IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RALPH S. JANVEY, IN HIS CAPACITY AS COURT-APPOINTED RECEIVER FOR THE STANFORD INTERNATIONAL BANK, LTD., ET AL.	§	
	§	Case No. 03:09-CV-0724-N
Plaintiff,	§	
v.	§	
JAMES R. ALGUIRE, ET AL.	§	
Defendants.	§	

RECEIVER'S APPLICATION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND IN THE ALTERNATIVE, WRIT OF ATTACHMENT, CONCERNING ACCOUNTS OF FORMER STANFORD EMPLOYEES

The Receiver, Ralph S. Janvey, hereby files his Application for Temporary Restraining Order, Preliminary Injunction, and in the Alternative, Writ of Attachment, Concerning Accounts of Former Stanford Employees, stating in support thereof as follows:

INTRODUCTION

The Receiver applies to the Court for a temporary restraining order, preliminary injunction, and in the alternative, writ of attachment, concerning the accounts of the defendants named in the Receiver's Second Amended Complaint Against Former Stanford Employees (Doc. 156). In this lawsuit, the Receiver seeks to recover millions of dollars of investor funds paid to these former employees through fraudulent transfers from the Stanford Ponzi scheme. This application seeks to enjoin the removal of assets from the accounts of the former employees

while the lawsuit is pending to prevent dissipation of those assets, which total over $24 million and represent the bulk of the known assets available to satisfy, if only partially, a judgment against the defendants subject to this application.

The former employees' accounts (collectively, the "Accounts")[1] are currently held pursuant to this Court's orders, but they are subject to being released after June 1, 2010 absent further order from the Court (*see* Doc. 214; Doc. 379). Unless the Court further enjoins the withdrawal or transfer of assets from the frozen accounts, more than $24 million will be released with very little, if any, chance of recovery later once a final judgment is entered. One former employee, David Nanes, who received over $9.8 million in fraudulent transfers through an account in the name of a corporation he owns and controls, has already dissipated all of the funds in that account including over $5.3 million via international wire transfer. *See infra*, Argument Section B.2.

Injunctive relief is directly authorized by the Texas Uniform Fraudulent Transfer Act and is equally warranted under traditional equitable principles. The irreparable harm to the Receiver that would result from denial of this injunction also directly impacts the public interest, because the assets subject to this application represent thousands of victims' best hope to receive some compensation for their losses caused by the Stanford fraud. The former employees cannot credibly argue that harm to them caused by an injunction somehow outweighs the harm that would befall the victims—whose finances were completely wiped out by the Ponzi scheme that the former employees helped to perpetuate—if this injunction is denied.[2]

---

[1] The Accounts subject to this application, and their owners (the "Accountholders"), are listed in Exhibit 2 at Appx. 16-21.

[2] Alternatively, the Receiver also meets the requirements for a writ of attachment under Texas law. Specifically, (1) the former employees are justly indebted to the Receiver; (2) the attachment is not sought for the purpose of injuring or harassing the defendants; (3) the Receiver will almost certainly lose his debt

The requested injunction (or attachment) preventing the dissipation of the assets in Accounts is particularly appropriate given (a) the uncontroverted evidence that the Stanford CD program was a Ponzi scheme from the beginning, including the admission of one of the scheme's architects, and the SEC's conclusion as early as 2004 that SIBL CDs were likely a "very large ponzi scheme," and (b) the fact that the former employees, in light of the case law and evidence discussed herein, will never be able to establish the affirmative defense of good faith and reasonably equivalent value. At least as far back as early 2005, the former employees subject to this motion either knew the legitimacy of the SIBL CDs was highly questionable (due to concerns raised by the government, investors or potential investors, and others) or should have known it (because the CD returns were too good to be true, sales commissions were too generous, and the auditing and reporting mechanisms related to the CDs were inadequate). As the SEC recently reported, Stanford Group Company ("SGC")[3] and its employees failed to conduct *any* due diligence regarding SIBL's investment portfolio or how SIBL was able to generate the above-market interest rates it offered its customers, and thus they had no objective good-faith basis for believing that they were being paid to sell legitimate investments, or that those investments were suitable for their clients. Nonetheless, they continued to market the CDs, helping Stanford to sell approximately $5.4 billion in CDs between June 2006 and 2009 and to reap generous financial rewards for doing so.

The Receiver requests an expedited hearing on this application for temporary restraining order, preliminary injunction and, in the alternative, writ of attachment and further

---

unless the writ of attachment is issued; and (4) specific grounds for the writ exist under Section 61.002 of the Texas Civil Practice & Remedies Code.

[3] Stanford Group Company ("SGC") was the registered broker-dealer that employed the majority of the Accountholders subject to this motion. The SEC has reported that by 2004, sale of SIBL CDs accounted for over 70% of SGC's revenues. *See* SEC OIG Report, Ex. 5 at 22, Appx. 57.

requests that the order directing the June 1 release of employee accounts be stayed until such time as the Court rules upon this application.

BACKGROUND

A. The Stanford Ponzi Scheme

The Stanford Defendants operated a Ponzi scheme that defrauded investors of more than $7 billion. James M. Davis, the former chief financial officer of Stanford Financial Group Company and Stanford International Bank, pled guilty to federal charges of fraud, conspiracy to commit fraud, and conspiracy to obstruct an SEC proceeding, and admitted that the Stanford fraud was a Ponzi scheme from the beginning. No. 09-298, Doc. 771 (Davis Plea Agreement) at ¶ 17(n) (Stanford, Davis, and other conspirators created a "massive Ponzi scheme"); Doc. 807 (Davis Tr. of Rearraignment) at 16:16-17, 21:6-8, 21:15-17 (admitting the Stanford Ponzi fraud was a "massive Ponzi scheme ab initio"). The SEC reached the same conclusion as early as 2004, concluding that SIBL CDs were quite likely a "very large ponzi scheme, designed and marketed by SIB's [sic] and SGC's [sic] to lull investors into a false sense of security by their claims that the SIB products are similar to traditional U.S. bank CDs." *See* SEC Office of Inspector General Report, Ex. 5 at 72, Appx. 107-09.[4]

The basic structure of the Stanford Ponzi scheme and the deception of the more than 20,000 Stanford victims have been set forth at length in the Receiver's and the SEC's prior briefing, including the diversion of new investor money to highly speculative and illiquid investments, to pay CD interest and redemptions to other investors, to fund Allen Stanford and his cronies' lavish lifestyles, and to create the far-flung and elaborate facade of legitimate financial services business in order to perpetuate the fraud. *See generally* Doc. 156; No. 09-298,

[4] The SEC OIG report is admissible under the hearsay exception for factual findings from an investigation made pursuant to authority granted by law. *See* FED. R. EVID. 803(8).

Doc. 952. The defrauded investors' money was also used to incentivize the Stanford financial advisors and other employees to sell even more fraudulent CDs, through extravagant salaries, commissions, bonuses and other job-related compensation. Doc. 18, ¶¶ 38-41, 47-54. At the inception of the Receivership in February 2009, the total outstanding principal amount of SIBL CDs was approximately $7.2 billion, yet the combined assets of all Stanford entities had a total value of less than $1 billion; the Stanford entities were thus hopelessly insolvent. *Id.* ¶ 13.

B. The Receiver's claims against former employees.

In this action, the Receiver asserts fraudulent-transfer and unjust-enrichment claims against the 117 former-employee defendants with frozen accounts (collectively, the "Accountholders") (*see* Second Amended Complaint and Motion for Leave to Supplement,[5] Docs. 156 and 340). These claims total $139,987,649. *See* Van Tassel Affidavit, Ex. 1, Appx. 1-15. This sum consists of both purported job-related compensation paid from Stanford to the Accountholders (the "Compensation Claims" total $123,987,517) and SIB CD proceeds received by some of the Accountholders relating to their own CD investments (the "CD-Proceeds Claims" total $16,000,132).[6]

1. Claims to recover CD commissions and other job-related compensation.

The substantial majority of the job-related compensation paid to the former employees was funded from the sale of SIBL CDs, which is to say it was funded by the

[5] The Receiver's claims against former employees for recovery of employment related compensation are already pending, and his claims for recovery of proceeds those former employees received from their own investments in the fraudulent CDs are the subject of the Receiver's Motion for Leave to File a Supplemental Complaint Against Former Stanford Employees (Doc. 340).

