

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

STATE OF TEXAS,

Plaintiff,

v.

RETIREMENT VALUE, LLC,
RICHARD H. "DICK" GRAY,
HILL COUNTRY FUNDING, LLC,
HILL COUNTRY FUNDING, , and
WENDY ROGERS,

Defendants,

AND

JAMES SETTLEMENT SERVICES,
LLC et al.

Third Party Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

126th JUDICIAL DISTRICT

RECEIVER'S RESPONSE TO ROGERS' MOTION TO ENFORCE

Eduardo S. Espinosa, court-appointed receiver for Retirement Value, LLC responds in opposition to Wendy Rogers' Motion to Enforce the settlement agreement between her and the Receiver.

BACKGROUND

Wendy Rogers was a principal and officer of Retirement Value, which this Court has found "engaged in fraud or fraudulent acts in the course of selling unregistered securities." Order on Plaintiff's Motion for Partial Summary Judgment. Both the State and the Receiver sued Rogers over her role in Retirement Value's fraud.

In August 2012, the parties entered into a settlement agreement. Rogers agreed to pay the Receiver \$200,000¹ and to give up her interest in Retirement Value and in the estate. In exchange, the Receiver, on behalf of himself and Retirement Value, released Rogers from “all claims ... that are directly or indirectly related to Retirement Value, the sale of Interests or Wendy Rogers’ service as an officer of Retirement Value, and/or the Pending Case.”² Settlement Agreement (Exh. A-1) at §12. The Receiver also covenanted not to sue. *Id.* at §13.

The State also gave a release to Rogers. Its release, however, was considerably narrower. The State released Rogers from “any and all civil claims” that “could have been brought in the Pending Case.” *Id.* at §17. Far from covenanting not to sue, the State expressly reserved the right to “demand additional enforcement of the laws and regulations of the State of Texas.” *Id.*

Also as part of their settlement, the parties asked the Court to enter an agreed permanent injunction (the Agreed PI). The Agreed PI provided that the State “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” related to Retirement Value. Agreed PI (Exh. A-2) at §1.11. The Agreed PI further recited that it was “meant to be a full, final and complete resolution of the civil obligations of Defendant Rogers to the State.” *Id.* at § V.

¹ Through an addendum to the Agreement, this amount was later reduced to about \$180,000.

² The “Pending Case” was defined as this case. Settlement Agreement at Recital A.

More than two years later, a grand jury in Collin County indicted Rogers on multiple felony counts related to her involvement in the Retirement Value scam. The criminal cases are currently pending before the 380th District Court in Collin County. Rogers has moved to dismiss at least a portion of the indictments against her arguing that the settlement agreement bars the criminal charges. See Motion to Quash, Dismiss or Set Aside Indictment (Exh. A-3).

Last month, Rogers moved to enforce the settlement agreement. Bluntly, it is not clear what relief she is seeking from this Court. On the one hand, she appears to be asking the Court to enforce the settlement agreement: she requests (i) a declaration that the State breached the settlement agreement by bringing the indictments; (ii) an order directing the State to “withdraw[] any and all complaints upon which the indictments were premised;” and (iii) a declaration that her due process rights were violated by the State “when she was asked to give up legal rights” without warning her that the State was contemplating criminal charges. Amd. Motion at 4. On the other hand, she appears to be seeking to set aside the agreement by requesting that her settlement consideration be returned.³ *Id.* Adding to the confusion, Rogers also assures that Court that she “is not asking the Court to take any action regarding the indictments.” Rogers Brief at 1.

³ This request is directed at the State. Yet, Rogers paid nothing to the State; she paid the Receiver.

ARGUMENT AND AUTHORITIES

Regardless of the relief she seeks, however, Rogers is entitled to nothing⁴. To begin with, this Court lacks jurisdiction to consider her motion. Moreover, neither the State nor the Receiver has breached the settlement agreement. Nor has Rogers made any colorable allegation that she was fraudulently induced to enter into the settlement agreement. This Court should dismiss her motion.

I. This Court lacks subject-matter jurisdiction over Rogers' Motion

A settlement agreement is just an ordinary contract. State law does not provide for any special mechanism for its enforcement. *Gunter v. Empire Pipeline Corp.*, 310 S.W.3d 19, 22 (Tex. App. – Dallas 2009, pet. denied) (“The law does not recognize the existence of any special summary proceeding for the enforcement of a written settlement agreement”). Instead, parties must enforce settlement agreements using the usual means for enforcing agreements – a lawsuit which is resolved by either a summary judgment or trial. *Id.* This typically requires that the complaining party file an entirely new lawsuit.

