

CAUSE NO. D-1-GV-10-000454

STATE OF TEXAS,

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IN THE DISTRICT COURT OF

Plaintiff,

v.

TRAVIS COUNTY, TEXAS

RETIREMENT VALUE, LLC, *ET AL.*

Defendants,

126TH JUDICIAL DISTRICT

**FIRST AMENDED MOTION TO ENFORCE SETTLEMENT AGREEMENT,
DISGORGEMENT OF SETTLEMENT FUNDS AND
REQUEST FOR EVIDENTIARY HEARING**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, WENDY ROGERS, (“Rogers”) and in support of this amended motion, shows as follows:

1. In early 2010, the State of Texas, (“the State”) at the request of John Morgan, the Commissioner of the Texas State Securities Board, brought an action against Rogers, claiming, inter alia, that she sold an unregistered security and committed securities fraud¹.
2. In the same action, the State requested that the court appoint a receiver for Retirement Value, LLC, (“RV”), on the grounds that RV was selling an unregistered security.

¹ Rogers requests that the Court take judicial notice of all pleadings on file in this case.

3. Although a receiver was appointed in early 2010, at least in part on the basis that RV was selling an unregistered security, the State did not seek an actual ruling from the Court on that issue until a year and a half later.
4. Nevertheless, the Court, found that the RV product was in fact a security on December 7th, 2011, in a ruling on a motion for summary judgment against Rogers.
5. Rogers, timely appealed the ruling to the 3rd Court of Appeals in Austin, Texas.
6. Before the appellate court rendered a decision on that issue, the State settled with Rogers in August of 2012, not long after this Court denied a motion for summary judgment, filed by the State, claiming that Rogers committed securities fraud. *See* Settlement Agreement attached as **Exhibit A**².
7. Part of the settlement required Rogers to dismiss her appeal on the securities issue. Rogers complied with that requirement and dismissed her appeal. *See* Settlement Agreement at Paragraph 22.
8. Unbeknownst to Rogers, the State was keeping an eye on a bigger prize, to wit, an eventual indictment of Rogers for, inter alia, securities fraud.
9. In fact, on February 26, 2015, Rogers was indicted in Collin County, Texas, for securities fraud. *See* Indictments attached as **Exhibit B**³.
10. At all times, the State had planned to pursue a criminal case against Rogers, but wanted to insure that she would first dismiss her appeal of the core issue alleged therein.

² The Settlement Agreement included as a Party, the State of Texas, the Texas State Securities boards (“TSSB”) and was signed by Jack Hohengarten on behalf of the State of Texas.

³ The indictments seem to have been obtained at the request of the TSSB, through their employee Letha Sparks, and

11. The State's plan worked.

12. The question, however, is whether the State should be allowed to succeed in its plan.

THE ANSWER HAS TO BE A RESOUNDING NO. Certainly, since this Court was asked to approve the settlement, it should not allow itself to be complicit in this devious plan.

13. The terms of the settlement agreement specifically provide that the State **may no longer pursue a finding that Rogers sold a security or committed securities fraud**. See Settlement Agreement at paragraph 17.

“Release by the State. The State does hereby forever agree to RELEASE, ACQUIT, FOREVER DISCHARGE AND HOLD HARMLESS Wendy Rogers and her attorneys, insurers, representatives, successors and assigns, and all persons or entities in privity therewith, from any, and all civil claims, demands damages, actions, causes of action, and suits at law or in equity, of any kind or nature, whether arising under statute or common law, whether known or unknown, that have been brought, should have been brought, or could have been brought in the Pending Case. The State does not release or waive its right to demand additional enforcement of the laws and regulations of the State of Texas or the United States, except with regard to those claims and causes of action, whether statutory, legal or equitable, which were, or should have been, or could have been, asserted in the Pending Case, regarding Retirement Value or Hill Country Funding, and which occurred prior to this Settlement. This release does not affect the claims of any other party. Nor does this release include the Emergency Cease and Desist Order entered by the Texas Securities Commissioner on March 29, 2010. By this release, the State does not intend to release any other person including without limitation Wells Fargo Bank, N.A., Wells Fargo Advisors, LLC, Wells Fargo Investments, LLC, Whitney Giles, Ronald James, Donald James, James Settlement Services, LLC, Mike Beste, or any licensee of Retirement Value.”

14. This Court retained jurisdiction over the parties to the settlement agreement and therefore, has the authority to hear this motion. Venue for any matters related to the

not through any complaint by any investor in Retirement Value.

Settlement Agreement lies in the Courts of Travis County, Texas. See Settlement Agreement at Paragraph 24(b).

“Choice of Law. The rights and liabilities of the Parties under this Agreement shall be governed as to validity, interpretation, enforcement, effect and damages by the laws of the State of Texas, without regard to any rules, statutes or case law regarding conflicts of law. Venue for any matters related hereto lies in the Courts of Travis County, Texas.”

15. Rogers respectfully requests that the Court hold an evidentiary hearing to determine, inter alia, the following:

- a. Whether the letter and spirit of the provisions of the settlement agreement have been breached by the State and specifically the TSSB as the complaining party to the indictments; and
- b. Whether the breach was intentional; and
- c. Whether Rogers’ due process rights have been violated by the State, when she was asked to give up legal rights, without being informed or warned that a criminal complaint(s) were being contemplated against her; and
- d. Whether justice requires that the settlement agreement be enforced and the State ordered to take all action necessary to comply with its terms, including, but not limited to, withdrawing any and all complaints upon which the indictments were premised; and
- e. Whether justice requires that the State pay back to Rogers the settlement funds; and

- f. Whether justice requires that Rogers recover her reasonable and necessary attorney fees incurred in enforcing the terms of the settlement agreement.

WHEREFORE, WENDY ROGERS, prays that, after hearing, she be granted the relief sought herein, and such other and further relief to which she may show herself justly entitled.

Respectfully submitted,

RENTEA & ASSOCIATES

/s/ Bogdan Rentea
BOGDAN RENTEA
State Bar No. 16781000
505 W. 12th Street, Suite 206
Austin, Texas 78701
Tel: (512) 472-6291
Fax: (512) 472-6278
brentea@rentealaw.com

COUNSEL FOR WENDY ROGERS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record herein by:

Electronic Service

on this the 15th day of April, 2015.

<p>Jack Hohengarten Susan Millsapps TEXAS ATTORNEY GENERAL Financial and Tax Litigation Division 300 W. 15th Street, Sixth Floor Austin, Texas 78711-2548 (512) 475-3503 (512) 477-2348 fax jack.hohengarten@texasattorneygeneral.gov susan.millsapps@texasattorneygeneral.gov COUNSEL FOR THE STATE OF TEXAS</p>	<p>Michael Napoli COX SMITH MATTHEWS INC. 1201 Elm Street, Suite 3300 Dallas, Texas 75270 (214) 698-7800 (214) 698-7899 fax mnapoli@coxsmith.com</p> <p>Mary Schaerdel Dietz COX SMITH MATTHEWS INC. 111 Congress Avenue, Suite 2800 Austin, Texas 78701 (512) 703-6300 (512) 703-6399 fax mdietz@coxsmith.com COUNSEL FOR RV RECEIVER</p>
<p>R. James George Jr. John W. Thomas John R. McConnell GEORGE BROTHERS KINCAID & HORTON, LLP 114 W Seventh, Suite 1100 Austin, Texas 78701-3015 (512) 495-1400 (512) 499-0094 fax rjgeorge@gbkh.com jthomas@gbkh.com jmccconnell@gbkh.com COUNSEL FOR RV RECEIVERS</p>	<p>Isabelle M. Anton Giorgi TAYLOR DUNHAM, LLP 301 Congress Avenue, Suite 1050 Austin, Texas 78701 (512) 473-2257 (512) 478-4409 fax iantongiorgi@taylordunham.com COUNSEL FOR HCF RECEIVER</p>
<p>Geoffrey D. Weisbart Mia A. Storm WEISBART SPRINGER HAYES LLP 212 Lavaca Street, Suite 200 Austin, Texas 78701 (512) 652-5780 (512) 682-2074 fax gweisbart@wshllp.com mstorm@wshllp.com COUNSEL FOR THE CREDIT INTERVENORS</p>	<p>Daniel R. Richards Tonia L. Lucio Clark Richards RICHARDS RODRIGUEZ & SKEITH, LLP 816 Congress Avenue, Suite 1200 Austin, Texas 78701 (512) 476-0005 (512) 476-1513 fax drichards@rrsfirm.com tlucio@rrsfirm.com crichards@rrsfirm.com ATTORNEYS FOR BAKER INTERVENORS</p>

<p>Richard H. Gray Catherine Gray 301 Main Plaza, #349 New Braunfels, Texas 78130 (210) 392-3550 texasgraze@gmail.com PRO SE DEFENDANTS</p>	<p>Carl Galant Nicholas P. Laurent MCGINNIS LOCHRIDGE & KILGORE, LLP 600 Congress Avenue, Suite 2100 Austin, Texas 78701 (512) 495-6000 (512) 495-6093 fax cgalant@mcginnislaw.com nlaurent@mcginnislaw.com COUNSEL FOR THIRD PARTY DEFENDANT KON JAMES, DON JAMES, AND JAMES SETTLEMENT SERVICES</p>
<p>Benjamin S. De Leon Thomas P. Washburn DE LEON & WASHBURN, P.C. 901 S. MoPac Expressway, Suite 230 Austin, Texas 78746 (512) 478-5308 (512) 482-8628 fax bdeleon@dwlawtx.com pwashburn@dwlawtx.com COUNSEL FOR THIRD PARTY DEFENDANT MICHAEL McDERMOTT</p>	

