 2011); *United States v. Pettengill*, 11-cr-192 Docket 35 (Jan. 22, 2013). Kiley, Beckman and Gerald Durand were convicted by a jury on several counts stemming from the scheme. *See* Jury Verdicts, *United States v. Beckman et al.*, 11-cr-228 Docket 303, 305 & 307 (Jun. 12, 2012).

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. *See United States v. Cook*, 10-cr-75 Docket 7, at 1–3. And they succeeded; despite taking in almost $200 million, their scheme left next to nothing for the victims of their fraud. *See Declaration of Luz M. Aguilar*, Beckman Docket 4, ¶ 11 (Mar. 7. 2011) ("Aguilar Decl."). Indeed, when the Receiver was appointed, a mere $1.8 million was found in the bank accounts of the Receiver Estates. *Second Status Report of Receiver R.J. Zayed*, SEC Docket 219, § D (Mar. 4, 2010).

While telling their victims various stories about how their money would be safely invested, the Ponzi Felons recklessly spent it, squandering tens of millions of dollars on everything from high risk trading ventures to personal entertainment and luxuries. The Ponzi scheme generated substantially all of the income for the Ponzi Felons and their myriad entities and pursuits. *United States v. Cook*, 10-cr-75 Docket 7 at 1-3.

When the Ponzi Felons did engage in trading, they accumulated substantial losses. *See Aguilar Decl.* ¶ 12 (detailing $68.3 million lost in trading activities); *Declaration of Scott J. Hlavacek*, SEC Docket 4, ¶ 50 (Nov. 23, 2009) ("Hlavacek Decl.") (tracing $35.2 million lost through trades at PFG Best, Inc.). Not only were the Ponzi Felons decidedly unsuccessful traders, they spent tens of millions of investor funds on personal indulgences including high-end real estate properties, including the historic Van Dusen Mansion, gambling, luxury cars, travel, country club memberships, other forms of personal entertainment and "support gifts" to friends and family members. *See Hlavacek*

Decl. ¶ 39; *Aguilar Decl.* ¶ 26. The Ponzi Felons also funneled millions of dollars of stolen investor funds into their personal accounts. Exhibit 3 to the *Hlavacek Decl.*, SEC Docket 4-2 at 31-32 (detailing $7.6 million transferred to Ponzi Felon Cook's personal accounts); *Aguilar Decl.* ¶¶ 23-25 (detailing $7.8 million transferred to Ponzi Felon Beckman's personal accounts, which was comingled with and far exceeded funds from other sources).

Despite substantial losses and lavish personal expenditures, the Ponzi Felons also returned approximately $52 million to investors, including the Defendants and other Winning Investors, as lulling payments in furtherance of the fraud. *Hlavacek Decl.* ¶ 38; *Aguilar Decl.* ¶ 12. These returns were generated by arithmetic fiction performed by the Ponzi Felons in furtherance of the fraud. *See* Second Superseding Indictment, *United States v. Beckman et al.*, 11-cr-228 Docket 162, ¶ 16; *United States v. Pettengill*, 11-cr-192 Docket 6, ¶ 3(i) (explaining that employees of the Oxford Entities simply multiplied an investor's principal by the promised rate of return to get the reported monthly investment return). In reality, the "profits" given to the Defendants and other Winning Investors was money stolen from the victims of the fraud.

C. Transactions with the Defendants

Each of the remaining Winning Investor Defendants received payments from the Ponzi Felons in excess of any investments they made in the scheme. The details of these transfers are set forth in Table 1 below and discussed in more detail in section IV(B) *infra*:

Defendant	Transfers From Defendant to Receiver Estates (Investments)	Transfers To Defendant from Receiver Estates (Returns)	Excess (False Profits)
Mark Stoltenberg	-	$3,500.00	$3,500.00
Robert and Dianne Birk	$187,779.36	$300,459.65	$112,680.29
A.K. Hilal	$49,000.00	$56,201.14	$7,201.14
George and Shirley Janssen	$50,000.00	$60,250.00	$10,250.00

Table 1.[2]

On July 15, 2013, the Receiver filed a Complaint against the Winning Investor Defendants, among others, seeking the return of the false profits they received from this Ponzi scheme. (Docket 1 at 1-2.)

On October 1, 2013, Stoltenberg filed his Answer. (Docket 34.) On October 15, 2013, the Birks filed their Answer. (Docket 54.) On October 18, 2013, Hilal filed his Answer. (Docket 59.) On October 23, 2013, the Janssens filed an Answer and Counterclaim.[3] (Docket 77.)

II. Standards for Summary Judgment

The standard for summary judgment is well-established: summary judgment should be granted "if the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to a judgment a matter of law." Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986)).

The moving party must demonstrate the absence of any genuine dispute regarding material facts, but the existence of a "scintilla" of evidence supporting the non-movant's position is not enough to defeat a motion for summary judgment. *Tusing v. Des Moines*

[2] (Declaration of Joseph M. Kaczrowski ("Kaczrowski Decl."), ¶¶ 2-3, 5-7, 12-14.)
[3] The Receiver's Motion to Dismiss the Janssen Counterclaim is pending. (Docket 105.)

Indep. Cmty. Sch. Dist., 639 F.3d 507, 514 (8th Cir. 2011) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)).