Texas law provides only a limited exception to this requirement. If the Court retains plenary power over the underlying dispute, then the suit to enforce the settlement can be brought in the same proceeding as the original claim. *Mantas v. The Fifth Court of Appeals*, 925 S.W.2d 656, 658 (Tex. 1996). However, if the

⁴ In the extent that Rogers is attempting to raise Fourth and Fifth Amendment arguments based on the purported intersection between this case and whatever criminal investigation preceded the indictments similar to those raised by McDermott, these arguments are simply addressed to the wrong court. See Receiver's Response to McDermott's Motion to Enforce at 11-15.

dispute arises after the trial court's plenary jurisdiction has expired, then the party seeking to enforce the settlement must file a separate lawsuit. *Id.* at 658-59.

The disputes between Rogers and the State and Receiver in this case were fully resolved in 2012. That the receivership proceeding continues, as it must until the assets are finally disposed of, does not grant the Court continuing jurisdiction over this long-resolved dispute. Under the "discrete issue" doctrine, certain orders entered into during the court of a receivership are treated as final adjudications even though the receivership proceeding has not finally concluded. *Huston v. FDIC*, 800 S.W.2d 845, 847 (Tex. 1990) (opinion on reh'g) ("We hold that a trial court's order that resolves a discrete issue in connection with any receivership has the same force and effect as any other final adjudication of a court, and thus, is appealable."). The Supreme Court in *Huston* applied what had been a probate rule to receiverships. *Id.* at 848.

An order is final if it conclusively disposes of and is decisive of the issue or controverted question for which that part of the proceeding was brought. *Id.* Stated more simply, an order in a receivership proceeding is final if it resolves all issues of law and fact between the parties involved in the order. *Crowson v. Wakeham*, 897 S.W.2d 779, 782 (Tex. 1995). Here, all of the disputes between the Rogers and the State or the Receiver were resolved by settlement in 2012. The Receiver dismissed his claims and the parties agreed to the entry of an injunction, which the Court entered in November 2012. The Court's plenary power of the dispute between the

State and Rogers as well as the dispute between the Receiver and Rogers ended long ago.

A case cited by Rogers, *Kalyanaram v. University of Texas System*,⁵ 2009 WL 1423920 (Tex. App. – Austin 2009, no pet.) also demonstrates that this Court lacks jurisdiction over her motion. In *Kalyanaram*, the parties settled and the court entered an order dismissing Kalyanaram's claims. Several years later, he alleged that he was induced by fraud to release his claims. In order to make this claim, however, Kalyanaram had to satisfy the requirements of a bill of review. When he was unable to do so, the court dismissed his claims for fraud and breach of the agreement.

Accordingly, the Court lacks subject-matter jurisdiction to hear Roger's motion to enforce and it should be summarily dismissed.⁵ *B.Z.B., Inc. v. Clark*, 273 S.W.3d 899, 905 (Tex. App. – Houston [14th Dist.] 2008, no pet.)(holding that trial court lacked jurisdiction to consider dispute over settlement agreement that arose after plenary jurisdiction expired).

II. Neither the Receiver nor the State has breached Rogers' settlement agreement

Rogers' motion is entirely bereft of any allegations against the Receiver. It is far from clear whether Rogers even claims that the Receiver has breached her settlement agreement. This is hardly surprising as the Receiver has few, ongoing

⁵ As Rogers appears to have disavowed any attempt to have this Court interfere with the criminal proceedings against her, the Receiver will not brief arguments as to why the Court lacks jurisdiction to do that. To the extent, however, that Rogers seeks any such relief, the Receiver urges the Court to dismiss those claims for lack of subject-matter jurisdiction and incorporates by reference his arguments in response to McDermott's motion to enforce.

obligations to Rogers under the settlement agreement. Now that the settlement has been approved and the Receiver's claims dismissed, the only obligations the Receiver has to Rogers are to maintain the confidentiality of financial information that Rogers provided in connection with the settlement (Settlement Agreement at §8) and to seek to dismiss any suit against Rogers brought by Retirement Value (*id.* at §13). The Receiver has maintained the confidentiality of Rogers' financial information. And, Retirement Value has not sued Rogers. She has not alleged otherwise.