/s/ Bogdan Rentea _____
Bogdan Rentea

COMPROMISE AND SETTLEMENT AGREEMENT

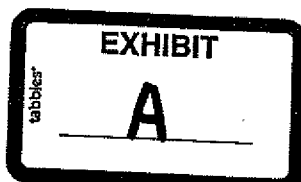
This Compromise and Settlement Agreement (the "Agreement") is entered into effective as of the ___ day of August 2012 (the "Effective Date"), between and among the following:

- a. Wendy Rogers ("Rogers");
- b. Eduardo S. Espinosa, in his capacity as Court-Appointed Receiver for Retirement Value, LLC (the "RV Receiver") and Retirement Value, LLC, a Texas limited liability company ("Retirement Value");
- c. The State of Texas (the "State");
- d. Donald R. Taylor, in his capacity as the Court-Appointed Receiver for Hill Country Funding, LLC, a Texas Limited Liability Company, and Hill Country Funding, LLC, a Nevada limited liability company (the "HCF Receiver"), Hill Country Funding, LLC (Texas), and Hill Country Funding, LLC (Nevada) (both companies, collectively, "HCF"), and
- e. Gary Cain, Barry Edelshein and Qvest III Master Fund LLC, Matthew C. Allen, Jr., Trustee under the Matthew and Teddie Allen Charitable Remainder Annuity Trust, Matthew C. Allen, Jr., Teddie Allen and Laddell Harrison (collectively, the "Intervenors").

Rogers, the RV Receiver, Retirement Value, the HCF Receiver, HCF, the State, and the Intervenors will be collectively referred to as the "Parties," and may be individually referred to as a "Party." The RV Receiver and the HCF Receiver will be collectively referred to as the "Receivers."

RECITALS

- A. The State at the request of the Deputy Securities Commissioner of Texas, John Morgan, filed an Original Verified Petition and Application for *Ex Parte* Temporary



Restraining Order, Temporary and Permanent Injunctions, Restitution, Disgorgement, and Appointment of Receiver, commencing a lawsuit numbered and styled Cause No. D-1-GV-10-000454, *State of Texas v. Retirement Value, LLC, Richard H. "Dick" Gray, Bruce Collins and Kiesling, Porter, Kiesling, & Free, P.C.*, in the 126th Judicial District Court of Travis County, Texas (the "Pending Case").

B. On May 5, 2010, the Court issued the First Amended Temporary Restraining Order and Order Appointing Receiver providing certain injunctive relief and appointing the Receiver and, on May 28, 2010, the Court issued the Agreed Temporary Injunction Order against Defendants Retirement Value, LLC and Richard H. "Dick" Gray and the Relief Defendant and Order Appointing Receiver.

C. The State amended its petition to add claims against Rogers in the Pending Case.

D. The RV Receiver has filed his Cross-claim against Rogers in the Pending Case.

E. The HCF Receiver has filed his claims against Rogers in the Pending Case.

F. The intervenors have intervened in the Pending Case and asserted claims against Rogers.

G. Rogers disputes the allegations made against her and admits no wrongdoing.

H. The Parties have determined that it is in their best interests to resolve all claims and disputes between them and Rogers, including, without limitation, all claims arising out of the operation of Retirement Value, the sale by Wendy Rogers of interests in

Retirement Value's Re-Sale Life Insurance Policy Program ("Interests"), Rogers' service as an officer and manager of Retirement Value, Rogers' service as an employee of HCF, and the State's request for permanent injunctive relief against Rogers.

TERMS OF AGREEMENT

In consideration of the promises and agreements contained in this Agreement – including the recitals, acknowledgements, representations and warranties set forth herein – the Parties agree as follows:

1. Settlement Property. Rogers will pay \$200,000 to the RV Receiver as consideration for entering into this Settlement Agreement. To generate the \$200,000, it is anticipated that Rogers will transfer the following assets (the "Settlement Property") to the Receiver where they will be held for sale:
 - a. The real property located at 310 Meadow Park, New Braunfels, Texas 78130 ("the Charity House") and
 - b. The real property located at 304 May Street, Pettus, Texas 78146 ("the Bee County Rental House")

The order approving the settlement shall explicitly provide that the Settlement Property is an RV Receivership asset, but that the property will remain titled in Rogers name while being sold. After the sale of the above properties, (a) in the event of a shortfall, Rogers will have 30 days to pay the shortfall between the amount paid through the sale of the properties and the \$200,000 and (b) in the event of an excess, any amounts in excess of the \$200,000 settlement amount shall be paid back to Rogers. Rogers may obtain the release of the Settlement Property at any time by paying the RV Receiver the difference between any amounts already paid pursuant to this Agreement and \$200,000. Rogers will immediately send to the RV Receiver all offers received on the Settlement Property. Rogers and the RV Receiver may agree to extend or shorten the above timeframes.

2. Membership Interests in Retirement Value. Rogers hereby transfers all of her membership interest in Retirement Value to the Receiver. This transfer will be effective on the Settlement Date (as defined below).

3. Relinquishment of Interests. Wendy Rogers' husband, Jeff K. Rogers ("J. Rogers"), hereby relinquishes any interest he may have in the Settlement Property or Membership Interests in Retirement Value under the laws of Texas, either as he may have as a joint tenant, under the community property laws of the State of Texas or in any other manner in the Settlement Property and consents to the transfer of the Settlement Property by Rogers to the Receiver as set forth in this Settlement Agreement.

4. Investigation by Receiver and State. Rogers will be made reasonably available to the Receiver, the HCF Receiver and the State to answer questions, on the phone or in person, that may arise related to Retirement Value and HCF.

5. Use of Settlement Property. The RV Receiver will use the proceeds of the Settlement Property for the payment of premiums or for distribution to the creditors of Retirement Value and not for administrative or other expenses.

6. Release of Property.

(a) The RV Receiver hereby releases any interest or claim he may have to any property or assets owned by Rogers, save and except the Settlement Property.

(b) Rogers and her husband hereby release any interest or claim they may have to any property or assets of the Receivers, including without limitation the Settlement Property and the assets of Absolute Betah, LLC or Special Acquisitions, Inc.

7. Possession and Ownership of Property. Upon execution of this Agreement, approval by the Court of the Agreement and entry of the Agreed Permanent

Injunction and Final Judgment as to Rogers in the form previously agreed to by Rogers, the Receivers and the State (the "Settlement Date"), the Receivers expressly agrees that any Court order, decree or document establishing or conferring authority or power upon the Receivers to control or possess any of Rogers' property (save and except the Settlement Property) as property of the Receivers shall no longer apply. Accordingly, on the Settlement Date, the Receivers hereby authorizes Rogers to have complete control, including the power to transfer, use or otherwise dispose of the Rogers' property (save and except the Settlement Property) in any manner she desires. The Receivers additionally agree to take all steps necessary, within five (5) business days of the Settlement Date, to release and/or unfreeze any and all encumbrances, holds or restraints on the Rogers' property (save and except the Settlement Property).

8. Cooperation. The Parties to this Agreement will act in good faith in the performance of their obligations under this Agreement consistent with the purposes of this Agreement. No Party will unreasonably delay, withhold or condition any notice, approval or similar action required or permitted by this Agreement. The Parties shall cooperate reasonably with each other and with their respective representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall (i) furnish upon request to each other such further information; (ii) execute and deliver or cause to be executed and delivered to each other such other documents; and (iii) do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement.

9. Verified Financials; Supporting Documentation.

(a) Concurrently with the execution of this Settlement Agreement, Rogers agrees to provide the Receivers with a verified financial statement of Rogers' current assets and liabilities ("Verified Financials"), the form and substance of which has already been reviewed and approved by the Receiver. Additionally, Rogers has already provided the Receivers significant documentation to support the Verified Financials ("Supporting Documentation") and, by entering into this Settlement Agreement, the Receivers acknowledge that they are satisfied with the disclosures made by Rogers regarding her and J. Rogers' finances.

(b) The releases set forth in paragraph 12, 14, 16, and 17, the covenants not to sue set forth in paragraphs 13 and 15, and the release of property set forth in paragraph 6 of this Settlement Agreement are expressly conditioned upon the accuracy of the Verified Financials and Supporting Documentation and the Parties are relying on the accuracy of such in entering into this Settlement Agreement. If either the Verified Financials or the Supporting Documentation contain a material falsehood made intentionally or with reckless disregard for the truth, then the releases contained in this Settlement Agreement shall be null and void and the Receivers shall be entitled to assert any claims they may have against Rogers.

10. Confidentiality of Rogers' Personal Identifying and Financial Information.

The Parties agree to keep the personal identifying and financial information of Rogers ("Confidential Information") confidential and agree to disclose and/or file with the Court only the information necessary for approval of the Settlement Agreement. To the extent Confidential Information can reasonably be redacted from documents before they are

disclosed and/or filed, the Receivers agree to redact such information. If Confidential Information cannot be reasonably redacted, the Receivers agree to identify (and deliver to Rogers if not already in her possession) all documents they intend to file with the Court at least two (2) days before any hearing to approve this Settlement Agreement so that Rogers may object. Nothing herein shall prohibit the Receivers from sharing the Confidential Information with representatives of the Office of the Attorney General of Texas, the Texas State Securities Board, or the Texas Department of Insurance. The Receivers must take all reasonable steps to ensure that any party with whom he shares Confidential Information is subject to this confidentiality provision. With respect to the State of Texas, nothing in this agreement is intended to supersede or modify any provision in the Public Information Act.