[6] The Second Amended Complaint (Doc. 156) and the Supplemental Complaint Against Former Stanford Employees (Doc. 340) include claims against defendants who have a held account and defendants who do not have a held account. The amounts referenced in the text above relate only to claims against defendants who have a held account. The total dollar amounts at issue in the Second Amended Complaint and the Supplemental Complaint exceed $215 million and $51 million, respectively.

defrauded investors. *See* Doc. 18 at ¶¶ 49-54.[7] The Compensation Claims seek the return of CD commissions and other job-related compensation.

The Stanford Defendants[8] used an elaborate and sophisticated incentive program to motivate the former Stanford employees to sell SIBL CDs to brokerage customers. *See* SEC's Second Amended Complaint (No. 09-298, Doc. 952), ¶¶ 28-29. The program included huge up-front forgivable loans, high SIBL CD commission rates, SIBL quarterly bonuses, PARS payments, branch managing director quarterly compensation, and severance payments, all closely tied to maintaining and increasing SIBL's portfolio of CDs.

SIBL paid disproportionately large commissions to SGC as compensation for the sale of SIBL CDs. No. 09-298, Doc. 952, ¶¶ 28-29. For example, SGC received a 3% trailing fee from SIBL on sales of SIBL CDs by SGC advisors. *Id.* In 2007 alone, SIBL paid SGC and its affiliates more than $291 million in management fees and commissions for CD sales, up from $211 million in 2006. *Id*. ¶ 30. From these funds, SGC paid financial advisors commissions and bonus payments in the range of 1% to 3% on the initial sale of SIBL CDs they sold, as well as on the cumulative amount in their client SIBL CD portfolio. Doc. 18, ¶ 48. As reflected in the Receiver's Second Amended Complaint, 161 former employees received commissions or bonuses tied directly to SIBL CD sales in excess of $100,000, including 92 of the former

---

[7] The Receiver has retained Karyl Van Tassel and her firm, FTI Consulting, Inc., to perform forensic accounting analyses, cash tracing, and other services to assist the Receiver's investigation of the Stanford fraud. Based on a review of the Stanford records and data from financial institutions used by Stanford, Van Tassel has concluded that the substantial majority of this job-related compensation paid to the former-employee defendants was proceeds from the sale of SIBL CDs. *See id.*

[8] The "Stanford Defendants" in the SEC action (No. 09-298) include R. Allen Stanford, James M. Davis, Laura Pendergest-Holt, Mark Kuhrt, Gilberto Lopez, Stanford International Bank, Ltd., Stanford Group Company, and Stanford Capital Management, LLC.

employees with held accounts; of those, 29 former employees received in excess of $1 million, including 20 of the former employees with held accounts.[9]

SGC used this generous commission and loan structure to recruit established financial advisors with pre-existing client bases likely disposed to purchase SIBL CDs, and thus pursue the aggressive and ever-increasing growth goals for SIBL deposits. *See, e.g.,* Jason Green Email,[10] Ex. 3,[11] Appx. 22; David Nanes Bonus Agreement,[12] Ex. 7, Appx. 189; No. 09-298, Doc. 952, ¶¶ 28-29. The commission structure also provided a powerful incentive for SGC financial advisors to aggressively sell CDs to investors. *Id.* Many of the former financial advisors subject to this application were among the biggest CD-sellers at Stanford, including:

Name	Client SIBL CD Portfolio in 2008
David Nanes[13]	$170,000,000+
Maria Villanueva[14]	$114,000,000+

9 *See* Doc. 156. These payments, referred to in the Second Amended Complaint as "SIBL CD Commissions," "SIBL Quarterly Bonus," and "Branch Managing Director Quarterly Compensation," are only three of the six forms of compensation the Receiver is suing to recover in the Second Amended Complaint.

10 Jason Green email to Allen Stanford dated November 29, 2005: "Over dinner, I sat next to Chris. He said that, not counting his $2B plus in institutional assets, he had over $1B in high net worth client assets (they get these folks as fallout from their institutional business - board members, philanthropists, etc). Of that $1B, he could easily see 10% of those funds going to SIB (i.e., $100mm just from him - he's 1 of 5). Basically, if all goes well, they could be an important part of helping you hit your $6.5B goal for SIB at end of 2006."

11 The documents attached to the Receiver's Application as Exhibits 3, 4, 8, 9, 10, 12, 13, 15, 16, 18, 20, 22, 23, 24, 25, 26, 27, and 28 are true and correct copies of emails or email attachments that FTI collected from Stanford's email servers or computer hard drives in the course of its investigation on behalf of the Receiver. *See* Ex. 30, ¶ 3, Appx. 256-56.

12 Allen Stanford letter to David Nanes in April 2004, setting out bonus structure for SIBL sales, including bonuses of up to $1.05 million per quarter, and adding: "I cannot over emphasize the importance you play in our collective efforts to reach our goal of over $6.5Bn in Total Assets at SIB by December 31, 2006."

13 Appendix No. 208; held accounts worth over $730,000.

14 Appendix No. 313; held account worth over $700,000.

Henry Mills[15]	$92,000,000+
Sylvia Aquino[16]	$79,000,000+
Michael Word[17]	$77,000,000+
Lupe Northam[18]	$60,000,000+
Patrick Cruickshank[19]	$54,000,000+
Mark Groesbeck[20]	$44,000,000+

2. Claims to recover CD investment proceeds received by former employees.

In addition to claims for CD commissions and other job-related compensation, the Receiver seeks to recover CD proceeds the former employees received from their own investments in the fraudulent CDs. Ninety-nine of the former employees, including 34 who still have frozen accounts, collectively received over $51 million in proceeds from the fraudulent CDs they were also selling to investors.[21] These proceeds represent even more of the defrauded investors' money now held by the Accountholders. *See* Doc. 18, ¶¶ 38-41.

C. The former employees' frozen accounts.

The Accounts are brokerage and IRA accounts held at Pershing, LLC,[22] which are each held by a former-employee defendant against whom the receiver has Compensation Claims

---

15 Appendix No. 198; held account worth over $39,000.

16 Appendix No. 11; held accounts worth over $200,000.

17 Appendix No. 325; held accounts worth over $5,000.

18 Appendix No. 214; held accounts worth over $530,000.

19 Appendix No. 71; held accounts worth over $330,000.

20 Appendix No. 123; held accounts worth over $70,000.

21 The Receiver has requested leave to file a supplemental complaint asserting these claims. *See* Doc. 340.

22 Four of the Accounts are held at custodians other than Pershing. One is at SEI Private Trust, one is at JPMorgan Chase & Co and two are coin accounts held at Stanford Coins & Bullion, Inc. The custodian of each Account is reflected in Exhibit 2 at Appx. 16-21.

and/or CD-Proceeds Claims. The Accounts have been frozen under this Court's orders since the beginning of the Receivership. In January 2010, the SEC, the Receiver, and counsel for numerous former employees reached an agreement whereby certain former-employee accounts would be released, depending on the nature and amounts of the Receiver's claims against those former employees. *See* Doc. 174. On January 15, 2010, the Court accepted the parties' agreement and ordered the release of some or all assets in the accounts of certain former employees.[23] *See* Doc. 214. On April 6, 2010, per further agreement of the parties, the Court ordered the release of some additional accounts;[24] and the remaining frozen brokerage and IRA accounts and assets, which are the subject of this application, were ordered to be released on June 1, 2010, absent further Court order. *See* Doc. 379.