If the non-moving party fails to make a showing sufficient to establish that there is a genuine issue for trial about an element essential to that party's case, summary judgment must be granted. *Reed v. ULS Corp.*, 178 F.3d 988, 990 (8th Cir. 1999). Summary judgment is mandated—even on typically fact-intensive issues—when the facts and the law support only one reasonable conclusion. *Roth v. U.S.S. Great Lakes Fleet, Inc.*, 25 F.3d 707, 708 (8th Cir. 1994) (citing *McDermott Intern., Inc. v. Wilander*, 498 U.S. 337 (1991)). Although ambiguities must be resolved in the light most favorable to the nonmoving party, summary judgment cannot be denied based on conjecture, surmise, "metaphysical doubt," or self-serving conclusory statements. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986); *Smith v. Int'l Paper Co.*, 523 F.3d 845, 848 (8th Cir. 2008).

III. The Uniform Fraudulent Transfer Act

Minnesota has adopted the Uniform Fraudulent Transfer Act ("UFTA"). Minn. Stat. §§ 513.41–51 (2009). "Courts have routinely applied UFTA to allow receivers or trustees in bankruptcy to recover monies lost by Ponzi-scheme investors." *Donell v. Kowell*, 533 F.3d 762, 767 (9th Cir. 2008). The UFTA provides that a transfer may be voided if it is made with the intent to defraud creditors or for less than reasonably equivalent value if the transferor should have known that he would become insolvent—in other words, that he would incur debts that he would be unable to pay as they came due. Minn. Stat. § 513.44.

Most states' UFTA laws are nearly identical, so courts often look to other jurisdictions in deciding these cases. *Armstrong v. Collins*, No. 01 Civ. 2437, 2010 U.S. Dist. LEXIS 28075, at *57 (S.D.N.Y. Mar. 24, 2010). The UFTA is also nearly identical to the fraudulent transfer provisions of the federal bankruptcy code, so courts also frequently look to bankruptcy cases in applying the UFTA. *Id.*; *see also SEC v. Brown*, 643 F. Supp. 2d 1077, 1082 (D. Minn. 2009).

The "actual fraud" provision of Minnesota's UFTA is found in Minn. Stat. § 513.44(a)(1):

> (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
>
> (1) with actual intent to hinder, delay, or defraud any creditor of the debtor[.]

To void a transfer under this provision, the receiver for an entity that was an instrument of a Ponzi scheme must show that the Ponzi scheme operator (the debtor) transferred funds in furtherance of a fraud on any of his creditors (like the investors who were victims of his scheme) with actual fraudulent intent. *Brown*, 643 F. Supp. 2d at 1081–82. The transfer need not be unlawful in the abstract. *Id.* at 1082. Furthermore, any participation in the fraud (or lack thereof) on the part of the transferee is irrelevant. *Warfield v. Byron*, 436 F.3d 551, 559 (5th Cir. 2006).

A. Actual Fraudulent Intent: The "Ponzi Scheme Presumption"

Ponzi schemes are insolvent from inception. *Warfield*, 436 F.3d at 558 (citing *Cunningham v. Brown*, 265 U.S. 1, 7–8 (1924)). A Ponzi scheme operator knows that, using later investors' money to pay off earlier investors, without money coming in from legitimate business, the scheme cannot go on forever; later investors will eventually lose. *SEC v. Cook*, No. 3:00-CV-272-R, 2001 U.S. Dist. LEXIS 2601, at *9 (N.D. Tex. Mar. 8, 2001). When the operator of a Ponzi scheme takes incoming money and transfers it to early investors, he does so with actual intent to hinder or delay payment to other creditors of the scheme. *Collins*, 2010 U.S. Dist. LEXIS 28075, at *64; *Terry v. June*, 432 F. Supp. 2d 635, 639–640 .D. Vir. 2006).

The appellate courts are unanimous in upholding the "Ponzi scheme presumption": proof of a Ponzi scheme conclusively establishes that transfers pursuant to the scheme were made with actual intent to hinder, delay, or defraud. *E.g.*, *Donell*, 533 F.3d at 770; *In re Slatkin*, 525 F.3d 805, 814 (9th Cir. 2008); *Warfield*, 436 F.3d at 558; *In re M&L Bus. Mach. Co.*, 59 F.3d 1078, 1079–80 (10th Cir. 1995); *Scholes v. Lehmann*, 56 F.3d 750, 757 (7th Cir. 1995). This Court is in accord. *Brown*, 643 F. Supp. 2d at 1082.

A criminal conviction of the Ponzi scheme operator precludes litigation on the existence of the Ponzi scheme and its operator's fraudulent intent. *Terry*, 432 F. Supp. 2d at 640 (collecting cases); *see also In re Manhattan Inv. Fund Ltd.*, 397 B.R. 1, 12 (S.D.N.Y. 2007) (relying on manager's guilty plea setting forth that he continuously falsified performance, sent statements to investors reflecting significant gains, concealed

fund's true state, and used falsified records to attract new investors to find that the fund operated as a Ponzi scheme).[4]

B. The "Good Faith" and "Reasonably Equivalent Value" Affirmative Defense

Once the plaintiff has met his burden of proving that a transfer was made with actual intent to defraud, it is the defendant's burden to prove that the transaction should not be voided because it was taken "in good faith and for a reasonably equivalent value[.]" Minn. Stat. § 513.48(a). The defendant bears the burden of proving ***both*** that he took in objective good faith ***and*** that he provided consideration of a reasonably equivalent value for the transfer. *Warfield*, 436 F.3d at 560. In the summary judgment context, the non-moving party must come forward with evidence that is more persuasive than typically required to survive summary judgment if his claim of good faith and reasonably equivalent value is "implausible" in light of the undisputed facts. *In re Agric. Research & Tech. Group, Inc.*, 916 F.2d 528, 534 (9th Cir. 1990) (citing *Matsushita*, 475 U.S. 574).