11. Permanent Injunction. Kerees agree to the entry of a permanent injunction relating to Retirement Value and HCF enjoining Rogers from unlawfully selling securities; acting as an agent, dealer or salesman in the unlawful sale of securities; engaging in fraud; or violating the Texas Deceptive Trade Practices Act, the Texas Securities Act or the Texas Insurance Code. The injunction shall be in the form of Exhibit A.

12. Release by the RV Receiver and Retirement Value and Anyone Making Claims by, through or under Them. The RV Receiver and Retirement Value and their successors, assigns, executors, administrators, legal representatives, and any and all persons or entities under its control (the "RV Releasers"), do hereby forever agree to RELEASE, ACQUIT, FOREVER DISCHARGE AND HOLD HARMLESS Wendy Rogers and her attorneys, insurers, representatives, successors and assigns, from any and

all claims, demands, damages, actions, causes of action, and suits at law or in equity, of any kind or nature, whether arising under statute or common law, whether known or unknown, that have been brought, should have been brought, or could have been brought, that are directly or indirectly attributable or related to Retirement Value, the sale of the Interests, or Wendy Rogers' service as an officer of Retirement Value, and/or the Pending Case. This release does not affect the claims of any party other than the RV Releasers or those asserting a claim by, through or under Retirement Value. By this release, the RV Releasers do not intend to release any person including without limitation Wells Fargo Bank, N.A., Wells Fargo Advisors, LLC, Wells Fargo Investments, LLC, Whitney Giles, Ronald James, Donald James, James Settlement Services, LLC, Mike Beste, or any licensee of Retirement Value.

13. Covenant Not to Sue. Retirement Value further agrees that neither it nor any agent or representative acting on its behalf will bring any other lawsuit or other action against Rogers to recover for any injuries or damages sustained or claimed by them as a result of any claim released herein. If any other such lawsuit has been or is ever brought by Retirement Value or the RV Receiver, on their behalf or by, through or under them, Retirement Value will petition the Court to dismiss such suit with prejudice or to enter a take nothing judgment. This covenant not to sue is expressly conditioned upon the material accuracy of the Verified Financials or Supporting Documents.

14. Release by the HCF Receiver and HCF and Anyone Making Claims by, through or under Them. The HCF Receiver and HCF and their successors, assigns, executors, administrators, legal representatives, and any and all persons or entities under its control (the "HCF Releasers"), do hereby forever agree to RELEASE, ACQUIT,

FOREVER DISCHARGE AND HOLD HARMLESS Wendy Rogers and her attorneys, insurers, representatives, successors and assigns, from any and all claims, demands, damages, actions, causes of action, and suits at law or in equity, of any kind or nature, whether arising under statute or common law, whether known or unknown, that have been brought, should have been brought, or could have been brought, that are directly or indirectly attributable or related to Retirement Value, HCF, the sale of the Interests, or Wendy Rogers' service as an officer of Retirement Value or HCF, and/or the Pending Case. This release does not affect the claims of any party other than the HCF Releasers or those asserting a claim by, through or under HCF. By this release, the HCF Releasers do not intend to release any other person including without limitation Wells Fargo Bank, N.A., Wells Fargo Advisors, LLC, Wells Fargo Investments, LLC, Whitney Giles, Ronald James, Donald James, James Retirement Services, LLC, Mike Beste, or any licensee of Retirement Value.

15. Covenant Not to Sue. HCF further agrees that neither it nor any agent or representative acting on its behalf will bring any other lawsuit or other action against Rogers to recover for any injuries or damages sustained or claimed by them as a result of any claim released herein. If any other such lawsuit has been or is ever brought by HCF or the HCF Receiver, on their behalf or by, through or under them, HCF will petition the Court to dismiss such suit with prejudice or to enter a take nothing judgment. This covenant not to sue is expressly conditioned upon the material accuracy of the Verified Financials or Supporting Documents.

16. Release by the Intervenor and Anyone Making Claims by, through or under Them. The Intervenor and their successors, assigns, executors, administrators,

legal representatives, and any and all persons or entities under its control (the "Intervenor Releasors"), do hereby forever agree to RELEASE, ACQUIT, FOREVER DISCHARGE AND HOLD HARMLESS Wendy Rogers and her attorneys, insurers, representatives, successors and assigns, from any and all claims, demands, damages, actions, causes of action, and suits at law or in equity, of any kind or nature, whether arising under statute or common law, whether known or unknown, that have been brought, should have been brought, or could have been brought, that are directly or indirectly attributable or related to Retirement Value, HCF, the sale of the Interests, or Wendy Rogers' service as an officer of Retirement Value or HCF, and/or the Pending Case. This release does not affect the claims of any party other than the Intervenor Releasors or those asserting a claim by, through or under them. By this release, the Intervenor Releasors do not intend to release any other person including without limitation Wells Fargo Bank, N.A., Wells Fargo Advisors, LLC, Wells Fargo Investments, LLC, Whitney Cole, Ronald James, Donald James, James Settlement Services, LLC, Mike Beste, or any licensee of Retirement Value.

17. Release by the State. The State does hereby forever agree to RELEASE, ACQUIT, FOREVER DISCHARGE AND HOLD HARMLESS Wendy Rogers and her attorneys, insurers, representatives, successors and assigns, and all persons or entities in privity therewith, from any and all civil claims, demands, damages, actions, causes of action, and suits at law or in equity, of any kind or nature, whether arising under statute or common law, whether known or unknown, that have been brought, should have been brought, or could have been brought in the Pending Case. The State does not release or waive its right to demand additional enforcement of the laws and regulations of the State

of Texas or the United States, except with regard to those claims and causes of action, whether statutory, legal or equitable, which were, or should have been, or could have been, asserted in the Pending Case, regarding Retirement Value or Hill Country Funding, and which occurred prior to this Settlement. This release does not affect the claims of any other party. Nor does this release include the Emergency Cease and Desist Order entered by the Texas Securities Commissioner on March 29, 2010. By this release, the State does not intend to release any other person including without limitation Wells Fargo Bank, N.A., Wells Fargo Advisors, LLC, Wells Fargo Investments, LLC, Whitney Giles, Ronald James, Donald James, James Settlement Services, LLC, Mike Beste, or any licensee of Retirement Value.

18. Release by Rogers. Wendy Rogers, and her heirs, successors, assigns, executors, administrators, legal representatives, and any and all persons or entities under her control (the "Rogers Releasees"), do hereby forever agree to RELEASE, ACQUIT, FOREVER DISCHARGE AND HOLD HARMLESS Retirement Value, the Receiver, K&L Gates, LLP, the Intervenor, the State and their directors, managers, shareholders, members, partners, officers, employees, servants, attorneys, insurers, agents, representatives, successors and assigns, parent corporations, subsidiaries, affiliates, and all persons or entities in privity therewith, from any and all claims, demands, damages, actions, causes of action, and suits at law or in equity, of any kind or nature, whether arising under statute or common law, whether known or unknown, that have been brought, should have been brought, or could have been brought, that are directly or indirectly attributable or related to Retirement Value, HCF, the sale of the Interests, or Wendy Rogers' service as an officer of Retirement Value or HCF, and/or the Pending

Case. This release does not affect the claims of any party other than the Rogers Releasers or those asserting a claim by, through or under them. By this release, the Rogers Releasers do not intend to release any other person including without limitation Wells Fargo Bank, N.A., Wells Fargo Advisors, LLC, Wells Fargo Investments, LLC, Whitney Giles, Ronald James, Donald James, James Settlement Services, LLC, Mike Beste, or any licensee of Retirement Value.

19. Requirement of Court Approval of Settlement Agreement.

(a) The Parties understand and agree that the terms of this Agreement are conditioned upon final approval by the Court and entry of the Agreed Permanent Injunction, in the form previously agreed to by Rogers, the RV Receiver and the State. The RV Receiver, by entering into this Agreement, additionally agrees to take all steps reasonably necessary to obtain approval from the Court, including filing a motion for court approval and making any reasonably necessary assurances or recommendations to the Court or any other parties. Should any investor or other interested person object or otherwise seek to prevent Court approval of this Agreement, the RV Receiver, the State, the Intervenor and Rogers agree to take all reasonable steps necessary to respond to such objections and obtain approval from the Court.

(b) Should the Court fail to approve this Agreement for any reason, this Agreement shall be null and void as if the Parties had never entered into the Agreement. Should the Court reject any specific agreement or provision herein, each party shall have the option of ratifying the Agreement without that provision or rejecting the Agreement in its entirety. Should the Court for any reason fail to sign and enter the Agreed Permanent Injunction attached this Agreement as Exhibit A, this Agreement shall be null

and void. Should the Court reject or modify any provision in the Agreed Permanent Injunction attached as Exhibit A, each party has the option of ratifying this Agreement without the provision or rejecting the Agreement in its entirety.

20. Legal Fees and Court Costs Related to the Pending Case. The Parties agree and understand that each will be responsible for paying its own attorneys' fees, taxable and non-taxable court costs, and costs of litigation.

21. Representations and Warranties.

(a) The Parties expressly represent and warrant to each other that they are legally competent and authorized to execute this Agreement and that the State officials executing this Agreement have received all necessary approvals.