Presumably, Rogers is asserting that the State's alleged breach of contract somehow entitles her to money from the Receiver. She asserts no legal basis for such an argument and the Receiver is aware of none. Nevertheless, the Receiver will address her argument that the State has breached the settlement agreement.

Based on the facts alleged by Rogers, the State did not breach the settlement agreement. First, Rogers argues that the State agreed that it would "no longer pursue a finding that Rogers sold a security or committed securities fraud." Amd. Motion at 3. The State agreed to no such thing. That purported agreement is nowhere to be found in the settlement agreement. Rather, the State expressly reserved the right "to demand additional enforcement of the laws and regulations of the State of Texas or the United States." Settlement Agreement at §17.

Second, Rogers argues that the State breached the settlement agreement by indicting her for her conduct in connection with Retirement Value in violation of the release contained in the agreement. This argument is deeply flawed. To begin

with, the State did not release any sort of criminal claim. Its release is expressly limited to civil claims that could have been brought in this proceeding. The indictments against Rogers are decidedly criminal rather than civil in nature. Moreover, criminal charges could not have been brought in this civil case. “In a civil case, a court lacks jurisdiction to impose criminal liability on a defendant.” *Anambra State Community in Houston, Inc. v. Ulasi*, 412 S.W.3d 786, 791 (Tex. App. – Houston [14th Dist.] 2013, no pet.)(dismissing claim seeking to impose criminal liability for violation of law for lack of subject matter jurisdiction).

Moreover, a release cannot support a claim for breach of contract. At best, it would provide Rogers with an affirmative defense that she could assert in the criminal cases against her. A “release surrenders legal rights and obligations between the parties. It operates to extinguish the claim or cause of action as effectively as would a prior judgment between the parties and is an absolute bar to any right of action on the released matter.” *Dresser Indus., Inc. v. Page Petroleum, Inc.*, 853 S.W.2d 505, 503 (Tex. 1993). Accordingly, a “release is expressly designated as an affirmative defense.” *Id.* Simply put, suit on a released claim by a releasing party does not give rise to a claim by the released party for breach of the release portion of a settlement agreement. *Frontier Logistics, L.P. v. National Property Holdings, L.P.*, 417 S.W.3d 656, 663 (Tex. App. – Houston [14th Dist.] 2013, pet. denied).

Rogers has no claim for breach of contract. But, if she really wishes to assert such a claim against the Receiver, Rogers needs to file a separate suit so that her

allegations can be tested as required by the state law (including Chapter 27 of the Texas Civil Practice and Remedies Code) and the Texas Rules (including Rules 13 and 91a).

III. Neither the State nor the Receiver fraudulently induced Rogers to enter into the settlement agreement.

As with her breach of contract claim, Rogers makes no allegations of fraud against the Receiver. Without at least allegations of fraud, Rogers has not alleged any basis for the Court to order the Receiver to return Rogers' settlement payment. She must, therefore, be arguing that the Receiver is somehow responsible for the State's conduct in indicting her.

Rogers does not actually allege fraud on the part of the State. Instead, she argues that the State had an undisclosed intent to indict her when it settled with her.⁶ Amd. Motion at 2-3. What Rogers does not allege is that the State affirmatively lied to her about the possibility of an indictment or the existence of an ongoing criminal investigation. Nor does she point to any law or rule requiring that the State disclose the existence of a criminal investigation to her.

This failure is fatal to Rogers' fraud claim. Simply put, the State had no affirmative duty to inform Rogers of the possibility or existence of a criminal investigation. *United States v. Prudden*, 424 F.2d 1021, 1032 (5th Cir. 1970)(holding that IRS agent had no duty to inform taxpayer of an ongoing criminal investigation when conducting an audit); *also United States v. Blocker*, 104 F.3d 720, 729-30 (5th

⁶ Given that more than two years passed from the date the State executed the settlement agreement (August 2012) to the date of the indictments (February 2015), this allegation seems far-fetched.

Cir. 1997)(holding that state insurance examiner had no duty to disclose fact that he had secretly agreed to furnish information gleaned from his examination to the FBI). This rule has been uniformly adopted in the federal courts. *United States v. Stringer*, 535 F.3d 929, 940 (9th Cir. 2008)(collecting cases).⁷

There is no Texas law to the contrary. The one case on which Rogers bases her fraud claim, *Kalyanaram v. University of Texas System*, 2009 WL 1423920 (Tex. App. – Austin 2009, no pet.), also does not impose any such duty. Accordingly, Rogers has failed to allege a fraud claim against either the State or the Receiver.