The aggregate value of the remaining Accounts subject to this application is $24,333,376 (as of April 14, 2010). The value of the claims against each Accountholder exceed the aggregate value of the Accounts associated with that Accountholder. The funds in the Accounts represent the Receiver's best chance to recover on his claims for the benefit of defrauded investors. But if the remaining assets and funds are released to the Accountholders, they will have every incentive to move the funds away from this Court's jurisdiction or to third parties. At a minimum, the assets will be dissipated nation-wide to many different institutions, thus forcing the Receiver to incur unnecessary cost and delay in returning the assets to the

---

[23] Specifically, the order directed the release of all funds in any former employee accounts that exceed, for each individual, the collective amount identified by the Receiver in the Appendix to the December 18, 2009 Second Amended Complaint Against Former Stanford Employees under the headings "SIBL CD Commission," "SIBL Quarterly Bonuses," and "Branch Managing Director Quarterly Compensation."

[24] Specifically, the Court ordered, *inter alia,* the release of accounts of former employees against whom the Receiver's aggregate claim for SIBL CD commissions, SIBL quarterly bonuses and branch managing director quarterly compensation is less than $50,000. *See* Doc. 379.

defrauded investors, and rendering any recovery uncertain. It is likely that at least some of the funds will never be recovered.

The Receiver respectfully requests that the assets and funds in the Accounts not be released until the Receiver's claims are fully adjudicated.

ARGUMENT

A. The Receiver is entitled to a TRO and preliminary injunction under TUFTA.

The Receiver requests a temporary restraining order and preliminary injunction that will enjoin the Accountholders from transferring or otherwise removing assets from the Accounts.[25] Such an order is necessary to ensure the assets are available to compensate the Stanford victims.

The Texas Uniform Fraudulent Transfer Act, which is based on the Uniform Fraudulent Transfer Act, specifically provides that a plaintiff may obtain an "injunction against further disposition . . . of the asset transferred or of other property." TEX. BUS. & COM. CODE § 24.008(a)(3)(A). When an asset has already been transferred with intent to defraud creditors once, there is a heightened risk that it will be transferred again or otherwise removed from the creditors' reach. The UFTA's drafters recognized this risk and thus expressly included injunction against further disposition as an appropriate remedy in UFTA actions. *See, e.g., Star Creations Inv. Co., Ltd. v. Alan Amron Development, Inc.,* No. CIV. A. 95-4328, 1995 WL 495126, at *19 (E.D. Pa. Aug. 18, 1995) (noting that the UFTA "expressly recognize[s] the appropriateness of injunctive relief to prevent further dissipation and transfers of fraudulently conveyed property").

---

[25] The Receiver is willing to post bond in an amount the Court deems appropriate. No bond is necessary here, however, because the assets and funds in the Accounts will remain safely custodied with their third-party custodians and there is no risk of loss to the Accountholders.

The Texas legislature's inclusion of the phrase "or of other property" makes it clear that the statutory injunction can apply to the Accounts, whether or not the assets in the Accounts are proven to be the "asset [fraudulently] transferred" from Stanford to the Accountholders. *Cf. Biliouris v. Sundance Resources, Inc.*, 559 F. Supp. 2d 733, 739 (N.D. Tex. 2008) (UFTA was "enacted to provide swift, effective, and uniform remedies" and "should be construed broadly to effect [its] purpose"); *Epperson v. Entertainment Express, Inc.*, 338 F. Supp. 2d 328, 342 (D. Conn. 2004) ("UFTA gives the court broad authority to remedy fraud"). In other words, money is fungible and it makes no difference whether the Accountholder took the fraudulently transferred dollars and placed them in the Accounts, or instead placed those dollars elsewhere and used other dollars to fund the Accounts, so long as the Accounts to be enjoined are worth no more than the amount the Receiver may recover on his claims. *See Hoxworth v. Blinder, Robinson & Co., Inc.*, 903 F.2d 186, 195-96 (3d Cir. 1990) (discussing injunction against disposition of defendant's funds to ensure recovery in suit for money damages and noting that "[l]egally as well as economically, money is fungible") (internal quotations omitted).

Based on the uncontroverted proof that the Stanford Defendants transferred funds to the Accountholders with intent to defraud creditors (*see infra* § B.1.a), the Receiver is entitled to an injunction against property held by the Accountholders, up to the value of the funds fraudulently transferred to them. *Hahn v. Love*, --- S.W.3d ---, No. 01-07-00096-CV, 2009 WL 793637, at *6 (Tex. App.—Houston [1st Dist.] March 26, 2009, pet. denied) (creditor may obtain injunction against further disposition by transferee if intent to defraud is proved) (citing TEX. BUS. & COM. CODE § 24.008(a)); *Tanguy v. Laux*, 259 S.W.3d 851, 858 (Tex. App.—Houston [1st Dist.] 2008, no pet.) (under TUFTA, a temporary injunction may be sustained if the trial

court was presented with evidence of intent to defraud creditors); *Telephone Equipment Network, Inc. v. TA/Westchase Place, Ltd.,* 80 S.W.3d 601*,* 611 (Tex. App.—Houston [1st Dist.] 2002, no pet.) (affirming grant of temporary injunction against TUFTA transferee). Where, as here, "there is a prior history of fraudulent conveyances, it is necessary to preserve the status quo of the subject matter of the suit pending a final trial of the case on its merits." *Seib v. American Sav. & Loan Ass'n of Brazoria County*, No. 05-89-01231-CV, 1991 WL 218642, at *4 (Tex. App.—Dallas Oct. 25, 1991, no writ).

B. The Receiver is entitled to a TRO and preliminary injunction under traditional equitable principles.

Even beyond this specific statutory authority under TUFTA, the Receiver is entitled to an injunction under traditional equitable principles. In order to prevail on a request for TRO or preliminary injunction, the Receiver must establish that (1) there is a substantial likelihood that he will prevail on the merits of his claims, (2) there is a substantial threat that he will suffer irreparable injury if the injunction is denied, (3) the threatened injury to the Receiver outweighs the threatened injury to the parties to be enjoined, and (4) granting the injunction will not disserve the public interest. *See Walgreen Co. v. Hood*, 275 F.3d 475, 477 (5th Cir. 2001).

1. There is a substantial likelihood the Receiver will prevail on the merits of his claims.

a. The Receiver's *prima facie* case of fraudulent transfer is uncontroverted.

First, the Receiver is substantially likely to succeed on the merits of his claims and thus obtain both legal and equitable relief. The Receiver's *prima facie* case of fraudulent transfer is unassailable. The transfers underlying the Compensation Claims and the CD-Proceeds Claims were payments from an insolvent Ponzi scheme. "[T]ransfers made from a Ponzi scheme are presumptively made with intent to defraud, because a Ponzi scheme is, as a

matter of law, insolvent from inception." *Quilling v. Schonsky*, No. 07-10093, 2007 WL 2710703, at *2 (5th Cir. Sept. 18, 2007); *see also Warfield v. Byron*, 436 F.3d 551, 558 (5th Cir. 2006) (". . . [the debtor] was a Ponzi scheme, which is, as a matter of law, insolvent from its inception. . . . The Receiver's proof that [the debtor] operated as a Ponzi scheme established the fraudulent intent behind transfers made by [the debtor]."). Thus, the Receiver is entitled to both the legal and equitable relief he seeks: an order declaring that the transfers to the Accountholders were fraudulent transfers, declaring that such transfers are property of the Receivership Estate, ruling that they are subject to a constructive trust for the benefit of the Estate, and authorizing Pershing and the other custodians to transfer the assets in the Accounts to the Estate. *See* Doc. 156 at 22-23; *see also* Doc. 340-2 at 2-3 (same, but not including request applicable to Pershing and other custodians).