(b) The Parties represent and warrant to each other that they have not sold, assigned, granted, or transferred to any other person or entity any claim, counterclaim, demand, action, or cause of action encompassed by this Agreement and that they are the real party in interest.

22. Dismissal of Pending Case. Within five (5) business days after the Settlement Date, the Receiver and the Intervenors shall cause their counsel to file a motion to dismiss their claims against Rogers with prejudice, and Rogers shall cause her counsel to dismiss all appeals.

23. Compromise. This Agreement is a compromise and settlement to avoid the expenses and uncertainties of litigation. It is specifically understood and agreed by the Parties that the execution of this Agreement is not an admission of liability on the part of any person or entity.

24. General Provisions.

(a) **Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes in its entirety any prior or contemporaneous agreement or understanding, oral or written, among the parties hereto regarding the settlement of the Pending Case. The terms and conditions hereof may not be changed or modified except by written agreement signed by all parties.

(b) **Choice of Law.** The rights and liabilities of the Parties under this Agreement shall be governed as to validity, interpretation, enforcement, effect and damages by the laws of the State of Texas, without regard to any rules, statutes, or case law regarding conflicts of law. Venue for any matters related hereto lies in the Courts of Travis County, Texas.

(c) **Headings.** The headings used in this Agreement are inserted solely for convenience and shall not be used to interpret the meaning of this document.

(d) **Nonreliance.** In executing this Agreement, the Parties represent that neither they nor their attorneys have relied upon any statement or representation (other than those expressly contained in this Agreement, in the Verified Financials or in the Supporting Documentation) pertaining to this matter made by those persons and entities who are hereby released, or by any person or persons representing or acting on behalf of the Parties. The Parties acknowledge that they have separate counsel, that this Agreement has been explained to them by their counsel, that they understand this Agreement, and that they agree to the terms contained in this Agreement.

(e) **Authorship of Agreement.** This Agreement was drafted jointly by the Parties and their respective legal advisors, and is not to be construed or interpreted against any of the Parties on the grounds of sole or primary authorship.

(f) **Amendment.** It is expressly understood and agreed that this Agreement may not be altered, amended, modified or otherwise changed in any respect whatever except by a writing duly executed by the undersigned and/or their respective authorized representatives.

(g) **Attorneys' Fees and Costs.** In the event that one or more Parties file suit to enforce, interpret or construe the terms of this Settlement Agreement as to another party, the prevailing party in such suit shall be entitled to recover from the non-prevailing party the prevailing party's reasonable attorneys' fees, costs of court, and expenses of suit.

(h) **Contractual Terms.** The Parties understand and agree that the terms of this Settlement Agreement are contractual in nature and not merely recitals, and that the agreements contained herein and the consideration transferred is to compromise doubtful and disputed claims, to avoid further litigation, and to buy peace. No payments made, property or assets transferred or conveyed, releases or other consideration given will be construed as an admission of liability by any party.

(i) **Severability; Invalid Provisions Omitted.** After the Settlement Agreement is approved by the Court, in the event that any provision, clause or part of this Settlement Agreement is held to be invalid, void, voidable, illegal and/or unenforceable by a court of law, any such ruling shall not affect the validity, enforceability and binding effect of the other provisions, clauses and portions of this Settlement Agreement. Any

provision declared invalid, void, voidable, illegal and/or unenforceable shall be severable from the remainder of this Settlement Agreement.

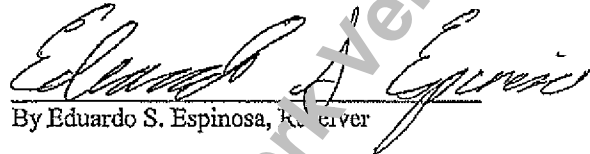
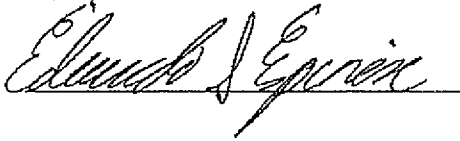
(j) **Counterparts.** This instrument may be executed in multiple original counterparts, each of which shall be deemed an original for all purposes. No single counterpart of this Agreement need be executed by all of the Parties, so long as each of the Parties shall have executed at least one counterpart.

[SIGNATURE PAGES FOLLOW]

IN WITNESS HEREOF, the Parties have executed this Agreement through their duly authorized representatives effective as of the Effective Date.

EDUARDO S. ESPINOSA, in his capacity as the court-appointed Receiver for Retirement Value, LLC

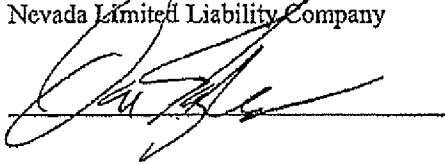
RETIREMENT VALUE, LLC



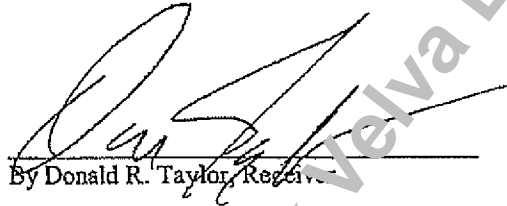
By Eduardo S. Espinosa, Receiver

Unofficial copy Travis Co. District Clerk Welda L. Price

DONALD R. TAYLOR, in his capacity as the court-appointed Receiver for Hill Country Funding, LLC, a Texas Limited Liability Company; and Hill Country Funding, LLC, a Nevada Limited Liability Company

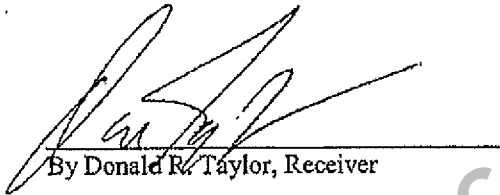


HILL COUNTRY FUNDING, LLC (TEXAS)



By Donald R. Taylor, Receiver


HILL COUNTRY FUNDING, LLC (NEVADA)



By Donald R. Taylor, Receiver

Unofficial copy Travis Co. District Clerk Velva L. Price

THE STATE OF TEXAS



By

Its: AAG

Unofficial copy Travis Co. District Clerk Velva L. Price

QVEST III MASTER FUND, LLC

DR. GARY CAIN



By: _____

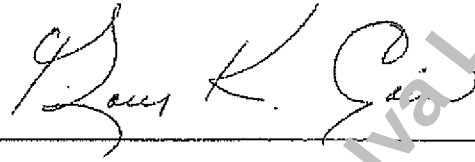
Its: _____

BARRY EDELSTEIN

Unofficial copy Travis Co. District Clerk Velda L. Price

QVEST III MASTER FUND, LLC

DR. GARY CAIN



A handwritten signature in cursive script, appearing to read "Gary K. Cain", is written over a horizontal line.

By: _____

Its:

BARRY EDELSTEIN

Unofficial copy Travis Co. District Clerk Velva L. Price

QVEST III MASTER FUND, LLC

DR. GARY CAIN

By: _____

Its:

BARRY EDELSTEIN

A handwritten signature in black ink, appearing to read "Barry Edelstein", written over a horizontal line.

Unofficial copy Travis Co. District Clerk Velda L. Price

MATTHEW C. ALLEN, JR., TRUSTEE under the
Mathew and Teddie Allen Charitable
Remainder Annuity Trust, dated July 17, 2002

MATTHEW C. ALLEN, JR. individually

Matthew C. Allen, Jr. Trustee Matthew C. Allen, Jr.

TEDDIE ALLEN

LADDELL HARRISON

Teddie Allen

Ladell Harrison

WENDY ROGERS

JEFF R. ROGERS

Wendy Rogers

J.R. Rogers

Unofficial copy Travis Co. District Clerk Velva L. Price

The Court finds the Court has jurisdiction over the parties and the subject matter herein. The Court finds this Agreed Permanent Injunction Order and Final Judgment as to Defendant Wendy Rogers ("Agreed Order") to be proper, necessary, and in the best interest of justice to be proper, necessary, and in the best interest of justice.

I.
Stipulations

The parties stipulate to the following:

1.1 The Court has jurisdiction over Defendant Wendy Rogers and the subject matter of this action.

1.2 The State of Texas is duly authorized to bring this cause of action pursuant to state law.

1.3 The parties hereto waive the entry of Findings of Fact and Conclusions of Law under Rule 296 of the Texas Rules of Civil Procedure with respect to the entry of this Agreed Order.

1.4 This Agreed Order complies with all of the statutory, jurisdictional and procedural requisites for entry and enforcement.

1.5 Defendants hereby waive Texas Rules of Civil Procedure 63, and 683 through 689.

1.6 Defendant Rogers hereby agrees to the continuation of the Appointment of Eduardo S. Espinosa of K&L Gates, LLP as the Receiver of Retirement Value, LLC pursuant to the Court's order dated May 5, 2010 and any subsequent court orders; and further permanently waives any motion or any other action to set the Receiver's appointment aside.

1.7 Defendant Rogers will turn over to the Retirement Value Receiver the following property held in her name and/or in the name of Jeff Rogers, her husband:

- (a) The residence located at 304 May Street, Pettus, Texas 78146 (the "Bee County Rental House"); and
- (b) The residence located at 320 Meadow Park, New Braunfels, Texas 78130 (the "Charity House");

The Bee County Rental House and the Charity House shall be collectively referred to as the "Settlement Property."

The Settlement Property shall remain titled in the name of Wendy and/or Jeff Rogers until sold.

1.8 All property in the name of Rogers or Jeff Rogers, save and except the Settlement Property (the "Released Property") shall be released from the Receivership and returned to the Rogers.