Nor does *Kalyanaram* otherwise support a fraud claim against the State. Notably, the *Kalyanaram* court held that the defendant was entitled to summary judgment on Kalyanaram's claim that it fraudulently induced him to settle his claims. Moreover, the facts of *Kalyanaram* are simply inapposite. Kalyanaram alleged that the University committed fraud by misrepresenting that it would (i) abandon the criminal charges against him; (ii) cooperate with his criminal defense and (iii) adhere to the terms of the settlement. *Id.* at *4. The State in this case made no representations to Rogers about potential criminal charges. Moreover, as discussed above, the State has fully complied with the settlement agreement.

As part of this argument Rogers suggests that she has been damaged because she gave up her appeal of the Court's summary judgment ruling that Retirement Value's product was a security. Her argument makes no sense. The Receiver's

⁷ As may be obvious from the styles of these cases, the issues arise in the context of motions to dismiss indictments or to suppress evidence in criminal trials – a fact which demonstrates the inappropriety of bringing this motion before this Court and the Court's lack of subject-matter jurisdiction.

claims were dismissed. Accordingly, the partial summary judgment never became final as to her. Similarly, the State's claims were reduced to the Agreed PI in which the Court did not find that Retirement Value's product was a security. Accordingly, the settlement imposes no limitation on her ability to argue that Retirement Value's product was not a security in her criminal case.

Accordingly, the Court should dismiss Roger's Motion to Enforce.

Respectfully submitted,

By: /s/ Michael D. Napoli
Michael D. Napoli
State Bar No. 14803400

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COUNSEL FOR THE RECEIVER OF
RETIREMENT VALUE, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record listed below, through the electronic filing manager if that counsel's e-mail address is on file or via e-mail, if not, on this 1st day of June 2015.

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By: /s/ Michael D. Napoli
Michael D. Napoli

Unofficial copy Travis Co. District Clerk Michael L. Price

Unofficial copy Travis Co. District Clerk Velva L. Price

EXHIBIT "A"

STATE OF TEXAS,

IN THE DISTRICT COURT OF

Plaintiff,

v.

RETIREMENT VALUE, LLC,
RICHARD H. "DICK" GRAY,
HILL COUNTRY FUNDING, LLC,
HILL COUNTRY FUNDING, , and
WENDY ROGERS,

TRAVIS COUNTY, TEXAS

Defendants,

AND

JAMES SETTLEMENT SERVICES,
LLC et al.

Third Party Defendants.

126th JUDICIAL DISTRICT

AFFIDAVIT OF MICHAEL D. NAPOLI

BEFORE ME, the undersigned authority, on this day personally appeared Michael D. Napoli, who is personally known to me, and after being duly sworn according to law, upon his oath duly deposed and said:

1. My name is Michael D. Napoli. I am over 21 years of age and otherwise competent to testify. I have personal knowledge of the facts set forth herein, and they are true and correct.

2. I am a member of Dykema Cox Smith and have practiced law in Texas since 1991. During the course of my career, I have represented targets of investigations by the Securities and Exchange Commission ("SEC") and Texas State Securities Board ("TSSB"); defended claims brought by the SEC and TSSB; and

represented parties who have been placed in receivership by the TSSB. I have also represented both plaintiffs and defendants in lawsuits and arbitrations alleging securities fraud, including cases arising out of Ponzi schemes.

3. I am counsel for the Receiver, Eduardo S. Espinosa (the "Receiver"), in this matter. I have been counsel for the Receiver since this case began in May 2010.

4. Attached to my affidavit are true and correct copies of the following documents:

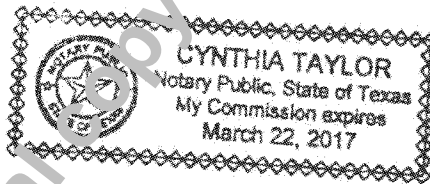
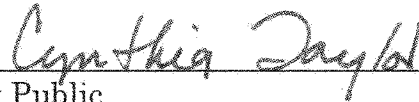
- a. The Settlement Agreement between Wendy Rogers and the Receiver, the State and others is attached as Exhibit A-1;
- b. The Agreed Permanent Injunction against Wendy Rogers, entered by the Court on November 21, 2012 is attached as Exhibit A-2; and
- c. Rogers' Motion to Quash and Set Aside Indictment filed in the 380th Judicial District Court is attached as Exhibit A-3.