A transferee's good faith is determined by the specific facts in each case, evaluating what the transferee "knew or should have known" under an objective standard.

[4] The Receiver also is entitled to recover under Section 513.44(a)(2) ("constructive fraud"). In a summary judgment context where the transferee's good faith is assumed, there is very little difference between 'actual' fraud and 'constructive' fraud under UFTA. Under Minn. Stat. § 513.44(a)(2), the Receiver does need not prove fraudulent intent. *Armstrong*, 2010 U.S. Dist. LEXIS 28075, at *62. With the "Ponzi presumption" discussed in Part IV(A), fraudulent intent is established by criminal convictions. With constructive fraud, the Receiver must show only inadequate consideration for the transfer and the existence or prospect of other unpaid creditors, then the Receiver may recover the transferee's "profits." *Id.*; *Scholes*, 56 F.3d at 757.

See Memorandum Opinion and Order, 11-cv-1042 Docket 260 at 54-59 (Sep. 28, 2012). However, for purposes of this motion, the Receiver is not challenging that part of the affirmative defense for any of the Winning Investor Defendants.

Even if a transferee received the funds in good faith, the transferee must still prove that he or she provided reasonably equivalent value to the transferor. Where a creditor has shown actual intent to defraud, as pursuant to a Ponzi scheme, the burden is on the transferee to show that the transfer was exchanged for reasonably equivalent value—and thus, that the debtor's assets were not actually depleted by the transfer. *Warfield*, 436 F.3d at 560 ("The primary consideration in analyzing the exchange of value for any transfer is the degree to which the transferor's net worth is preserved."). An investor does not technically provide "value" with his investment, because it simply perpetuates a fraudulent scheme, but courts have consistently held that "a defrauded investor in a Ponzi scheme gives 'value' to the debtor in the form of a dollar-for-dollar reduction in the investor's restitution claim against the Ponzi scheme." *Id.* at 67; *Donell*, 533 F.3d at 771. Nevertheless, in a Ponzi scheme, initial "investments" are generally considered to have reasonably equivalent value. *Armstrong*, 2010 U.S. Dist. LEXIS 28075, at 67–68. Thus, investors who in good faith recovered their "principal" are generally allowed to keep that amount.

But the fictitious profits received from a debtor engaged in a Ponzi scheme cannot be considered reasonably equivalent value. *Armstrong*, 2010 U.S. Dist. LEXIS 28075, at *68; *Donell*, 533 F.3d at 771. Under settled law, payments that exceed the principal invested are voidable as fraudulent transfers under the UFTA. *Terry v. June*, 432 F.

Supp. 2d 635, 642–43 (W.D. Va. 2006) (characterizing this proposition as "widely accepted by courts"). The policy reason for this is equitable distribution of the remaining assets among all of the defrauded investors; the "'winners' in the Ponzi scheme, even if innocent of any fraud themselves, should not be permitted to enjoy an advantage over later investors sucked into the Ponzi scheme who were not so lucky." *Donell*, 533 F.3d at 770 (internal quotations omitted). Thus, under settled law, the "reasonably equivalent value" prong of the good faith defense is what prohibits "winning" investors from keeping false profits over and above the amount of their initial investments.

Additionally, contributions made by employees of a Ponzi scheme—whether or not the employees acted in good faith—will not be considered adequate consideration for transfers made to them if their "work" is to bring other investors into the scheme. *Warfield*, 436 F.3d at 560. As the *Warfield* court noted, "[i]t takes cheek to contend that in exchange for the payments he received, the [] Ponzi scheme benefitted from [the transferor's] efforts to extend the fraud by securing new investments." *Id.* Another situation in which consideration may be deemed inadequate (and thus a transfer may be avoided) occurs when the transfer was greater than the compensation required by an employment agreement. *In re TransTexas Gas Corp.*, 597 F.3d 298, 307 (5th Cir. 2010). Like good faith, reasonably equivalent value is a question of fact that must be determined by analyzing the unique circumstances of each case. *Armstrong*, 2010 U.S. Dist. LEXIS 28075, at *61.

IV. Summary Judgment on the Receiver's Fraudulent Transfer Claims Against the Remaining Winning Investor Defendants Must Be Granted

The Receiver's motion for summary judgment with respect to the Winning Investor Defendants must be granted because there is no genuine dispute of material fact that the funds transferred to them came from a Ponzi scheme and that the Ponzi Felons had actual fraudulent intent in making those transfers.

A. Transfers Made to the Winning Investor Defendants Were Made Pursuant to a Ponzi Scheme, with Actual Intent to Hinder, Delay, or Defraud Payment to Other Creditors

There is no reasonable dispute that the Ponzi Felons were running a Ponzi scheme. The Ponzi Felons all pleaded guilty or were convicted for running the Ponzi scheme. Thus, the Ponzi scheme presumption applies. Further, as Chief Judge Davis found in his Order Granting Summary Proceedings, all transfers from Cook's fraudulent entities, including those from which all the funds can be traced, were made with actual intent to hinder, delay, or defraud. *See Order Allowing Summary Proceedings*, SEC Docket 380 (Jul. 20, 2011). The transfers to the Winning Investor Defendants are thus fraudulent as a matter of law.