The Accountholders can only avoid liability by proving both that they accepted the transfers in good faith and provided reasonably equivalent value in exchange for the fraudulent transfers. *See* TEX. BUS. & COMM. CODE § 24.009(a). A defendant who invokes an affirmative defense under § 24.009(a) "carries the burden of establishing good faith and the reasonable equivalence of the consideration obtained." *Hahn v. Love*, --- S.W.3d ----, No. 01-07-00096-CV, 2009 WL 793637, at *6 (Tex. App.—Houston [1st Dist.] March 26, 2009, pet. denied) (citing *Flores v. Robinson Roofing & Const. Co., Inc.*, 161 S.W.3d 756 (Tex. App.—Fort Worth 2005, pet. denied)). Any Accountholder who fails to carry this burden by establishing *both* prongs of this defense is liable on the Receiver's claims.

b. As a matter of law, the Accountholders cannot demonstrate the provision of reasonably equivalent value.

The controlling case law precludes the Accountholders from any chance of showing they provided reasonably equivalent value in exchange for the fraudulent transfers they

received. The Accountholders provided no reasonably equivalent value in exchange for their extravagant compensation, and in some cases services that directly furthered the building of the Ponzi scheme, and such consideration does not constitute reasonably equivalent value. The law in the Fifth Circuit is clear that securing new investments into a Ponzi scheme, and other services performed in the furtherance of the scheme, are not reasonably equivalent value as a matter of law. *See Warfield v. Byron*, 436 F.3d 551, 558-60 (5th Cir. 2006).

In *Warfield*, the defendants solicited new investors for a Ponzi scheme and also invested in the scheme, and the receiver brought fraudulent-transfer claims to recover payments purported to be sales "commissions" and investment "earnings". *Id*. at 554-55. The court determined that the defendants did not provide reasonably equivalent value in exchange for the fraudulent transfers, and thus their defense failed and the court did not need to draw a conclusion on the issue of good faith. *Id*. at 560. The *Warfield* court observed that "[i]t takes cheek to contend that in exchange for payments he received, the . . . Ponzi scheme benefited from [the broker's] efforts to extend the fraud by securing new investments." *Id.* at 560 (citing *In re Randy*, 189 B.R. 425, 438-39 (Bankr. N.D. Ill. 1995), for the proposition that "as illegal services premised on illegal contracts, broker services provided in furtherance of a Ponzi scheme do not provide reasonably equivalent value"); *see also In re Ramirez Rodriguez,* 209 B.R. 424, 434 (Bankr. S.D. Tex. 1997) (stating that "as a matter of law, the Defendant gave no value to the debtors [Ponzi scheme operators] for the commissions attributable to investments made by others"). On this basis alone, the Accountholders' only possible defense fails as a matter of law.

c. The evidence precludes the Accountholders from showing good faith.

Further, the Accountholders cannot establish that they received the transfers in good faith because they either knew *or should have known* of the fraudulent nature of the

transfers they received and the SIBL CD products they sold, promoted, and invested in. *See Warfield,* 436 F.3d at 559-60 (relevant inquiry is what transferee "objectively knew or should have known"). A defendant in a UFTA action who possesses "enough knowledge of the actual facts to induce a reasonable person to inquire further about the transaction" cannot establish good faith. *See Cohen v. Pomona Valley Imports, Inc*., 199 B.R. 709, 719 (B.A.P. 9th Cir. 1996). The series of facts and events detailed herein were more than enough to "excite the suspicions" of any reasonable financial professional in the Accountholders' position and to "induce [them] to inquire further" about the transfers they received, the SIBL CD product, and the Stanford organization generally. *See id*.; *see also Hahn v. Love*, 2009 WL 793637, at *7 (defendant with "knowledge of such facts as would excite the suspicions of a person of ordinary prudence and put him on inquiry of the fraudulent nature of an alleged transfer does not take the property in good faith"); *Warfield*, 436 F.3d at 559 (holding that transferee's contention "that they were not knowing participants in the Ponzi scheme" was "irrelevant").

The evidence uncovered by the Receiver thus far in his investigation demonstrates conclusively that many of the Accountholders subject to this motion had serious concerns about the nature of SIBL's CDs. If they either did not have or did not voice such concerns, they had more than enough evidence of problems to put them on notice of the fraudulent nature of the CDs, including the SEC and NASD investigations, customer concerns, self-proclaimed whistleblowers leaving the company, and the overarching theme that the CD program was just too good to be true (both for customers who bought the CDs and employees who sold them). What must have appeared to all of the Accountholders to be too good to be true was indeed untrue.

In the recent report by the SEC's Office of Inspector General, the SEC concluded that SGC had failed to conduct *any* due diligence of the SIBL portfolio, and that there was "no indication that anyone at SGC knew how its clients money was being used by SIB or how SIB was generating sufficient income to support the above-market interest rates paid and the substantial annual three percent trailer commissions paid to SGC." *See* OIG Report, Ex. 5 at 24, 50, Appx. 59, 85. In 2005, the SEC made this point directly to SGC in a letter to Jay Comeaux (the President of SGC and the owner of held Accounts worth over $1.2 million) (discussed *infra)*, stating that SGC and its representatives lacked access to information regarding "the actual and specific investments in the SIB portfolios" and thus could not "determine . . . the risk level of the SIB CDs," and could not "know if the product [was] suitable to its customer's needs." *See* SEC Letter to Jay Comeaux, Ex. 11, Appx. 199-206. The Accountholders therefore could not have had any objective good-faith basis for believing that they were being paid to sell legitimate investments.

The Accountholders' failure to adequately investigate SIBL CDs is inexcusable, given that the FINRA rules under which they operate require that "In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer . . .". FINRA Conduct Rule 2310(a); *see also In re World Vision Entertainment, Inc.*, 275 B.R. 641, 660 (Bankr. M.D. Fla. 2002) (holding that a prudent broker must perform an investigation by reviewing investment ratings and audited financial records, not by "rely[ing] only on slick, marketing brochures or insurance coverage."). By continuing to sell the SIBL CDs despite a complete lack of information and by, in some cases, making affirmative misrepresentations regarding the SIBL CDs, the Accountholders likely committed fraud under Section 206 of the

Investment Advisers Act of 1940. *See* OIG Report, Ex. 5 at 19, Appx. 54; No. 09-298, Doc. 952, ¶ 123.

i. Many Accountholders expressed concern about the CDs but continued to sell them.

A number of the Accountholders expressed serious concerns about the CDs and SIBL, but nonetheless continued selling those CDs to customers in exchange for excessive compensation.

For example, in August 2007, financial advisor Doug McDaniel[26] wrote to Jim Davis, Laura Pendergest, and Juan Rodriguez-Tolentino: "I have only done $3,000,000 of my clients' money (and my own) in the CD product. I have the potential to do much more, but to do that, I would need to become even more comfortable with the product." *See* McDaniel Email, Ex. 13, Appx. 209-12. McDaniel attached a list of questions, noting "some of them may sound like an investigative reporter but I'd like to get as comfortable as I can with the bank." *Id*. At Davis's suggestion, McDaniel forwarded the questions to Rodriguez-Tolentino along with a request for a phone call on the topic. The attached questions included: "My understanding is that from 2000-2002, the Bank's portfolio returns were in the range [of 11% to 15%]. With S&P and EAFE negative for all of those years, and yet a tolerance of up to 50% equity for the bank, how was the bank's portfolio invested"; "What financial instruments and strategies are in place to guard against significant losses in the portfolio, particularly on the equity side? Does each of the managers hedge their own portfolios against loss or do you employ a separate manager to hedge the total bank portfolio."; and "There are many people involved on the investment committee of the Bank. How does this committee ensure that appropriate hedging is in place? This would seem

---

[26] Appendix No. 190; held accounts worth over $140,000.

to require some sophisticated calculations outside the expertise of most investment committees." The Receiver has located no evidence that Tolentino ever answered McDaniel's very basic questions, but nonetheless, by late 2008, McDaniel had increased his client SIBL CD portfolio to over $13 million. Between April 2006 and February 2009, he received $134,767 in SIBL CD commissions, $84,359 in SIBL quarterly bonuses, and $1,314,168 in loans.