FURTHER AFFIANT SAYETH NOT.



Michael D. Napoli

SUBSCRIBED AND SWORN TO BEFORE ME this 1st day of June 2015.



Notary Public

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

STATE OF TEXAS,
Plaintiff,

IN THE DISTRICT COURT OF

v.

RETIREMENT VALUE, LLC,
RICHARD H. "DICK" GRAY,
HILL COUNTRY FUNDING, LLC,
a Texas Limited Liability Company,
HILL COUNTRY FUNDING, a Nevada
Limited Liability Company, and
WENDY ROGERS,
Defendants,

TRAVIS COUNTY, TEXAS

AND

JAMES SETTLEMENT SERVICES, LLC,
ET AL.

Third-Party Defendants

126th JUDICIAL DISTRICT

**MOTION FOR APPROVAL OF
SETTLEMENT WITH DEFENDANT WENDY ROGERS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Eduardo S. Espinosa in his capacity as Receiver of Retirement Value, LLC, and files this Motion for Approval of Settlement with Defendant Wendy Rogers as follows:

Eduardo S. Espinosa, in his capacity as Receiver for Retirement Value, LLC ("RV Receiver"), the State of Texas (the "State"), Donald R. Taylor, in his capacity as Receiver for Hill Country Funding, LLC ("HCF Receiver"), and Gary Cain, Barry Edelstein and Qvest III Master Fund, LLC (the "Intervenors") have reached a compromise and settlement agreement of all claims and disputes they may have against Wendy Rogers ("Rogers") (collectively the Parties), and vice versa. The Parties have also agreed to full and complete releases of such

claims and disputes. A fully executed copy of the Compromise and Settlement Agreement between the Parties is attached and incorporated herein as Exhibit A.

In addition, upon the Court's approval of the Compromise and Settlement Agreement and in consideration of the promises and agreements contained therein, the Parties also request that the Court approve and enter the Agreed Permanent Injunction Order and Final Judgment As to Defendant Wendy Rogers attached to the Settlement Agreement as Exhibit A.

This Court previously approved a contingency fee for the RV Receiver's counsel with respect to these claims. A settlement statement showing the gross recovery, the amount of attorneys' fees, and the net proceeds payable to the Receiver is attached and incorporated herein as Exhibit B.

The Parties agree that each party will bear their own attorneys' fees and costs.

PRAYER

The Receiver prays that the Court grant this motion to approve the attached Compromise and Settlement Agreement and the distribution of the proceeds and sign and enter the Agreed Permanent Injunction Order and Final Judgment As to Defendant Wendy Rogers.

The Receiver further prays for such further relief to which he may be justly entitled.

Respectfully submitted,



R. James George, Jr.
State Bar No. 07810000
John W. Thomas
State Bar No. 19856425
John R. McConnell
State Bar No. 24053351
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Facsimile: (512) 499-0094

ATTORNEYS FOR RECEIVER

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:

- U.S. Mail, First Class (as to Ackels, Lanahan, Williams, and D'Agostino only)
- Certified Mail (return receipt requested)
- Facsimile
- Federal Express Delivery
- Hand Delivery
- Electronic Service

on this the 6th day of September, 2012, to wit:

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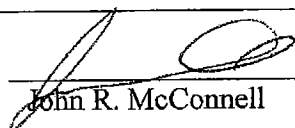
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<p>Todd A. Marquardt MARQUARDT LAW FIRM 11919 Jones Maltsberger San Antonio, Texas 78216 (210) 320-8800 (210) 247-9396 fax todd@marquardtlawfirm.com COUNSEL FOR THIRD PARTY DEFENDANT JAMES STRIZAK</p>	<p>Barry A. Chasnoff M. Lean Pena Clayton Matheson AKIN GUMP STRAUSS HAUER & FELD LLP 300 Convent Street, Suite 1500 San Antonio, Texas 78205 (210) 281-7000 (210) 224-2035 fax bchasnoff@akingump.com mpena@akingump.com cmatheson@akingump.com ATTORNEYS FOR SOCIETY AND CORPORATION OF LLOYD'S</p>