B. The Remaining Winning Investor Defendants Cannot Show They Provided Reasonably Equivalent Value

As discussed in section III.B above, it is the Defendants' burden to prove they took the funds in good faith ***and*** for reasonably equivalent value. Even assuming each of the Winning Investor Defendants took the funds in good faith, there is no genuine issue of material fact that they did not provide any reasonably equivalent value for the excess they received as described in Table 1 above.

Because none of the Winning Investor Defendants provided any value beyond their initial "investments," their affirmative defense must fail.

1. Stoltenberg

Defendant Mark Stoltenberg never made an investment in this Ponzi scheme. Nevertheless, on or around April 2, 2008, Receivership Entity UBS Diversified Growth LLC transferred $3,500.00 to Defendant Stoltenberg. (Kaczrowski Decl. ¶ 2.)

No evidence has been found in the Receiver's investigation, and Defendant Stoltenberg has not produced any, to show that he provided reasonably equivalent value for the $3,500.00 that he received from the Receiver Estates.[5]

Because there is no issue as to any material fact relating to Defendant Stoltenberg's receipt of the $3,500.00, the Receiver is entitled to summary judgment in that amount.

2. Hilal

Defendant Adel Hilal received one transfer from this Ponzi scheme totaling $56,201.14. (Kaczrowski Decl. ¶ 3.) Although it is the defendant's burden to show both good faith and reasonably equivalent value, the Receiver does not dispute Defendant Hilal made a purported investment in this Ponzi scheme in the amount of $49,000.00 to UBS Diversified Growth LLC. (Kaczrowski Decl. ¶ 5.) However, even assuming

[5] Defendant Stoltenberg has mentioned a prior investment housed at Peregrine Financial in Chicago ("PFG"). However, PFG is not a Receivership Entity, and any consideration given to PFG is not reasonably equivalent value for funds he received from the Receiver Estates. In fact, the Receiver filed suit against PFG, which subsequently commenced bankruptcy proceedings stemming from an unrelated fraud, in early 2012. *See Complaint*, 12-cv-269 Docket 1 (Feb. 3, 2012); *Notice of Filing Bankruptcy and Automatic Stay*, 12-cv-269 Docket 31 (Jul. 12, 2012).

Defendant Hilal's investment, there is no evidence that he provided reasonably equivalent value for the $7,201.14 in fraudulent profits he received.[6]

Because there is no issue as to any material fact relating to Defendant Hilal's receipt of the excess $7,201.14, the Receiver is entitled to summary judgment in that amount.

3. Janssens

Defendants George and Shirley Janssen received six transfers from Receiver Estates totaling $60,250.00. (Kaczrowski Decl. ¶ 6.) Although here again it is the defendants' burden to show both good faith and reasonably equivalent value, the Receiver does not dispute Defendants Janssen made a purported investment in this Ponzi scheme in the amount of $50,000.00 to UBS Diversified Growth LLC. (Kaczrowski Decl. ¶ 7.) However, even assuming this purported investment, there is no evidence that the Janssens provided reasonably equivalent value for the $10,250.00 in fraudulent profits they received.

Because there is no issue as to any material fact relating to Defendants Janssens' receipt of the excess $10,250.00, the Receiver is entitled to summary judgment in that amount.

[6] Defendant Hilal claims he did not invest with the Ponzi Felons. (Docket 59.) However, Defendant Hilal signed an agreement with Crown Forex, received statements from Receiver Estates including "The Oxford," "UBFX Diversified," and "UBS Diversified," and his statements from Millennium Trust, the third party administrator through which he made his investments, show a $49,000 position in UBS Diversified FX Growth, yet another Receiver Estate. (Kaczrowski Decl. ¶ 4.)

4. Birks

Defendants Robert and Dianne Birk are Hollie Beckman's parents. Ms. Beckman is married to Ponzi Felon Bo Beckman and is personally named as a Relief Defendant in one of the SEC's civil suits. *SEC v. Beckman, et al*., 11-cv-574 (D. Minn.).

The Birks received at least 115 transfers from this Ponzi scheme totaling $300,459.65.[7] (Kaczrowski Decl. ¶ 12.) Although it is the Birks' burden to show both good faith and reasonably equivalent value, the Receiver does not dispute that they made a purported investment in this Ponzi scheme in the amount of $187,779.36. (*See* Kaczrowski Decl. ¶ 14.) However, even assuming this purported investment, the Birks still received $112,680.29 in cash transfers in excess of that amount, of which forty-six transfers totaling $97,201.57 were made *before* any purported investment with any Receivership Entity. (Kaczrowski Decl. ¶¶ 12-14.)

The Birks also admit that of the funds they received from the Ponzi scheme, at least $101,997.94 was "gifts," for which, by definition, no reasonably equivalent value could have been provided. (*Id.* ¶ 11 Ex. 9.)