In March 2008, FA Robert Ulloa wrote to Jason Green[27] with a list of concerns regarding SIBL indicating that he, too, had suspicions. *See* Ex. 8, Appx. 190-91: Ulloa inquired as to: "SIB's funding sources other than CDs?"; "Which banks provide liquidity funding to SGC?"; "Liquidity funding, how SGC does it?"; "SIB's Equity Investments, what percentage is private?", "Have we reduced/increased our exposure to financials?"; "How leveraged is Stanford, is it 30 to 1 like most investment banks?" Although Laura Pendergest suggested addressing Ulloa's questions on an upcoming all-FA call, noting "I am sure if he has these questions others will as well," the Receiver has located no record of what, if any, answers were provided to the group. By late 2008, Ulloa had increased his client SIBL CD portfolio to over $165 million. Between 2005 and 2009 he received $3,585,168 in SIBL CD commissions and $987,973 in SIBL quarterly bonuses.

Many of the other FAs did, in fact, share similar concerns, as Pendergest suggested. Also in March 2008, financial advisors Neal Clement,[28] John Mark Holliday[29] and Scot Thigpen discussed SIBL and how to "have a good story to tell prospective clients . . . in these difficult markets." *See* Ex. 4, Appx. 23-27. Thigpen noted that it was "difficult . . . to show [SIBL is] able to provide positive returns even in light of horrible market conditions."

---

[27] Appendix No. 121; held accounts worth over $100,000.

[28] Appendix No. 57; held accounts worth over $430,000.

[29] Appendix No. 144; held accounts worth over $30,000.

Thigpen opined that "[a]ccredited investors are pretty savvy investors lots of times" and asked how one could show them the available SIBL CD rates without showing them the underlying portfolio returns. Clement responded: "If I have a client that has to see the [SIB] portfolio, the SIB is not for them!!!!!" This statement speaks for itself and shows the alarming extent to which the Accountholders willfully neglected their duties to their clients. By 2008, Clement's client SIBL CD portfolio exceeded $20 million and Holliday's exceeded $3 million. Between April 2006 and February 2009, Clement received $270,347 in SIBL CD commissions, $163,882 in SIBL quarterly bonuses, and $639,506 in forgivable loans; and Holliday received $33,358 in SIBL CD commissions and $597,503 in forgivable loans.

ii. The SIBL CD program was just too good to be true.

"If it looks too good to be true, it probably is." That is the age-old warning that the Accountholders failed to heed about the SIBL CD program. Even if they did not voice any concerns, all of the former employees were on constructive notice that something was amiss just by how extraordinarily the CDs performed in a down economy and how well the employees were being paid compared to their counterparts in the financial services industry.

The historical performance of SIBL's CDs is extraordinary, to say the least. SIBL offered CD rates that were significantly greater than those offered in the United States. It represented that it was able to pay those returns by profitably investing the CD proceeds in globally-diversified liquid securities that were actively traded by in-house investment experts. In other words, SIBL purported to be like a hedge fund but, unlike a hedge fund, its customers were guaranteed (by SIBL) a specified return regardless of the fund's performance. SIBL's purported investment earnings consistently outperformed the market and always remained steady in both good times and in bad. The purported returns for 2003 were 11.7%; for 2004, 11.9%; for 2005,

12.1%; for 2006, 12%; for 2007, 12.7%. *See* SIBL Return Chart, Ex. 18, Appx. 223-28. Simply put, SIBL CDs were outperforming virtually every stock and investment product on the market.

Stanford employees, including the Accountholders, likewise were being paid far more than their counterparts at other investment firms to sell the SIBL CDs. SGC received a 3% commission (also called a "referral fee") on the initial sale of a SIBL CD, and 3% annually for the life of the CD. *See* SEC Letter to Jay Comeaux, Ex. 11, Appx. 199-206. Financial advisors, in turn, received an annual 1% commission on all amounts their customers had in CDs for that year and were eligible for commissions on the initial sale of CDs of 1% or more. *See* Doc. 18 at ¶ 48.

The Stanford commission structure, according to the SEC, was excessive in comparison to industry norms, violated rules set forth by the NASD and FINRA, and was not adequately communicated to prospective CD investors. In a September 2005 letter to Jay Comeaux, the SEC wrote that "it is unclear if investors receive any notice regarding commissions paid to SGC for sales of the CDs," and the SIBL marketing materials used by SGC FAs to promote the CD "are not definitive to the amount of commissions paid on each transaction" and do not make it clear that "the three per cent referral fee is paid as long as the funds are on deposit." *Id*. Under this structure, the SEC explained, the commission rate on a SIBL CD with a 60-month maturity equated to 15% of the amount invested, which "is in excess of an allowable commission for any kind of securities" and thus "clearly violate[s] NASD Rule 2440[30] regarding Fair Prices and Commission." *Id*. By comparison, when an SGC broker sold a typical certificate of deposit issued by a U.S. bank (and insured by the FDIC), the commission to SGC was in the range of 0.05% to 0.125% of the initial amount invested, or roughly 150 times

---

30 Now FINRA Rule 2440.

smaller than the commission SGC received on a SIBL CD. *See* Sales Credit Table, Ex. 19, Appx. 229.

This fundamental distinction alone should have caused any reasonable financial professional to actively question and investigate the SIBL CD product. But the Accountholders were evidently happy as long as they kept getting paid, and such ignorant bliss does not equate to good faith. *See In re World Vision Entertainment, Inc.*, 275 B.R. 641, 660 (Bankr. M.D. Fla. 2002) (concluding that the brokers' "cursory investigation" was insufficient to support good faith defense, where court found that brokers "just did not want to ask too many questions because they did not want to know too much").

iii. The Accountholders ignored multiple other warning signs about problems with SIBL CDs.

Even setting aside the extraordinary performance of the SIBL CDs and the extravagant compensation packages for Stanford financial advisors and other employees, there were an overwhelming number of warning signs that would have caused a reasonable person to investigate the nature of SIBL and the CDs it offered.

2004 - 2005 SEC Inquiry. As early as October 2004, the SEC conducted an "informal inquiry" into the SIBL CD program, during which the SEC observed a number of red flags and concluded that "SGC made material misstatements to investors concerning [SIBL CDs], as well as failing to disclose material facts in connection with the sales." *See* SEC Letter to Jay Comeaux, Ex. 11, Appx. 199-206. In September 2005, the SEC wrote to Jay Comeaux, and related the SEC's finding that SGC's SIBL CD marketing materials falsely "imply little or no risk to the investor" and that those materials were "materially misleading as they inaccurately imply a safety of principal and the guaranteed receipt of interest of the principal." *Id*. Over

time, it became clear that many SIBL investors were indeed misled, or at least confused, about whether their CD investments were guaranteed or insured against loss.

As part of the same inquiry, the SEC sent a detailed questionnaire to a number of SIBL CD investors, clearly signaling concerns about the CDs, the makeup of the underlying investment portfolio, and misrepresentations that customer deposits were guaranteed or protected by insurance. *See* SEC Questionnaire, Ex. 17, Appx. 219-22. Questions included: "Did anyone tell you where Stanford was going to invest your funds in order to generate returns for CD Program Investors?"; "Did anyone tell you that funds invested in the CD Program were insured against loss?"; "Did anyone guarantee the return of your principal investment?"; and "Please describe in full what you were told, if anything, about the risk of this investment." *Id*. Notice of this questionnaire was sent to *all* FAs in May 2005—and thus no former employee can credibly claim that such questions never crossed their mind. *See* Rep Poppell Email, Ex. 20, Appx. 230.

Customers contacted their FAs to express concern caused by the inquiry, many employees discussed those concerns internally,[31] and the questionnaire caused enough of a stir that Jay Comeaux and Mark Tidwell held an all-hands meeting in Houston to discuss it in June 2005.[32] The attendees at this meeting included Accountholders with held accounts now

---

[31] *See, e.g.,* Rep Poppell to Alvarado Email, Ex. 26, Appx. 250 ("Jay Comeaux phoned......his broker Doug Shaw has received a phone call from one of his clients. It seems the client has received a letter and subsequent request from the SEC regarding his respective purchase of an SIB CD from SGC. The letter is signed by Jennifer Brandt, SEC department of enforcement. I am not aware of such letter and am attempting to contact SEC to inquire. Jay is attempting to get a copy of this letter from the client."). Also in June 2005, another Baton Rouge FA wrote to Hank Mills to "find out how many of your clients received a letter from the SEC and *if there were any negative repercussions*." *See* Email to Hank Mills, Ex. 23, Appx. 236 (emphasis added).