1.9 Defendant Wendy Rogers and Jeff Rogers hereby agree and hereby waive any right, title or interest in the accounts, money, or other property belonging to or held for the benefit of Defendant Retirement Value or as appears to the Receiver to contain or be derived from proceeds of Defendants' Investment programs or used in furtherance thereof, whether such property is real, personal, or mixed, of whatever nature and wherever located whether or not the Receiver, Eduardo S. Espinosa of K&L Gates, LLP, has seized such property in this case save and except the Released Property (the "Receivership Property") and agrees that the proceeds or the Receivership Property may be distributed to investors and other creditors of Retirement Value as authorized by further orders of the Court.

1.10 All parties to this Order herein agree to the terms of this Agreed Order, request the Court to approve it, and waive the right to appeal its validity.

1.11 The State of Texas does not waive its right to demand additional enforcement of the laws and regulations of the State of Texas or the United States, except with regard to the imposition of civil fines and civil penalties for any of the Defendant Rogers's acts or omissions in violation of the Texas Securities Act, the Texas Deceptive Trade Practices Act, or any other law that could have been asserted in this lawsuit, with regard to Retirement Value, which occurred prior to entry of this Agreed Order.

1.12 This Agreed Order is part of a settlement and compromise. It is not an admission of wrongdoing or liability on the part of Defendant Rogers or Jeff Rogers.

It appearing that no further notice of hearing for the entry of this Agreed Order need be given; the Court being fully advised on the premises, and no just reason for delay appearing:

II.

Permanent Injunction Order

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Clerk of this Court shall issue a Permanent Injunction against the persons and entities named below, with the following force and effect.

TO: Defendant Wendy Rogers and her affiliates and agents, including but not limited to:

Defendant **WENDY ROGERS**; her employees, agents, representatives, and others acting in concert with her who receive actual notice of the Court's order by personal service, facsimile transmission, or otherwise, are hereby **COMMANDED** and **ORDERED** as follows:

Each of you is hereby **RESTRAINED** and **ENJOINED** from taking any and all of the following actions:

2.1 **Selling securities.** Promoting, issuing, selling, offering for sale, negotiating for sale, advertising, soliciting, dealing in or distributing any securities, in any way and by any manner or means, either directly or indirectly through investment advisors, investment advisor representatives, agents, "licensees", servants, officers, directors, shareholders, employees, representatives, or any other entity acting for them or on their behalf without complying with the securities registration requirements found in the Texas Securities Act;

2.2 **Acting as an agent, dealer or salesman.** Promoting, issuing, selling, offering for sale, negotiating for sale, advertising, soliciting, holding seminars, dealing in or distributing any securities, in any way, and by any manner or means, either directly or indirectly through agents, "licensees," servants, officers, directors, shareholders, employees, representatives, or any other entity acting for them or in their behalf, without complying with all dealer and salesman registration requirements of the Texas Securities Act;

2.3 **Engaging in fraud.** Engaging in fraud or fraudulent practices in connection with the offer for sale or the sale of securities or in the sale of any other financial product including without limitation, investments in viatical settlement contracts and life settlement contracts or other similar investments predicated upon the proceeds of life insurance policies, in the State of Texas; said fraud including, but not limited to: (i) the making of any misrepresentation, in any manner, of a relevant fact; (ii) the making of any promise or representation or prediction as to the future not made honestly and in good faith; (iii) the intentional failure to disclose a material fact; (iv) the gaining, directly or indirectly, through the sale of any security, of an underwriting or promotion fee or profit, selling or managing commission or profit, so gross or exorbitant as to be unconscionable; (v) the making of an offer containing a statement that is materially misleading or is otherwise likely to deceive the public; and (vi) materially aiding, with intent to deceive or defraud or with reckless disregard for the truth or the law, any person who in any way is participating in fraudulent practices.

2.4 Offering, soliciting, negotiating, procuring, selling or effectuating life settlements in Texas without being registered with the Texas Department of Insurance.

2.5 Offering, soliciting, negotiating, procuring, participating, contributing or investing in an illusory participation or illusory loan agreement, and in which funds are used to purchase life insurance policies and a thing of value is promised to be paid on the cessation of human life.

2.6 Offering participation agreements and/or loan agreements which promise the payment of money or thing of value conditioned on the cessation of human life.

2.7 Directly or indirectly doing an act that constitutes the "business of insurance," as that term is defined by section 101.051 of the Texas Insurance Code, except as expressly authorized by statute.

2.8 Paying, allowing, giving, or offering to pay, allow or give as an inducement to enter into an agreement a thing of value or other inducement that is not clearly specified in the policy and agreement.

2.9 Using a life expectancy certificate on a Texas resident from Midwest Medical Review or any settlement broker that is not registered with the Texas Department of Insurance

2.10 Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement that offers, solicits, negotiates, procures, sells or effectuates the purchase of life insurance through, but not limited to, any of the following statements: "16.5% base line expected income," "participants become irrevocable co-beneficiaries," "upon death of insured, you receive a pro-rata distribution of the death benefit based upon your original participation amount plus your base-line expected gain," "totally objective Life Expectancy underwriter," and "Traditional simple annual growth is 16.5%."

2.11 Committing fraudulent and dishonest acts and/or engaging in unfair or deceptive acts or practices in the business of Insurance by failing to disclose material facts to insureds and insurers.

2.12 Committing fraudulent and dishonest acts and/or engaging in unfair or deceptive acts or practices in connection with the sale of a life settlement by failing to disclose material facts to the purchaser.

2.13 Further, Rogers agrees and is hereby enjoined to comply with any provision of Tex. Ins. Code Ann. §§ 101.051, 541.051 -.056, 543.003, 841.001 et seq., 1111.001 - 1111.005, 4005.053 and 4005.101 and/or related 23 Tex. Admin. Code §§ 3.1701, et seq. and 21.1 - 21.122. As provided above, this provision is part of a settlement and compromise and is not an admission of wrongdoing or liability on the part of Rogers.

2.14 For purposes of this Agreed Order, the following words, terms and phrases shall be given the meaning as follows:

- (a) "Security" or "securities" shall include any limited partner interest in a limited partnership, share, stock, treasury stock, stock certificate under a voting trust agreement, collateral trust certificate, equipment trust certificate, preorganization certificate or receipt, subscription or reorganization certificate, note, bond, debenture, mortgage certificate or other evidence of indebtedness, any form of commercial paper, certificate in or under a profit sharing or participation agreement, certificate or any instrument representing any interest in or under an oil, gas or mining lease, fee or title, or any certificate or instrument representing or secured by an interest in any or all of the capital, property, assets, profits or earnings of any company, investment contract, or any other instrument commonly known as a security, whether similar to those herein referred to or not.
- (b) "Dealer" shall include every person or company other than an agent, who engages in this State either for all or part of his or its time, directly or

through an agent, in selling, offering for sale or delivery or soliciting subscriptions to or orders for, or undertaking to dispose of, or to invite offers for any security or securities and every person who deals in any other manner in any security or securities within this State. An issuer other than a registered dealer of a security or securities, who, directly or through any person or company, other than a registered dealer, offers for sale, sells or makes sales of its own security or securities shall be deemed a dealer; provided, however, this section or provision shall not apply to such issuer when such security or securities are offered for sale or sold either to a registered dealer or only by or through a registered dealer acting as fiscal agent for the issuer.

- (c) "Agent" shall include every person or company employed or appointed or authorized by a dealer to sell, offer for sale or delivery, or solicit subscriptions to or orders for, or deal in any other manner, in securities within this State, whether by direct act or through subagents; provided, that the officers of a corporation or partners of a partnership shall not be deemed agents solely because of their status as officers or partners, where such corporation or partnership is registered as a securities dealer under the Texas Securities Act.
- (d) "Investment adviser" shall include a person who, for compensation, engages in the business of advising another, either directly or through publications or writings, with respect to the value of securities or to the advisability of investing in, purchasing, or selling securities or a person who, for compensation and as part of a regular business, issues or adopts analyses or a report concerning securities.
- (e) "Investment adviser representative" or "representative of an investment adviser" shall include each person or company who, for compensation, is employed, appointed, or authorized by an investment adviser to solicit clients for the investment adviser or who, on behalf of an investment adviser, provides investment advice, directly or through subagents, to the investment adviser's clients. The term does not include a partner of a partnership or an officer of a corporation or other entity that is registered as an investment adviser under the Texas Securities Act solely because of the person's status as an officer or partner of that entity.
- (f) "Sale", "offer for sale", or "sell" shall include every disposition, or attempt to dispose of a security for value. The term "sale" means and includes contracts and agreements whereby securities are sold, traded or exchanged for money, property or other things of value, or any transfer or agreement to transfer, in trust or otherwise. Any security given, or delivered with, or as a bonus on account of any purchase of securities or other thing of value, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value. The term "sell" means any act by which a sale is made, and the term "sale" or "offer for sale" shall

include a subscription, an option for sale, a solicitation of sale, a solicitation of an offer to buy, an attempt to sell, or an offer to sell, directly or by an agent, by a circular, letter, or advertisement or otherwise, including the deposit in a United States Post Office or mail box or in any manner in the United States mails within this State of a letter, circular or other advertising matter. Nothing herein shall limit or diminish the full meaning of the terms "sale," "sell" or "offer for sale" as used by or accepted in courts of law or equity. The sale of a security under conditions which entitle the purchaser or subsequent holder to exchange the same for, or to purchase some other security, shall not be deemed to be a sale or offer for sale of such other security; but no exchange for or sale of such other security shall ever be made unless and until the sale thereof shall have been first authorized in Texas under the Securities Act, if not exempt thereunder, or by any other provisions of law.