The Birks offer various explanations for balance, none of which defeat the Receiver's claims. For example, the Birks claim from mid 2008 through 2009 they received almost $10,000 each month as "payments for services or wages for employment," but according to Dianne Birk's sworn testimony in the criminal case, she

[7] During the criminal trial, Ponzi Felon Beckman and the Government stipulated to the SEC's accounting of Birk transactions: total receipts of $286,305.04, $99,525.68 of which is in excess of any transfers to Receivership Entities. (*See* Kaczrowski Decl. Ex. 7 at 30-31.) Similarly, the Birks admit to having received at least $287,063.11 from Ponzi Felon Beckman in Exhibit 9. (*See* Kaczrowski Decl. ¶ 11 Ex. 9.)

and her husband did not perform any services for the fraudulent entities. (Docket 54 at 5; Kaczrowski Decl. Ex. 7 at 5-6, 10-11, 22 (testimony of Dianne Birk regarding "services" contemplated but not performed); Kaczrowski Decl. Ex. 9 (annotations by the Birks identifying $141,853.73 as payments from "Oxford")). After the Court froze the accounts of Oxford Global Partners and Oxford Global Advisors in July of 2009, and after the Birks had already received $104,464.87 in "compensation" for work they did not do, Ponzi Felon Beckman continued to make payments to the Birks from The Oxford Private Client Group, totaling another $32,666.62. (Kaczrowski Decl. Ex. 11.)[8]

The Birks gave the Receiver Estates little if any value beyond their purported investment in the Ponzi scheme. Even if the Birks had actually performed some services for the fraudulent entities, the case law is clear that the type of service contemplated does not provide reasonably equivalent value. *Id.*; (Kaczrowski Decl. Ex. 7 at 7 ("We were going to work for Bo's company and help do what we could to bring in business")); *infra* § III(B) (explaining that this sort of service is not adequate consideration for fraudulent transfers received).

The Birks also attempt to defend against the Receiver's claims with various defenses, which all fail as a matter of undisputed fact and law. As discussed more fully in Part III(B), the Birks' claim that the Receiver must show a fraud pertaining to them is not one of the elements of fraudulent transfer. (*See* Docket 54 at 3.) The conduct of the

[8] The Receiver's claims are based on transfers from the Receiver Estates, while the Birk admissions in Exhibit 9 rely on deposits to the Birks' bank account.

Birks is irrelevant. All that matters is that the transfers were made by the Ponzi Felons in furtherance of the scheme with actual intent to hinder, delay, or defraud.

In their answer, the Birks also misstate the elements of the good faith/reasonably equivalent value affirmative defense. (*See* Docket 54 at 3.) The statute requires *both* good faith *and* reasonably equivalent value. The defense is conjunctive, not disjunctive like the Birks assert. *Id.* Notwithstanding good faith, the Birks cannot show they provided any reasonably equivalent value for over one hundred thousand dollars they received from the Receiver Estates.

The Birks also claim that they received funds that have not been found "to have been the result of ill-gotten gains or 'substantially generate[d] from a scheme." (Docket 54 at 3.) However, as discussed in Part III(A), criminal convictions of the Ponzi scheme operators precludes litigation on the existence of the Ponzi scheme and its operators' fraudulent intent. *Terry*, 432 F. Supp. 2d at 640. All of the funds the Birks received came from Receiver Estates and were presumptively transferred with actual intent to hinder, delay or defraud.

The Birks may try to assert that the Beckmans' personal account was not part of the scheme, but the facts are otherwise. As discussed in Part I(B), nearly all of the money in the Beckmans' accounts was stolen investor funds. *See Aguilar Decl.* ¶ 25. Beckman was convicted on dozens of charges stemming from this fraud. *See Jury Verdict*, 11-cr-228 Docket 303; *Judgment*, 11-cr-228 Docket 397. A forfeiture order was entered against Beckman for all property derived from his participation in the fraud. *See Order of Forfeiture*, 11-cr-228 Docket 389 (Jan. 7, 2013). The money the Beckmans gave to

the Birks was no different than any other lulling payment made by the Ponzi Felons; the intent of the Birk transfers was the same: to give the appearance of a successful financial position and to conceal the true source of the funds. After the government shut down a number of the entities in 2009, Beckman continued to funnel money through his entities and accounts in furtherance of the fraud until the Receiver was appointed over those entities and accounts in 2011. Beckman had essentially no other income; the source of the funds in his personal accounts were proceeds of the fraud perpetrated on hundreds of victims. *See Aguilar Decl.* ¶ 25. Therefore all transfers out of the Beckmans' personal account to the Birks were done with actual intent to hinder, delay or defraud creditors.

The Birks also raise several other issues concerning real and personal property, but the Court has already ruled on these matters, despite several attempts by the Birks and Beckmans to relitigate the issues. *See, e.g.*, *Memorandum Opinion and Order*, Beckman Docket 214 (Sep. 21, 2011) ("The Court finds that the Birks have not demonstrated a cognizable interest in the Golf Drive property. Accordingly, their motion to intervene [to object to the sale of that property] must be denied."). Further, any personal property sold by the Receiver was done so with Court approval and with due process allowing anyone claiming ownership of the property to timely object and assert their ownership interest. *See id*; Beckman Docket 209 (Sep. 16, 2011); Beckman Docket 124 (Jun. 23, 2011); *see also* Beckman Docket 192 (Sep. 8, 2011); Beckman Docket 204 (Sep. 14, 2011); Beckman Docket 175 (Sep. 2, 2011); Beckman Docket 103 (Jun. 3, 2011). Because the Court has already ruled on these matters against the Birks, it is clear that no reasonably equivalent value was given to the Receiver Estates.