[32] *See* Tidwell Meeting Invite, Ex. 24, Appx. 237-38 .

cumulatively worth over $7.3 million, representing nearly a third of the value of the remaining held accounts.[33]

2006 NASD Inquiry. In September 2006, the National Association of Securities Dealers ("NASD") notified SGC that the NASD was continuing an inquiry into the SIBL CD program and detailing various apparent violations of NASD Conduct Rules related to SGC's marketing and sale of SIBL CDs. *See* NASD Letter, Ex. 21, Appx. 231-33. The rules violations outlined in the letter are typical of SGC financial advisors' misleading sales tactics. For example, the letter complained that SIBL CDs were marketed as superior to U.S. bank CDs, but such comparisons were never accompanied by a disclosure that "U.S. Bank CD's are insured by the FDIC, whereas SIBL CD's are not" or that "U.S. banks are subject to regulation by an agency of the U.S. Government, whereas SIB is not subject to such oversight." *Id.* Further, SIBL marketing materials claimed that SIBL CDs had "No Credit Risk", but "none of the brochures reveal any of the risks associated with the portfolio holdings of the bank, such as market risk and currency risk" and thus the materials "mislead[] [the] costumer and may obscure the risks associated with the CD products."[34] *Id.* Not only did the FAs not *disclose* the risks associated with SIBL CDs and its investment portfolio, but they had no way to even *evaluate* such risks themselves. Thus, another violation was the "unwarranted and misleading" assertion

---

[33] *See* Appendix Nos. 14 (Arnold), 32 (Freedman), 44 (Brownlee), 55 (Cisneros), 59 (Comeaux), 161 (LeBlanc), 170 (Ling), 179 (Malvaez), 196 (Miller), 207 (Murchison), 214 (Northam), 230 (Perez), 232 (Perry), 242 (Rai), 275 (Shaw), 280 (Simmons), 297 (Thomas), 301 (Trullenque), and 321 (Whittemore).

[34] Stanford's response to the NASD letter largely failed to address the substance of the NASD's assertions. *See* Response to NASD, Ex. 25, Appx. 239-49. Coincidentally, Stanford hired Spencer Barasch, former regional director of enforcement at the SEC and now a partner at the law firm Andrews Kurth, to assist with the NASD inquiry, and Mr. Barasch reviewed and approved the response before it was sent. Now, Barasch's partner at Andrews Kurth, Brad Foster, represents 118 of the former Stanford employees subject to the Receiver's Second Amended Complaint, 75 of whom are subject to this motion. *See* Doc. 383 at 2; Doc. 384.

that SIBL's portfolio investments were "prudent"—at a time when SGC admitted that "no one at SGC knows what the investments are." *Id.*

2008 Bloomberg Article and Early Whistleblowers. In July 2008, Bloomberg published an article stating that the SEC was "investigating sales of certificates of deposit by Stanford Group Company at its offshore bank, which has $6 billion in assets in Antigua." The article also noted that the SEC had issued subpoenas to two former SGC financial advisors who were allegedly forced to resign in 2007 because they refused to participate in SGC's "illegal and unethical" marketing methods, Charles Rawl and Mark Tidwell. The subpoenas sought information about the sale of SIBL CDs and requested copies of training materials on SIBL CD sales methods. The article prompted much discussion among both Stanford employees and SIBL CD investors, and led several investors to withdraw their funds from SIBL. *See, e.g.,* Doug Shaw[35] Email, Ex. 15, Appx. 215-16 (writing to Jay Comeaux: "Lost more $ from SIB due to the Tidwell article. Have you had any issues with it?"); Robert Barrett Email, Ex. 16, Appx. 217-18 (notifying Jay Comeaux that a former client of Tidwell's had redeemed a CD prior to maturity, which "was most likely the result of the Bloomberg article").

Even earlier, in 2002, former SGC advisor Leyla Basagoitia was fired, allegedly because of "her continued reluctance to push SIBL and its products". *See In re Stanford Group Company and Basagoitia*, Docket No. 03-02025, 2004 WL 2191763, at *2 (N.A.S.D. Sept. 15, 2004). In arbitration following her termination, Basagoitia alleged that SGC was "engaged in Ponzi scheme to defraud its clients" and that the SIBL CD was "risky in nature, unsuitable, and not the interest of her clients." *Id.* SGC later settled its dispute with Basagoitia in exchange for her agreement to renounce her claims against SGC.

---

[35] Appendix No. 275; held accounts worth over $1.3 million.

SIBL Customers Voice Concerns. SIBL customers were also raising concerns that were impossible to ignore. In early 2007, a prospective SIBL client produced an analysis and criticism of the SIBL CD product and sent it to his financial advisor, Tim Vanderver.[36] *See* Billy Hall SIBL CD Analysis, Ex. 9, Appx. 192-94. The analysis essentially concluded that SIBL was a Ponzi scheme—SIBL was "susceptible to a dependence on new deposits and renewed certificates in order to continue paying investors the guaranteed CD interest and the principal of maturing CDs" because only a small drop in the equities markets would likely render its assets insufficient to meet its liabilities; and further that SIBL's liabilities were already close to equaling or exceeding its assets. *Id*.

The Hall memo was circulated to multiple Stanford employees, including several who are subject to this motion.[37] Indeed, one of the FAs who has a held account, Tim Vanderver, was instrumental in creating a misleading response to the prospective customer, which emphasized, among other things, SIBL's "well diversified" portfolio; the various insurance policies SIBL maintains; and SIBL's "strong cash flow", none of which Vanderver had a reasonable basis for asserting. *See* Vanderver Response to Hall Analysis, Ex. 10, Appx. 195-98. Despite having notice of very real concerns about the SIBL CDs and clearly failing to perform adequate due diligence or otherwise act on these concerns, Vanderver increased his client SIBL CD portfolio to $28 million by 2008. Between January 2006 and February 2009, Vanderver received $510,819 in SIBL CD commissions, $208,168 in SIBL quarterly bonus, and $980,000 in forgivable loans.

---

[36] Appendix No. 307; held accounts worth over $350,000.

[37] In addition to in-house counsel Glen Rigby, at least the following other employees received a copy of the analysis: Maggie Schiffer; JC Bradham; Jason Green; Suzanne Hamm; Bernerd Young; and Lori Guyton.

In 2008, a prospective SIBL client's CPA sent a concerning email to Accountholders Jason Green and Chuck Vollmer[38] that questioned SIBL's suspiciously consistent investment returns and all but concluded that SIBL and Allen Stanford were the next Madoff. *See* Ex. 12, Appx. 207-08. The CPA wrote "I'm not totally comfortable with Stanford International Bank", noting that SIBL's audit firm was unknown to him, and concluding that SIBL "just seems to good to be true." He asked "How do I know . . . [SIBL's] consistent growth in assets and remarkably steady financial performance . . . is real? I know that seems like a rude question." In the ensuing internal discussion, one FA added quite the understatement: "More disclosure on the current firm as well as the regulatory bodies that certify our financial soundness would be helpful."

Apparently following up on other customer inquiries, a number of financial advisors attempted to find out more about the small island auditor that audited the multi-billion Stanford empire, but all to no avail. *See, e.g.,* Email from Bill Whitaker to Jason Green dated May 22, 2008, Ex. 27, Appx. 251 ("I met with a very wealthy prospect yesterday…and his first question concerned the auditors, C.A.S. Hewlett & Co. Ltd. in Antigua…He also said that he was surprised that a $7 Billion bank did not retain a Big 4 or an International Auditor. Please let me know who could I talk to give me a better understanding of the SIB auditors…." The Receiver has not located a response); Email from Mark Groesbeck to Mark Kuhrt dated September 25, 2007, Ex. 28, Appx. 252. Just before the receiver was appointed in February 2009, one of the Accountholders, Chuck Vollmer, acknowledged that he had been a proponent of hiring a "big name audit firm" for four years. *See* Vollmer Email, Ex. 22, Appx. 234-35.