- (g) "Issuer" shall mean and include every company or person who proposes to issue, has issued, or shall hereafter issue any security.

2.15 **Dissipation of Assets.** Disposing of, converting, dissipating, using, releasing, transferring, withdrawing, selling, assigning, encumbering, hypothecating, or concealing any Receivership Property.

2.16 **Destruction or Removal of Books and records.** Intentionally obstructing the Receiver or his designees from investigating, gaining access to, examining, or acquiring the originals or copies of any and all books, records, Property (as defined herein) or other materials concerning any business conducted by Defendant Retirement Value, LLC, such as by destroying or intentionally concealing such books, records, Property or other materials.

2.17 **Claims against Retirement Value or its property.** Making any claim, charge, or offset, commencing or prosecuting any action, appeal, or arbitration, including administrative proceedings, obtaining any preference, judgment, attachment, garnishment, or other lien, or making any levy against Defendant Retirement Value, LLC; any of the Receivership Property (as defined herein) or against the Receiver or the Plaintiff.

2.18 **Interfering with investigation.** Obstructing, hampering, seeking to delay, or interfering in any manner with any investigation of the sale of securities by Retirement Value, LLC, any of its agents, or its "licensees," conducted pursuant to the lawful authority of the Texas State Securities Board, the Office of the Attorney General, the Receiver, or any other law enforcement or governmental authority;

2.19 **Interfering with the Receiver or the Receivership Estate.** Interfering with, obstructing, or hampering the Receiver appointed for Retirement Value, LLC, including accessing or using any web site, telephone, voice mail, or electronic mail account owned or used by Defendant Retirement Value, LLC

2.20 Provided however, nothing in this permanent injunction is intended to prohibit Defendant Rogers from promoting, issuing, selling, offering for sale, negotiating for sale,

advertising, soliciting, dealing in or distributing any securities, including, investments in annuity contracts and life settlement contracts or other similar investments predicated upon the proceeds of life insurance policies so long as such action is in compliance with this Agreed Order, the Texas Securities Act and any other state or Federal law.

III. Turnover Order

YOU ARE FURTHER SPECIFICALLY ORDERED, TO THE EXTENT YOU HAVE NOT DONE SO IN COMPLIANCE WITH THE TEMPORARY RESTRAINING ORDER AND ORDER APPOINTING RECEIVER, AND TO THE EXTENT ANY OF THE FOLLOWING ITEMS ARE WITHIN YOUR CUSTODY, CARE OR CONTROL YOU AND EACH OF YOU ARE ORDERED TO PERFORM THE FOLLOWING ACTS:

3.1 Immediately place in the possession of the Receiver or one or more of his designated agents for the purpose of this turnover, all of the books, records, documents and other records, whether written, graphic, photographed, magnetically recorded, electronically recorded, generated by computer, or stored in a computer or other device, including said computer or other device, pertaining to Retirement Value, LLC;

3.2 Immediately place in the possession of the Receiver, or one or more of his designated agents for the purpose of this turnover, all Receivership Property;

3.3 Immediately place in the possession of the Receiver the Settlement Property; however, the Settlement Property shall remain titled in the name of Wendy and/or Jeff Rogers until it can be sold. Rogers and Jeff Rogers shall immediately list the Settlement Property for sale. No sale of the Settlement Property can be consummated without the approval of the Receiver and of the Court;

3.4 Repatriate to an account under the sole control of the Receiver any of the Receivership Property held either by Defendant Rogers or her agents, for Defendant Rogers' benefit, or held under any Defendant Rogers' direct or indirect control, individually or jointly, and immediately notify the Receiver of the institution and account in which any repatriated funds are located;

3.5 Provide to the Receiver a list of all investors in investment programs offered and sold by Retirement Value, LLC, including addresses and phone numbers;

3.6 Provide the Receiver with a full accounting of all of the Receivership Property held by Defendant Rogers; for Defendant Rogers' benefit; or under Defendant Rogers' direct or indirect control, individually or jointly;

3.7 Prevent any transfer, disposition, or dissipation whatsoever of any Receivership Property controlled by the Defendant Rogers, either directly or indirectly;

3.8 Provide the Receiver or his designated agents access to Defendant Retirement Value, LLC's' records and documents held by financial institutions wherever located; and

IV.
Defendant Rogers' Waiver
of Interest In Receivership Estate

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant Rogers waives and relinquishes all claims to the Receivership Property.

V.
Civil Fines and Civil Penalties

The State and the Receiver waive the right to obtain a judgment against Defendant Rogers for any civil fines or civil penalties for any conduct relating to the State's petition and the causes of action therein. The State's and the Receiver's waivers herein of civil fines and civil penalties does not apply to anyone other than Defendant Rogers, and in no way do such waivers affect the State's or the Receiver's rights to pursue civil fines, civil penalties, damages, or other sums from any agents who offered for sale or sold the investments in viatical settlement contracts or life settlement contracts or other similar investments predicated upon the proceeds of life insurance policies, issued by, for or on behalf of Retirement Value, LLC; from any officer, manager, employee or owner of Retirement Value, LLC; and person controlled by, controlling, subject to common control with acting in concert with Retirement Value LLC or Defendant Rogers, or from any person doing business with or having done business with Retirement Value, LLC or Defendant Rogers.

This Agreed Order is meant to be a full, final, and complete resolution of the civil obligations of Defendant Rogers to the State.

VI.
General Provisions

6.1 This order may be executed in multiple parts, which together shall constitute a single original instrument. Any executed signature page to this order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

6.2 Each of the undersigned representatives of the parties to this order certifies that he or she is fully authorized to enter into the terms and conditions of the order and to legally execute and bind that party to this order.

6.3 There being no just reason for delay, the Clerk of this Court is hereby directed to enter this Agreed Order pursuant to Rule 301 of the Texas Rules of Civil Procedure.

VII.
Other Orders

IT IS FURTHER ORDERED that except for an act of willful malfeasance or gross negligence, the Receiver shall not be liable for any loss or damage incurred by the receivership estate, or by Defendant Rogers, her clients or associates, or his subsidiaries or affiliates, their officers, directors, agents, and employees, or by any of Defendant Rogers' creditors or equity holders because of any act performed or not performed by him or his agents or assigns in connection with the discharge of his duties and responsibilities under the order appointing him Receiver of Retirement Value, LLC.

IT IS FURTHER ORDERED that no bond is required of the State of Texas pursuant to TEX. GOV'T CODE § 6.001, and this Agreed Permanent Injunction Order and Final Judgment as to Defendant Wendy Rogers shall issue and be effective immediately.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this action for all purposes.

IT IS FURTHER ORDERED this Agreed Order shall be binding on Defendant Wendy Rogers.

IT IS FURTHER ORDERED that the State have all writs of execution and other process necessary to enforce this Agreed Order.

All costs are taxed against the party incurring same, for which no execution shall issue, said costs having been paid.

SIGNED this the ____ day of June, 2012.

The Honorable Gisela D. Triana
Judge Presiding

APPROVED & ENTRY REQUESTED BY:

By: _____
Jack Hohengarten
State Bar No. 09812200
COUNSEL FOR THE STATE

By: _____
Michael D. Napoli
State Bar No. 14803400
COUNSEL FOR THE RECEIVER

By:

Bogdan Rentea
State Bar No. 16781000
COUNSEL FOR WENDY ROGERS

Unofficial copy Travis Co. District Clerk Veva L. Price

3/3/2015 SCANNED

ALNAPP

DEFENDANT Wendy L. Rogers

CHARGE Money Laundering >\$200K
Section 34.02 Texas Penal
Code

Person ID: 1570040, 2015 1581

ADDRESS 1312 Havenwood Blvd., New Braunfels, TX 78132

CAUSE# 380-80444-2015

DESCRIPTION W/F; DOB: 11/05/1975; SSN 462-65-4925; TX DL
#15882907

AGENCY/# State Securities Board

ARREST INFORMATION GJR

C/C Richard Hubert Gray, Michael C. McDermott, Ronald L. James, Donald L. James Witness: Letha Sparks

TRUE BILL OF INDICTMENT

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS: The Grand Jury of Collin

County, State of Texas, duly organized at the January Term, A D., 2015 of the 417th

District Court of said county, in said court at said term, do present that

WENDY L. ROGERS, herein (ter) "defendant"

On or about and between the dates of April 1, 2009, and April 15, 2010, in Collin County, Texas, did then and there

knowingly acquire and maintain an interest in, possess and transfer the proceeds of criminal activity, to wit: current money of the United States of America, in the aggregated amount of two hundred thousand dollars (\$200,000.00) or more, and said proceeds were generated from the commission of the offense of Theft of property in the aggregated amount of \$200,000.00 or more, a felony under the laws of the State of Texas; and the commission of fraud in connection with the sale and offer for sale of securities in the aggregated amount of \$100,000.00 or more, a felony under the laws of the State of Texas;

Against the peace and dignity of the State.