The case law and facts are clear: the Birks profited greatly from their inside connection to a Ponzi Felon. Despite several inaccurate and irrelevant statements to the contrary, the only value the Birks ever provided to the Receiver Estates was considerably less than the hundreds of thousands of dollars and other benefits they received. Because there is no issue as to any material fact relating to Defendant Robert and Dianne Birks' receipt of at least $112,680.29 in excess of any consideration given to the Receiver Estates, the Receiver is entitled to summary judgment in that amount.

V. All Defendants Were Unjustly Enriched by the Transfers in Question.

The Receiver has also stated a claim against the Winning Investor Defendants for unjust enrichment. The material facts are not in dispute; the Receiver respectfully requests that the Court grant summary judgment in the Receiver's favor as a matter of law.

A. Legal Background

Under Rule 8(d), the Receiver is permitted to plead an equitable remedy such as unjust enrichment in the alternative. *See, e.g.*, *Memorandum Opinion and Order*, 11-cv-1042 Docket 260 at 90-91 (explaining that it is permissible to plead an equitable claim such as unjust enrichment in the alternative to a legal claim such as fraudulent transfer).

Unjust enrichment requires the plaintiff to prove that a defendant "knowingly received something of value, not being entitled to the benefit, and under circumstances that would make it unjust to permit its retention." *Brown*, 643 F. Supp. 2d at 1083 (quoting *Southtown Plumbing, Inc. v. Har-Ned Lumber Co.*, 493 N.W.2d 137, 140 (Minn. App. 1992)). The theory of unjust enrichment supports recovery in situations of fraud

"where it would be morally wrong for one party to enrich himself at the expense of another." *Id.* at 1083.

Unjust enrichment, similar to fraudulent transfer discussed *supra*, does not require that the defendant committed a wrong. *Id.*; *Hartford Fire Ins. Co. v. Clark*, 727 F. Supp. 2d 765, 777–78 (D. Minn. 2010); *Kranz v. Koenig*, 484 F. Supp. 2d 997, 1001 (D. Minn. 2007). For example, in *Brown*, a Ponzi scheme operator used fraudulently obtained investor funds to pay the mortgage on his personal residence. 643 F. Supp. 2d at 1079. The defendant mortgage company, which had received proceeds of the fraud pursuant to an arm's length, straight-forward mortgage loan, was not alleged to have done anything illegal, immoral, or wrong in any way. *Id.* at 1083. But the court found this to be irrelevant to the adequacy of the receiver's claim; "an unjust enrichment claim does not require a defendant to commit a wrong, but only requires that the defendant benefit from another's wrong." *Id.* Other districts are in accord with Minnesota on this point. *See, e.g., Missal v. Washington*, No. 97-982, 1998 U.S. Dist. LEXIS 6016, at *14 n.6 (D.D.C. Apr. 17, 1998) ("Unjust enrichment does not depend so much on the culpability of the person who received the property, but on the right of some other person to that property."); *Goldberg v. Chong*, No. 07-20931, 2007 U.S. Dist. LEXIS 49980 (S.D. Fla. July 11, 2007) (granting summary judgment to receiver on claims of both fraudulent transfer and unjust enrichment where perpetrator of fraud paid employee an exorbitant salary when millions of dollars were owed to defrauded investors).

B. The Defendants Were Unjustly Enriched.

1. The Defendants Knowingly Received Something of Value.

All of the Winning Investor Defendants were unjustly enriched by the transfers from the Ponzi Felons. There is no question that each of the Winning Investor Defendants knowingly received something of value from this Ponzi scheme: funds in excess of any value they provided to the Receiver Estates. Over 700 other people lost everything. *See Motion for Order Approving Sixth Interim Distribution and Third Amended Final Claims List*, CFTC Docket 1059, § C (Jan. 14, 2014).

The Birks not only profited from the $300,459.65 in cash that was funneled to them, they also received numerous other benefits due to their personal relationship with the Beckmans, including $20,000 in "employee benefits" like medical and dental coverage, access to a luxury property in Texas, and rent-free living at a home in Texas that was purchased with stolen investor funds. (Kaczrowski Decl. ¶ 15); *see also Memorandum Opinion and Order*, Beckman Docket 214 at 2 (Sep. 21, 2011). For purposes of this motion, however, the Receiver is only seeking the portion of the cash transfers to them in excess of their transfers to Receiver Estates. The Birks received over $300,000 and other benefits, knowing they provided little if anything in exchange. (Kaczrowski Decl. Ex. 7 at 6 (explaining the plan conceived by the Beckmans and Birks to allow the Birks to retire with benefits and "still receive some money")).

The Birks claim they are not "winning investors" (and that the Receiver failed to define the term). (Docket 54 at 2.) However, the undisputed facts show that they received $300,459.65 stolen from the other investors who were victims of the Ponzi

scheme. (*See* Kaczrowski Decl. Ex. 12.) In addition to all the benefits showered on the Birks by the Ponzi Felons described throughout this brief, perhaps the most valuable to the Birks is that the purported "compensation" and the "support gifts" from Ponzi Felon Beckman allowed the Birks to retire with benefits and steady income. (Kaczrowski Decl. Ex. 7 at 6 ("[Beckmans] came to us and wanted to help my husband out, yes, and get him out of the job that he was at"); *id* at 7 (explaining that health care would have cost them about $1800 per month if they retired); *id* at 7-8 ("I think we took a look at what we were making with our salary and said that, you know, if we're going to do this, we have to match our salary…").

As to Defendant Stoltenberg, unjust enrichment is particularly apt because he profited from this Ponzi scheme without ever having even made an "investment."