---

[38] Appendix No. 317; held accounts worth over $490,000.

Despite these concerns, his client CD portfolio in 2008 was over $29 million, and he earned at least $680,000 in commissions and bonuses directly tied to selling SIBL CDs.

These are but a few examples of investors and prospective investors who saw SIBL for what it really was, based on nothing more a review of publicly available information. The former Stanford employees, who had superior access to information and who had a greater duty to inquire, decided to ignore the warning signs and continue to reap the financial benefits that came with doing so.

2. The Receiver—and the Stanford victims—will be irreparably harmed if injunction is denied.

The Receiver will suffer an actual, imminent, and irreparable injury if an injunction is not issued. The $24 million remaining in the Accounts likely will be lost forever to the Stanford victims unless the Court intervenes. The Accountholders almost certainly will transfer the released assets to third parties or to accounts or institutions in other jurisdictions, which would force the Receiver to pursue the assets through further fraudulent-transfer actions or preclude recovery altogether. Monetary damages cannot undo this harm nor compensate the Receiver or the Stanford victims for this loss. *See FDIC v. Garner,* 125 F.3d 1272, 1279-80 (9th Cir. 1997) (giving "substantial deference" to lower court's finding that there was "at least a possibility" of dissipation of assets absent an asset-freezing injunction, and consequently concluding that the possibility of irreparable injury had been adequately demonstrated); *Southern New England Telephone Co. v. Global Naps, Inc.*, 595 F. Supp. 2d 155, 160 (D. Mass. 2009) (granting preliminary injunction in fraudulent transfer action based upon "substantial risk that [assetholders] will dissipate, conceal or otherwise secrete assets thus causing irreparable harm to [creditor]"); *Seib*, 1991 WL 218642, at *4 (noting legislature's recognition that legal remedies available against subsequent transferees are "not as practical and efficient to the ends of justice

as the equitable remedy of an injunction" prohibiting disposition of the assets in the first instance); *FDIC v. Faulkner,* 991 F.2d 262, 264, 268 (5th Cir. 1993) (affirming preliminary injunction enjoining disposition of fraudulently transferred assets in action by FDIC receiver); *In re Focus Media Inc*., 387 F.3d 1077, 1087 (9th Cir. 2004) (affirming bankruptcy court's issuance of preliminary injunction enjoining recipient of allegedly fraudulent transfers from dissipating assets).

In *Seib*, a Texas court enjoined the defendants in a UFTA action from "dissipating or diverting assets that are the subject matter of a lawsuit pending a final trial of the case on the merits." *Seib*, 1991 WL 218642, at *1. The trial court held that absent an injunction, the plaintiffs would be "without adequate remedy at law, in that the assets which will probably be awarded to [plaintiffs] will become *difficult, if not impossible*, to account for and recover." *Id*. at *4 (emphasis added). Over the appellants' objections that there was no evidence of immediate threat of irreparable harm, the appeals court agreed with the appellees that "the court can infer from the pattern of prior fraudulent transfers that there is an immediate threat that more transfers will occur absent the granting of the temporary injunction." *Id*. at *3. The appeals court upheld the trial court's injunction under TUFTA based on findings that the asset-holders would "dissipate or divest the assets," "alter the status quo," and "hinder the court in the granting of appropriate relief," and that plaintiffs "will be without an adequate remedy at law." *Id*. at *5.

The risk that the assets in the Accounts will be dissipated, and lost forever to the Stanford victims, is very real. A telling example is the more than $9.8 million transferred from Stanford to an account in the name of Wealth Management Services, Ltd., ("WMS") a corporation owned and controlled by David Nanes.[39] The Receiver has sued WMS to recover

[39] Appendix No. 208; held accounts worth over $730,000.

those payments in a separate action. See No. 10-477, Doc. 1. Those funds were transferred to a Wachovia account in Florida, at a rate of approximately $225,000 per month, from 2006 through the beginning of the Receivership. *See* Ex. 29, ¶ 2, Appx. 254. Today, only a few thousand dollars are left in the Wachovia account, according to the bank records available to the Receiver. *Id*. The vast bulk of deposits into this account (over 80%) came from the $9.8 million transferred from Stanford. *Id*. In total, nearly $5.3 million in this account was transferred away from the United States via international wire transfer, including at least $750,000 in international transfers just in the last quarter of 2008 and January 2009. *Id*.

3. The threatened injury to the Receiver—and the victims of the Stanford fraud—outweighs the potential injury to the former employees.

The potential injury to the Receiver and Stanford victims if an injunction is not issued outweighs the potential harm to the Accountholders if their accounts remain frozen. If the Receiver is entitled to recovery on his claims against the Accountholders, which he has demonstrated to be highly likely, then the requested injunction will enable the Stanford victims to recover something, rather than nothing (but will not ensure even close to a full recovery). On the other hand, assuming for the sake of argument that the Receiver ultimately fails to recover on some or all of his claims, the injunction will not have injured the Accountholders, whose assets will still be available to them and will have continued to earn interest and other investment income during the pendency of this lawsuit.

4. The public interest favors granting an injunction.

Finally, the public interest favors enjoining the Accountholders from disposing of the assets held in the Accounts, as the interests of the innocent Stanford victims surely outweigh the interest of the highly compensated Stanford employees, who received these transfers with

either actual or constructive knowledge of the Stanford fraud. The Receiver is thus entitled to the injunctive relief requested.

C. The Receiver is entitled to a writ of attachment against the Accounts.

1. This Court may issue a writ of attachment in a fraudulent-transfer action.

In addition to injunctive relief, the Texas Uniform Fraudulent Transfer Act grants the Receiver, as plaintiff in a fraudulent-transfer action against the Accountholders, the right to "obtain . . . an attachment or other provisional remedy against the asset transferred or other property of [the Accountholders] in accordance with the applicable Texas Rules of Civil Procedure and the Civil Practice and Remedies Code relating to ancillary proceedings." TEX. BUS. & COMM. CODE 24.008(a)(2). In federal court, the state-law remedy of attachment is available under the circumstances and in the manner provided by the law of the state in which the district court is held. FED. R. CIV. P. 64. Thus, this Court may issue a writ of attachment pursuant to the laws of the state of Texas.

Under Texas law, attachment is available at any time during the progress of a suit if: (1) the defendant is justly indebted to the plaintiff; (2) the attachment is not sought for the purpose of injuring or harassing the defendant; (3) the plaintiff will probably lose his debt unless the writ of attachment is issued; and (4) specific grounds for the writ exist under Section 61.002. TEX. CIV. PRAC. & REM. CODE §§ 61.001, 61.003.

2. The Receiver is entitled to a writ of attachment against the Accounts.

The Receiver is entitled to a writ of attachment against each of the Accounts. Each Accountholder is justly indebted to the Receiver for an amount exceeding the aggregate value of the held Account(s) associated with that Accountholder. *See* Van Tassel Decl., Ex. 1, Appx. 1-15; Account Listing, Ex. 2, Appx. 16-21. Cumulatively, the Accountholders are justly

indebted to the Receiver for nearly $140 million. *See* Ex. 1, Appx. 1-15. As discussed above, the Receiver will almost certainly prevail in his claims against the former employees, particularly in light of the evidence herein showing that they cannot establish the good faith affirmative defense.

Further, this attachment is not sought for the purpose of injuring or harassing the Accountholders, but only to ensure the Receiver does not lose the debt owed to him by the Accountholders. Sadler Decl., Ex. 6, Appx. 187-88. Indeed, the Receiver will probably lose his debt unless this writ of attachment is issued. *Id.* The assets in the Accounts must be returned to the Estate for the benefit of defrauded investors. But if the assets are released to the Accountholders, they will have every incentive to move the funds away from this Court's jurisdiction or otherwise hinder the Receiver's ability to collect on any judgment he obtains. At a minimum, the assets will be dissipated nation-wide to many different institutions, thus forcing the Receiver to incur unnecessary cost and delay in returning the assets to the defrauded investors. And it is likely that at least some if not most of the funds will become completely unrecoverable.