Andrea Kay Bond
FOREPERSON OF THE GRAND JURY

FILED

2015 FEB 26 PM 2: 29

ANDREA STROH THOMPSON
DISTRICT CLERK
COLLIN COUNTY, TEXAS

BY *B. Brack* DEPUTY

3/3/2015 SCANNED

ALINAPP

DEFENDANT Wendy L. Rogers
Person ID: 1510040, 2015-1580

CHARGE EOCA >\$200K; Section 71.02 (1) & (10) TPC

ADDRESS 1312 Havenwood Blvd., New Braunfels, TX 78132

CAUSE# 380-80445-2015

DESCRIPTION W/F; DOB: 11/05/1975; SSN 462-65-4925; TX DL #15882907

AGENCY# State Securities Board

ARREST INFORMATION GJR

C/C Richard Hubert Gray, Michael C. McDermott, Ronald L. James, Donald L. James Witness: Letha Sparks

TRUE BILL OF INDICTMENT

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS: The Grand Jury of Collin County, State of Texas, duly organized at the January Term, A.D. 2015 of the 417th

District Court of said county, in said court at said term, do present that

WENDY L. ROGERS, hereinafter "defendant"

On or about and between the dates of April 1, 2009, and April 15, 2010, in Collin County, Texas, and elsewhere, with the intent to establish, maintain, and participate in a combination and in the profits of a combination, said combination consisting of the defendant; Richard Hubert Gray; Ronald Llewellyn James; Donald J. James; Michael Timothy Beste; Michael Charles McDermott; Bruce Gordon Collins; and others, who collaborated in carrying on the hereinafter-described criminal activity, did then and there commit the following offenses, to wit: Theft of Property, pursuant to one scheme and continuing course of conduct, which in the aggregate, involved property of the value of \$200,000.00 or more in violation of Section 31.03 of the Texas Penal Code; and Money Laundering, pursuant to one scheme and continuing course of conduct, which in the aggregate, involved criminal proceeds in the amount of \$200,000.00 or more, in violation of Section 34.02 of the Texas Penal Code; all in violation of Section 71.02(a)(1) and

(a)(10) of the Texas Penal Code;

to disturb the peace and dignity of the State.

FILED

2015 FEB 26 PM 2:29

ANDREA STROH THOMPSON
DISTRICT CLERK
COLLIN COUNTY, TEXAS

BY B. Phelan DEPUTY

Andrea Kay Baird
FOREPERSON OF THE GRAND JURY

3/3/2015 SCANNED

ALINAPP

DEFENDANT Wendy L. Rogers

CHARGE Securities Fraud >\$100K
Article 581 Section 29C
Texas Securities ActPerson ID: 1510040, 2015-1582ADDRESS 1312 Havenwood Blvd., New Braunfels, TX 78132CAUSE# 380-80447-2015DESCRIPTION W/F; DOB: 11/05/1975; SSN 462-65-4925; TX DL #15882907AGENCY/# State Securities BoardARREST INFORMATION GJRC/C Richard Hubert Gray, Michael C. McDermott, Ronald L. James, Donald L. James Witness: Letha Sparks

TRUE BILL OF INDICTMENT

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS, The Grand Jury of Collin County, State of Texas, duly organized at the January Term, A.D., 2015 of the 417th

District Court of said county, in said court at said term, do present that

WENDY L. ROGERS, hereinafter "defendant"

On or about the dates listed below, and before the presentment of this indictment, in Collin County, Texas, did then and there, directly and through agents, sell and offer for sale interests in the Resale Life Insurance Policy Program (hereinafter referred to as the "RSLIP Program"), being a security, to wit: an evidence of indebtedness, promissory note, and an investment contract, to each of the persons listed below, and in the following amounts:

<u>Person</u>	<u>Date</u>	<u>Amount</u>
Ronald C. Harrison, Jr.	May 28, 2009	\$25,000.00
Lola Mae Grospiron	July 10, 2009	\$584,078.73
A. Samuel & Ruth Povia	July 14, 2009	\$50,000.00
Duwayne Adams	August 4, 2009	\$35,000.00
Margaret Kathleen Meyer	August 19, 2009	\$30,049.63
Charles W. & Shirley A Beck	August 26, 2009	\$85,000.00
Jerry Holick	August 31, 2009	\$50,000.00
Thomas L. Borok	September 7, 2009	\$25,000.00
Monique VanDamme Wildt	September 16, 2009	\$35,000.00

Carla J. Workman	September 16, 2009	\$25,000.00
James Jones	September 22, 2009	\$30,000.00
Isabel R. Chacon	September 25, 2009	\$49,875.00
A. Samuel & Ruth Pavlak	October 13, 2009	\$30,000.00
Steven J. Bettison	October 15, 2009	\$50,000.00
Elaine S. Traylor	October 16, 2009	\$12,500.00
Deborah Jones	October 20, 2009	\$60,000.00
Thomas L. Borok	October 22, 2009	\$25,000.00
Jason C. Traylor	October 23, 2009	\$15,000.00
Deborah Jones	October 27, 2009	\$79,862.12
Thomas L. Borok	October 28, 2009	\$10,000.00
Nelda Hammett	October 28, 2009	\$50,000.00
Michael T. Krueger	November 5, 2009	\$25,000.00
Thomas L. Borok	November 6, 2009	\$25,000.00
Dirk Wildt	November 6, 2009	\$31,715.48
Kip & Maura Souza	November 10, 2009	\$12,000.00
Kathy Creel	November 12, 2009	\$100,000.00
Ira Allen	November 16, 2009	\$239,627.50
Burford Darrell & Barbara Gotcher	November 17, 2009	\$20,859.21
Dirk Wildt	November 17, 2009	\$15,117.98
Burford Darrell Gotcher	November 30, 2009	\$73,615.98
Walter B. Hayes	December 3, 2009	\$70,000.00
Timothy L. Mattison	December 21, 2009	\$50,000.00
David L. Allen	December 21, 2009	\$25,000.00
Thomas L. Borok	January 1, 2010	\$15,000.00

Lucian Marquez	January 4, 2010	\$474,000.00
Walter E. Beebe	January 15, 2010	\$100,000.00
Andrew M. Kozusko	January 21, 2010	\$30,000.00
Reid Curtis Rasmussen	January 27, 2010	\$79,325.74
Thomas L. Borok	January 29, 2010	\$10,000.00
Thomas L. Borok	February 1, 2010	\$5,000.00
Dean S. & Lyn C. Robinson	February 3, 2010	\$125,000.00
Janice Wildberger	February 3, 2010	\$25,000.00
Trista C. Collins	February 11, 2010	\$23,183.13
Adi Danous	February 16, 2010	\$25,000.00
Thomas L. Borok	February 19, 2010	\$5,000.00
Nancy M. Malia	February 25, 2010	\$90,078.15
Dirk Wildt	February 25, 2010	\$21,781.50
Thomas L. Borok	March 1, 2010	\$10,000.00
Thomas L. Borok	March 1, 2010	\$5,000.00
Thomas L. Borok	March 11, 2010	\$15,000.00
Chris Slay	March 12, 2010	\$55,000.00
Stephen Mullet	March 16, 2010	\$39,875.00
Billy Ed Powell	March 17, 2010	\$30,000.00
Bruce B. Kufferath	March 17, 2010	\$300,000.00
John J. Johnson	March 29, 2010	\$30,000.00

and said defendant committed fraud in connection with the sales and offers for sale of said securities by:

PARAGRAPH ONE

knowingly and intentionally representing investors would receive a 16.5% return per year on their investment for the entire life expectancy of the insured, said information being a misrepresentation of a relevant fact; and

PARAGRAPH TWO

knowingly and intentionally representing funds invested by investors in the RSLIP Program would be used for the purposes of purchasing specific life insurance policies associated with each investor's portfolio and that said investors' funds would be used to pay for the premiums of specific life insurance policies associated with each investor's portfolio, said information being misrepresentations of a relevant fact; and

PARAGRAPH THREE

intentionally failing to disclose funds invested by investors in the RSLIP Program would be comingled and that said funds would be misapplied by using said funds to pay premiums on any life insurance policy purchased by Retirement Value, L.L.C., when said premiums were due, regardless of the investors' portfolios, said information being a material fact; and

PARAGRAPH FOUR

intentionally failing to disclose funds invested by investors in the RSLIP Program would be comingled and that said funds would be misapplied by using said funds to purchase any life insurance policy purchased by Retirement Value, L.L.C., regardless of the investors' portfolios, said information being a material fact; and

PARAGRAPH FIVE

knowingly and intentionally representing that investor funds used to fund premium reserve accounts would be escrowed for the period of the life expectancy of the insured plus twenty-four (24) months, said information being a misrepresentation of a relevant fact; and

PARAGRAPH SIX

knowingly and intentionally representing that any unused premium reserve funds paid by investors and collected in connection with the operation of the RSLIP Program would be returned to investors, said information being a misrepresentation of a relevant fact; and

PARAGRAPH SEVEN

knowingly and intentionally representing that the law firm of Kiesling, Porter, Kiesling & Free, P.C. would act as an independent escrow agent in connection with the operation of the RSLIP Program, said information being a misrepresentation of a relevant fact; and

PARAGRAPH EIGHT

intentionally failing to disclose there were insufficient funds available in premium reserve accounts to pay premiums on life insurance policies for the life expectancy of the insured plus twenty-four (24) months, said information being a material fact; and

PARAGRAPH NINE

knowingly and intentionally representing to investors that Retirement Value, L.L.C., would employ a tracking service to track insureds whereupon the deaths of said insureds appropriate documentation could be filed in order to collect the death benefit on each such insured, said information being a misrepresentation of a relevant fact; and

PARAGRAPH TEN

intentionally failing to disclose that approximately 30% of investors' funds invested with the RSLIP Program were used to pay fees and commissions to sales agents selling the RSLIP Program, said information being a material fact; and