Defendants Hilal and Janssen both made purported investments with Receivership Entity UBS Diversified Growth LLC, along with hundreds of others. However, unlike the others, Defendants Hilal and Janssen gained substantial profits. It is clearly unjust to allow two investors to retain fictitious profits while hundreds of other similarly situated investors received nothing.

2. The Defendants Were Not Entitled to the Money that Transferred to Them and It Would Be Unjust for Them to Keep It.

The Winning Investor Defendants are not entitled to the money they received from the Ponzi Felons. There is no legitimate distinction between them and over 700 losing investors who were left with nothing. Further, it is undisputed that the Ponzi Felons gave them other people's money. The funds transferred to the Winning Investor Defendants

were taken from accounts in which other investors' money was comingled. (Kaczrowski Decl. ¶¶ 2-3, 5-7, 12-14); *Hlavacek Decl.*, ¶¶ 21-22, 38; *Aguilar Decl.*, ¶¶ 24-25. The transfers the Winning Investor Defendants received did not consist of "their money". As a matter of law, the Winning Investor Defendants' money was stolen the minute they handed it over to the Ponzi Felons; the scheme was insolvent from inception. *Warfield*, 436 F.3d at 558. The Winning Investor Defendants never had any segregated accounts; in fact, they never had any accounts at all. *Hlavacek Decl.*, ¶ 21. The documents they signed were not valid contracts; they were tools of a fraud. *Cummings v. Paramount Pictures*, 715 F. Supp. 2d 880, 911 (D. Minn., 2010); *TCS Holdings, Inc. v. Onvoy, Inc.*, No. 07-1200, 2007 U.S. Dist. LEXIS 56275, at *14–15 (D. Minn. Aug. 1, 2007). The statements they received were pure fiction and the calculation of their so-called interest was simple arithmetic that had nothing to do with currency trading. *See Plea Agreement,* 11-cr-192 Docket 6 at ¶ (i).

The judgment the Receiver seeks is one founded in justice and equity: that a small group of "winning investors" not be allowed to profit with stolen money while everyone else suffers catastrophic losses. But for sheer luck or an inside connection the Winning Investor Defendants would be in the same position as all of the other investors defrauded by this sad scheme. The only reasonable conclusion is that it would be unjust to allow the Winning Investor Defendants to keep their windfall. Accordingly, the Receiver respectfully requests that the Court enter summary judgment on his unjust enrichment claim and order the Winning Investor Defendants to return the money that they unfairly received.

VI. Defendants' Other Defenses Fail as a Matter of Law.

The Winning Investor Defendants have collectively asserted a handful of affirmative defenses in their Answers. However, none of these defenses can survive summary judgment.

A. Failure to Plead Fraud with Specificity

In their Answer, the Birks claim the Receiver's Complaint failed to include meet the specificity required by Rule 9(b). (Docket 54 at 3.) The Birks misunderstand the requirements of Rule 9(b). As discussed in more detail in Part III, the Receiver does not need to show any wrongdoing by the transferee, and the transfer need not be unlawful in the abstract. *Brown*, 643 F. Supp. 2d at 1082. Any participation in the fraud (or lack thereof) on the part of the transferee is irrelevant. *Warfield*, 436 F.3d at 559. Rule 9(b) requires the Complaint plead the "who, what, where, when, and how" of the fraud. *See Report and Recommendation*, SEC Docket 696 at 5-6 (Feb. 25, 2011) (quoting *BJC Health Sys. v. Columbia Cas. Co.*, 478 F.3d 908, 917 (8th Cir. 2007)); *Order*, 11-cv-1042 Docket 108 at 10-11 (Jun. 1, 2011). The Receiver's Complaint in this action also provided a detailed explanation of the scheme at issue and alleged that all transfers made by the Entities during the pendency of the scheme were transferred pursuant to the Ponzi scheme. *See, e.g., id.; Memorandum Opinion and Order*, 11-cv-1042 Docket 260 at 98. The Ponzi Felons had the requisite intent to satisfy the scienter element of the fraud, and the transfers themselves are by definition fraudulent because they were made pursuant to a Ponzi scheme.

Because the Receiver's Complaint includes the necessary specificity required by Rule 9(b), the Birks' affirmative defense fails.

B. "No Evidence of Wrongdoing"

Defendant Stoltenberg asserts an affirmative defense claiming that the Receiver "sued him without sufficient evidence of wrongdoing, without performing due diligence, and without a good faith basis for suing [him]." (Docket 34 at 5-6.) As an initial matter, the Receiver's complaint includes detailed factual allegations to support his claims for fraudulent transfer and unjust enrichment. More importantly, however, neither of the Receiver's claims require any wrongdoing on the part of the Defendants. Therefore the Receiver's Complaint cannot fail for lack of "evidence of wrongdoing" because wrongdoing by the Defendant is not an element of either claim. Defendant Stoltenberg's affirmative defense therefore fails.

C. Laches

Defendant Stoltenberg also includes a one-word affirmative defense of "Laches." (Docket 34 at 5.) Defendant Stoltenberg cannot show any delay or corresponding prejudice. Beginning in December of 2010, the Receiver contacted Defendant Stoltenberg, along with 200 other "winning investors," and attempted to resolve the Receiver's claims against him without protracted litigation and cost. *See Fifteenth Status Report of Receiver R.J. Zayed*, CFTC Docket 1039 at 7-8 (Aug. 22, 2013). However, after almost three years some of these "winning investors" rebuffed settlement attempts or defaulted on their settlement agreements. *Id.* The Receiver was then forced to file the instant action. *Id.* The Receiver waited forty-five days before serving the Complaint in a

final effort to avoid further litigation, during which time he again attempted to settle his claims against Defendant Stoltenberg and the others. *Id.* Despite the Receiver's repeated efforts, Defendant Stoltenberg refused to settle.