Finally, several specific grounds exist entitling the Receiver to a writ of attachment under TEX. CIV. PRAC. & REM. CODE § 61.002.[40] These specific grounds include:

(1) the defendant is not a resident of this state or is a foreign corporation or is acting as such;

(2) the defendant is about to move from this state permanently and has refused to pay or secure the debt due the plaintiff;

---

[40] As the Accounts are personalty held by a financial institution in the name of a customer of the financial institution, service of the writ of attachment is governed by Texas Finance Code § 59.008. TEX. CIV. PRAC. & REM. CODE § 61.045. The Finance Code provides that the custodians can be served at the address of their respective registered agents as registered with the secretary of state. *See* TEX. FIN. CODE § 59.008(a).

(3) the defendant is in hiding so that ordinary process of law cannot be served on him;

(4) the defendant has hidden or is about to hide his property for the purpose of defrauding his creditors;

(5) the defendant is about to remove his property from this state without leaving an amount sufficient to pay his debts;

(6) the defendant is about to remove all or part of his property from the county in which the suit is brought with the intent to defraud his creditors;

(7) the defendant has disposed of or is about to dispose of all or part of his property with the intent to defraud his creditors;

(8) the defendant is about to convert all or part of his property into money for the purpose of placing it beyond the reach of his creditors; or

(9) the defendant owes the plaintiff for property obtained by the defendant under false pretenses.

More than two-thirds of the Accountholders reside outside of Texas (80 of the 117). Sadler Decl., Ex. 6, Appx. 188; TEX. CIV. PRAC. & REM. CODE § 61.002(1). The Receiver has been unable to serve 19 of the Accountholders, despite a diligent effort.[41] *Id.*; TEX. CIV. PRAC. & REM. CODE § 61.002. If the release occurs as planned on June 1, most, if not all, of the funds in the Accounts will be moved to locations outside of Texas, and likely outside the United States, without leaving an amount sufficient to pay the Accountholders' debts. *Id.* § 61.002(5). And it is likely many of the assets in the Accounts will be transferred to third parties with intent to hinder the Receiver's ability to return the assets to the Stanford victims. *Id.* § 61.004. The Accountholders have every reason and incentive to remove assets from the Accounts, and therefore beyond the reach of the Court, the Receiver and the Stanford victims, or to otherwise dissipate or dispose of the assets. *Id.* § 61.007(7).

[41] One troubling example is David Nanes. The Receiver has attempted to serve Nanes more than 10 times at all known addresses—without success. *See* Affidavit of Non-Service, Ex. 14, Appx. 213-14. Further, counsel for the Receiver has engaged in discussions with a Houston attorney who purports to represent Nanes, who has expressed an interest in meeting with the Receiver's counsel to discuss the case, but nonetheless has refused to agree to accept service on his client's behalf. The Receiver has been unable to confirm Nanes's whereabouts, or whether Nanes is even in the United States.

For these reasons, the Receiver asks the Court to grant this application, and issue writs of attachment against each of the Accounts with the order specifying the maximum value of property that may be attached, and fixing the amount of bond required of the Receiver. The Receiver asks that these writs be issued before June 1, 2010 (when the Account would otherwise be released under the Court's existing orders) so the sheriff or constable can attach before the Accounts are released, and further, that the Court stay the order releasing employee accounts (Doc. 379) as it applies to Accountholders and the Accounts, until such time as the Court rules upon this Application.

CONCLUSION

For all the reasons discussed herein, the Receiver is legally and equitably entitled to the relief he requests, and this application should be set for hearing on an expedited basis. The Receiver requests a temporary restraining order, preliminary injunction and, in the alternative, writ of attachment, preventing the removal or dissipation of the assets in the Accounts, and that the order directing the June 1 release of employee accounts be stayed until such time as the Court rules upon this application.

Dated: April 19, 2010

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

Kevin M. Sadler
Texas Bar No. 17512450
kevin.sadler@bakerbotts.com
One Shell Plaza
910 Louisiana
Houston, Texas 77002
(713) 229-1234
(713) 229-1522 (Facsimile)

1500 San Jacinto Center
98 San Jacinto Blvd.
Austin, Texas 78701-4039
(512) 322-2500
(512) 322-2501 (Facsimile)

Timothy S. Durst
Texas Bar No. 00786924
tim.durst@bakerbotts.com
2001 Ross Avenue
Dallas, Texas 75201
(214) 953-6500
(214) 953-6503 (Facsimile)

ATTORNEYS FOR RECEIVER RALPH S. JANVEY

Certificate of Conference

Counsel for the Receiver conferred with David Reece of the SEC, who indicated that the SEC does not oppose this Application or the relief requested herein. Counsel for the Receiver conferred with the Examiner, who did not indicate whether he opposes this Application. Counsel for the Receiver conferred with the parties affected by this Application by email to the following counsel:

- Brad Foster
- Michael Stanley
- Marc Durant
- Jason Graham
- Robert Wright
- John Kincade
- Uttam Dhillon
- Charles Parker
- Jeffrey Tew
- Brett Feinstein

Because no counsel indicated that his client was unopposed, this Application is opposed.

/s/ Kevin M. Sadler
Kevin Sadler

Certificate of Service

On April 19, 2010, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served the Court-appointed Examiner, all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin M. Sadler
Kevin M. Sadler

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RALPH S. JANVEY, IN HIS CAPACITY AS COURT-APPOINTED RECEIVER FOR THE STANFORD INTERNATIONAL BANK, LTD., ET AL.	§	
	§	Case No. 03:09-CV-0724-N
Plaintiff,	§	
v.	§	
JAMES R. ALGUIRE, ET AL.	§	
Defendants.	§	

TEMPORARY RESTRAINING ORDER

Receiver Ralph S. Janvey applied for a temporary restraining order. After considering the pleadings and other papers on file with the Court, the evidence presented, and the arguments of counsel, if any, the Court finds that the Receiver's application should be granted. Unless the requested temporary restraining order is issued, the Accounts subject to this order will be released and the Receiver will be irreparably damaged by the dissipation of the assets held in the Accounts subject to this order, and monetary damages will be inadequate to compensate the Receiver.

IT IS THEREFORE ORDERED that the Accountholders listed in Exhibit A to this Order (*see* Exhibit 2 to the Receiver's Application), their respective officers, agents, and employees and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, including any financial institution, broker-dealer, investment advisor, private equity fund or investment banking firm, are hereby enjoined from

doing any act or thing whatsoever to remove, transfer, assign, pledge, mortgage, or otherwise dispose of any funds or assets of the Accounts listed in Exhibit A to this Order.

IT IS FURTHER ORDERED that the Receiver; Pershing, LLC; JPMorgan Chase & Co.; SEI Private Trust; and Stanford Coins & Bullion, Inc., their respective officers, agents, and employees and all persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are hereby enjoined from doing any act or thing whatsoever to remove any funds or assets from the Accounts listed in Exhibit A to this Order.

IT IS FURTHER ORDERED that this Court's order directing the June 1, 2010 release of certain accounts (Doc. 379) is stayed to the extent it applies to the Accounts listed in Exhibit A to this Order, pending further order from the Court.

IT IS FURTHER ORDERED that this order shall not be effective unless and until the Receiver executes and files with the clerk a bond, in conformity with the law, in the amount of $____________.

This order was issued at ______ [time] on the ___ day of ________, 2010. This order will expire 14 days from the date of issuance absent further order from the Court. A hearing on the preliminary injunction requested by the Receiver will be held on the ___ day of ______, 2010. This order shall be filed and recorded with the Clerk of Court.

Signed this _____ day of __________, 20__.

____

DAVID C. GODBEY,
UNITED STATES DISTRICT COURT JUDGE