PARAGRAPH ELEVEN

knowingly and intentionally representing to investors they retained an irrevocable co-beneficiary status in the life insurance policies maintained in their portfolio, when in fact the entity actually holding revocable beneficiary status for such policies was actually the law firm of Kiesling, Porter, Kiesling & Free, P.C., said information being a misrepresentation of a relevant fact; and

PARAGRAPH TWELVE

knowingly and intentionally continuing to represent to investors that the life expectancies on insureds provided by Midwest Medical Review, LLC, on policies sold to investors in the RSLIP program were approximately 92%

accurate even after receiving information that a report conducted by an independent firm auditing the life expectancies prepared by Midwest Medical Review, L.L.C., determined that the life expectancies provided by Midwest Medical Review, LLC, used in the RSLIP Program were significantly lower than 92%, said information being a misrepresentation of a relevant fact; and

PARAGRAPH THIRTEEN

intentionally failing to disclose that on or about September 28, 2006, in the United States District Court for the Western District of Tennessee, Memphis Division, in case number CR. NO. 03-201321-L, styled *United States of America vs. George Kindness and Amscot Medical Labs, Inc.*, George Kindness, the owner of Midwest Medical Review, LLC, was convicted of being aided and abetted in the introduction of a misbranded drug into interstate commerce with intent to mislead, said information being a material fact; and

PARAGRAPH FOURTEEN

intentionally failing to disclose that on or about August 23, 2007, in the United States District Court, Eastern District of California, Sacramento Division, in Case No. 2:07-cv-01724-GEB-CMK, styled *Securities and Exchange Commission v. Secure Investment Services, Inc., American Financial Services, Inc., Lyndon Group, Inc., Donald F. Neuhas, and Kimberly A. Snowden*, the Securities and Exchange Commission alleged Secure Investment Services, Inc., for which Richard H. Gray worked as a salesperson, misled investors by providing them unreliable life expectancy estimates certified by a physician from Amscot Medical Labs, Inc. and Midwest Medical Review, LLC, companies controlled by George Kindness, among other things, said information being a material fact; and

PARAGRAPH FIFTEEN

intentionally failing to disclose that other life expectancy companies had provided life expectancy estimates for the insureds in the RSLIP Program that were longer than those made by Midwest Medical Review, L.L.C., said information being material fact; and

PARAGRAPH SIXTEEN


intentionally failing to disclose that on or about June 25, 2009, a Notice of Hearing in Docket No. 454-09-4067.C was issued by the Texas Department of Insurance to Richard H. Gray, among others, alleging Richard H. Gray committed fraudulent or dishonest acts or practices in violation of the Texas Insurance Act, and seeking the revocation of Richard H. Gray's license to sell insurance in the state of Texas, said information being a material fact; and

PARAGRAPH SEVENTEEN

intentionally failing to disclose on or about September 8, 2008, Richard H. Gray, individually and in his capacity as Managing Member of Hill Country Funding, LLC, signed an "Undertaking Filed with the Securities Commissioner of Texas" with the Texas State Securities Board, agreeing, among other things, to "comply with all provisions of the Texas Securities Act," said information being a material fact;

All of said amounts were obtained pursuant to one scheme and continuing course of conduct, and the aggregate amount that was obtained was \$100,000.00 or more;

Against the peace and dignity of the State.


FOREPERSON OF THE GRAND JURY

FILED

2015 FEB 26 PM 2:29

ANDREA STROM THOMPSON
DISTRICT CLERK
COLLIN COUNTY, TEXAS
BY B. Plunk DEPUTY

3/3/2015 SCANNED

★ LINAPP

DEFENDANT Wendy L. Rogers CHARGE Theft PC 31.03 F1
 ADDRESS 1312 Havenwood Blvd., New Braunfels, TX 78132 CAUSE# 380-80443-2005
 DESCRIPTION W/F; DOB: 11/05/1975; SSN 462-65-4925; TX DL #15882907 AGENCY# State Securities Board
 ARREST INFORMATION GJR
 C/C Richard Hubert Gray, Michael C. McDermott, Ronald L. James, Donald L. James Witness: Letha Sparks

TRUE BILL OF INDICTMENT

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS: The Grand Jury of Collin County, State of Texas, duly organized at the January Term, A.D., 2015 of the 417th District Court of said county, in said court at said term, do present that

WENDY L. ROGERS, hereinafter "defendant"

on or about the dates listed below, and before the presentment of this indictment, in Collin County, Texas, did then and there unlawfully appropriate, to wit: acquire and exercise control over property, other than real property, to wit: current money of the United States of America, from the following owners, and in the following amounts:

<u>Owner</u>	<u>Date of Appropriation</u>	<u>Amount Appropriated</u>
Ronald C. Harrison, Jr.	May 28, 2009	\$25,000.00
Lola Mae Grospiron	July 10, 2009	\$584,078.73
A. Samuel & Ruth Pavlak	July 14, 2009	\$50,000.00
Duwaine Adams	August 4, 2009	\$35,000.00
Margaret Kathleen Meyer	August 19, 2009	\$30,049.63
Charles W. & Shirley A Beck	August 26, 2009	\$85,000.00
Jerry Holtek	August 31, 2009	\$50,000.00
Thomas L. Borok	September 7, 2009	\$25,000.00
Monique VanDamme Wildt	September 16, 2009	\$35,000.00
Carla J. Workman	September 16, 2009	\$25,000.00

James Jones	September 22, 2009	\$30,000.00
Isabel R. Chacon	September 25, 2009	\$49,875.00
A. Samuel & Ruth Pavlak	October 13, 2009	\$30,000.00
Steven J. Bettison	October 15, 2009	\$50,000.00
Elaine S. Traylor	October 16, 2009	\$12,500.00
Deborah Jones	October 20, 2009	\$60,000.00
Thomas L. Borok	October 22, 2009	\$25,000.00
Jason C. Traylor	October 23, 2009	\$15,000.00
Deborah Jones	October 27, 2009	\$79,862.12
Thomas L. Borok	October 28, 2009	\$10,000.00
Nelda Hammett	October 28, 2009	\$50,000.00
Michael T. Krueger	November 3, 2009	\$25,000.00
Thomas L. Borok	November 6, 2009	\$25,000.00
Dirk Wildt	November 6, 2009	\$31,715.48
Kip & Maura Souza	November 10, 2009	\$12,000.00
Kathy Creel	November 12, 2009	\$100,000.00
Ira Allen	November 16, 2009	\$239,627.50
Burford Darrell & Barbara Gotcher	November 17, 2009	\$20,859.21
Dirk Wildt	November 17, 2009	\$15,117.98
Burford Darrell Gotcher	November 30, 2009	\$73,615.98
Walter B. Hayes	December 3, 2009	\$70,000.00
Turner L. Mattison	December 21, 2009	\$50,000.00
David L. Allen	December 21, 2009	\$25,000.00

Thomas L. Borok	January 1, 2010	\$15,000.00
Lucian Marquez	January 4, 2010	\$474,000.00
Walter E. Beebe	January 15, 2010	\$100,000.00
Andrew M. Kozusko	January 21, 2010	\$30,000.00
Reid Curtis Rasmussen	January 27, 2010	\$79,325.74
Thomas L. Borok	January 29, 2010	\$10,000.00
Thomas L. Borok	February 1, 2010	\$5,000.00
Dean S. & Lyn C. Robinson	February 3, 2010	\$125,000.00
Janice Wildberger	February 3, 2010	\$25,000.00
Trista C. Collins	February 11, 2010	\$23,183.13
Adi Danous	February 16, 2010	\$25,000.00
Thomas L. Borok	February 19, 2010	\$5,000.00
Nancy M. Malia	February 25, 2010	\$90,078.15
Dirk Wildt	February 25, 2010	\$21,781.50
Thomas L. Borok	March 1, 2010	\$10,000.00
Thomas L. Borok	March 1, 2010	\$5,000.00
Thomas L. Borok	March 11, 2010	\$15,000.00
Chris Slay	March 12, 2010	\$55,000.00
Stephen Mullet	March 16, 2010	\$39,875.00
Billy Ed Powell	March 17, 2010	\$30,000.00
Bruce B. Kufferath	March 17, 2010	\$300,000.00
John J. Johnson	March 29, 2010	\$30,000.00

And said appropriations were without the effective consent of said owners in that consent was induced by deception, to wit: said defendant created and confirmed by words and conduct false impressions of fact that were likely to affect the judgment of said owners in the transactions and the defendant did not believe to be true; and said defendant failed to correct false impressions of fact that were likely to affect the judgment of said owners in the transactions, that said defendant previously created and confirmed by words and conduct, and said defendant did not at the time believe to be true; and said defendant promised performance that affected the judgment of said owners in said transactions that said defendant did not intend to perform and knew would not be performed; And said defendant acted with the intent to deprive said owners of said property by withholding said property permanently and for so extended a period of time that a major portion of the value and enjoyment of said property was lost to said owners, and by disposing of said property in a manner that made recover of said property by said owners unlikely;

And all of said amounts were obtained, as alleged, as part of one scheme and continuing course of conduct, and the aggregate value of the property so appropriated was \$200,000.00 or more;

Against the peace and dignity of the State.


FOREPERSON OF THE GRAND JURY

FILED

2015 FEB 26 PM 2:29

ANDREA STROH THOMPSON
DISTRICT CLERK
COLLIN COUNTY, TEXAS

BY B. Bards DEPUTY