The Receiver's Complaint was filed well within the statute of limitations and any delay was in an effort to avoid further litigation and cost, both to the Receiver and to Defendant Stoltenberg and the other holdout Winning Investors, and therefore not unreasonable under the circumstances. Defendant Stoltenberg has alleged no unreasonable delay nor any prejudice, and Defendant Stoltenberg's laches defense therefore fails.

D. Accord and Satisfaction

Defendant Stoltenberg also attempts to assert the affirmative defense of accord and satisfaction. (Docket 34 at 5.) The defense of accord and satisfaction bears no relation to the circumstances of this case.

The affirmative defense of accord and satisfaction require four elements: 1) that the transferor, *in good faith*, tendered an instrument to the transferee in full satisfaction of the claim; 2) the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered in full satisfaction of the claim; 3) the amount of the claim was unliquidated or subject to a bona fide dispute; and 4) that the transferee obtained the payment of the instrument. *See Webb Bus. Promotions, Inc. v. Am. Elecs. & Entm't Corp.*, 617 N.W.2d 67, 73 (Minn. 2000). Defendant Stoltenberg's attempt to assert this defense fails because at the time of the transfers there was not a dispute between the Receiver Estates and the Defendants

(element 3) and, more importantly, the Ponzi Felons did not make the transfers in good faith (element 1). As discussed in detail in Part III(A), all transfers made pursuant to the Ponzi scheme were made with actual intent to hinder, delay, or defraud and therefore could not have been made in good faith as required for an affirmative defense of accord and satisfaction. Defendant Stoltenberg's accord and satisfaction defense therefore fails.

E. Payment

Defendant Stoltenberg also asserts a one-word affirmative defense of "Payment." (Docket 34 at 5.) While brevity in pleadings is favored by the courts, the affirmative defense Defendant Stoltenberg attempts to raise in this instance is unclear and should be dismissed on that basis alone. In no event can Defendant Stoltenberg's affirmative defense of "payment" preclude summary judgment here.

There is no dispute that the transfer received by the Stoltenberg from the Receiver Estates was made while the entities were still under the control of the Ponzi Felons. As there is no disputed issue of material fact as to Ponzi Felons' control of the entities when they made the transfers, and since the Receiver is not bound by the actions of the entities while they were under the Ponzi Felons' control, Defendant Stoltenberg's defense of "payment" must fail. *See, e.g., Order*, 11-cv-1042 Docket 108 at 8 (quoting *Scholes v. Lehmann*, 56 F.3d 750, 755 (7th Cir. 1995).

F. The Janssen "Counterclaim" is not a Valid Affirmative Defense.

As discussed more fully in the Receiver's Motion to Dismiss the Counterclaim, the Janssens' "Counterclaim for Interpleader" is more likely an attempt to raise an affirmative defense rather than a counterclaim. (*See* Docket 106.) Labeling something a

"counterclaim" does not change its nature. *See Tenneco Inc. v. Saxony Bar & Tube, Inc.*, 776 F.2d 1375, 1379 (7th Cir. 1985). Even if the Janssen Counterclaim is an attempt to assert the affirmative defense of good faith *and* reasonably equivalent value, as discussed more fully in Part III(B), there is no reasonably equivalent value provided for those funds received in excess of the Defendants' transfers to Receiver Estates and summary judgment in that amount is therefore appropriate.

G. Hilal's Alleged Facts are Irrelevant and Do Not Create a Material Issue of Disputed Fact on the Receiver's Claims.

Defendant Hilal makes a number of unsupported assertions in his Answer. (Docket 59.) However, none of these "facts" are relevant to the Receiver's claims against him. Whatever story Defendant Hilal was told by the Ponzi Felons does not change the nature of the fraudulent transfer to him, or the fact that he was unjustly enriched in this fraud. Whether Defendant Hilal knew Trevor Cook or thought he was investing in the "Foreign Exchange Currency" does not alter the fact that he profited with stolen funds from the Ponzi scheme. As discussed in Part IV(B)(2), Defendant Hilal received transfers from the Ponzi Felons made in furtherance of the scheme, funds that were stolen from the hundreds of victims of the fraud.

Defendant Hilal also attempts to request a different venue for this matter, however this Court has jurisdiction and is the proper venue under a number of federal statutes and the Court's Orders. *See* (Docket 1 ¶¶ 10-13); *Order of Preliminary Injunction, Asset Freeze, and Other Ancillary Relief,* SEC Docket 51, at 15 (Dec. 8, 2009).

Defendant Hilal also asserts that he has nothing in common with the other Defendants. However, he is just like the other Defendants in the only way that matters: Defendant Hilal, like the other Winning Investor Defendants, received fraudulent profits and has refused to return them. Any factual distinctions between Defendant Hilal and the other Winning Investor Defendants cannot defeat summary judgment in this action.

CONCLUSION

For all of the foregoing reasons, the Receiver respectfully requests that the Court grant his motion for summary judgment.

Dated: April 18, 2014

Respectfully submitted,

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