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<p>Gary H. Oliver 1899 CR 3265 Mount Pleasant, Texas 75455 (903) 717-1546 goliver@goprsv.com PRO SE</p>	<p>Joseph Donnantuoni 15215 Berry Trail, #912 Dallas, Texas 75248 (951) 378-5670 joeytd11@yahoo.com PRO SE</p>
<p>Andrew D'Agostino Harvest Planning, LLC 41 Brook Street West Sayville, New York 11796 PRO SE</p>	<p>Gary J. Lenahan 228 Crawford Street Beckley, West Virginia 25801 PRO SE</p>
<p>Byron Tyghe Williams P.O. Box 88 Mentor, Ohio 44061-0088 (440) 209-9977 PRO SE</p>	



 John R. McConnell

COMPROMISE AND SETTLEMENT AGREEMENT

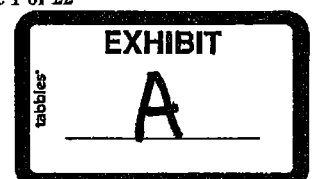
This Compromise and Settlement Agreement (the "Agreement") is entered into effective as of the ___ day of August 2012 (the "Effective Date"), between and among the following:

- 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 Edelstein 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 320 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 R. 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 paragraphs 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. Rogers 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 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.

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 Releasors or those asserting a claim by, through or under HCF. By this release, the HCF 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 Giles, Ronald James, Donald James, James Settlement 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 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 Intervenor Releasers or those asserting a claim by, through or under them. By this release, the Intervenor 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 Best, 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 County 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, 2011. 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 Intervenors 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 severed from the remainder of this Settlement Agreement.

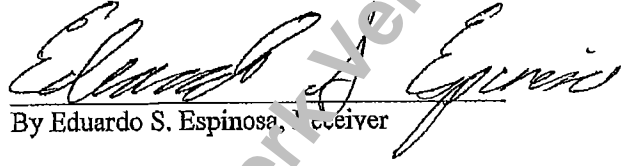
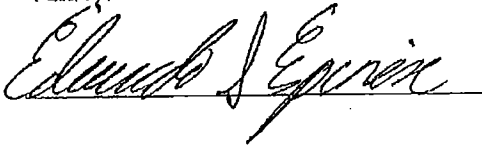
(j) Counterparts. This instrument may be executed in multiple original counterparts, each of which shall be deemed an original for all purposes. No single counterpart of this Agreement need be executed by all of the Parties so long as each of the Parties shall have executed at least one counterpart.

[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

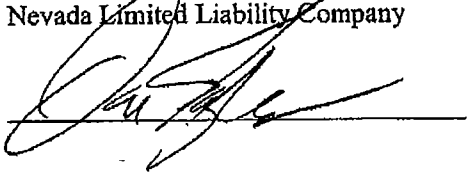
RETIREMENT VALUE, LLC



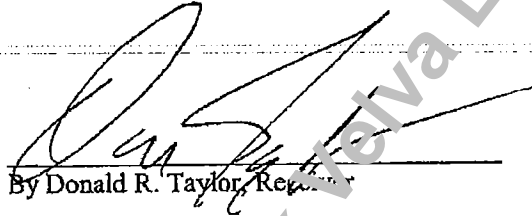
By Eduardo S. Espinosa, Receiver

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

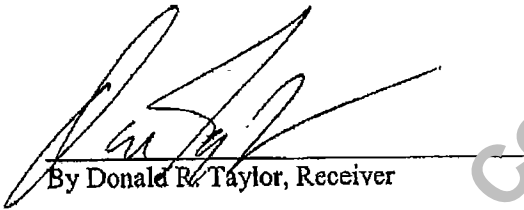


HILL COUNTRY FUNDING, LLC (TEXAS)



By Donald R. Taylor, Receiver

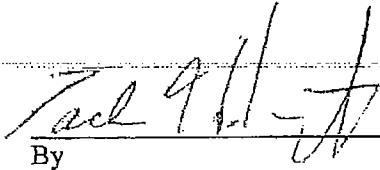
HILL COUNTRY FUNDING, LLC (NEVADA)



By Donald R. Taylor, Receiver

Unofficial copy Travis Co. District Clerk Melva L. Price

THE STATE OF TEXAS

 _____

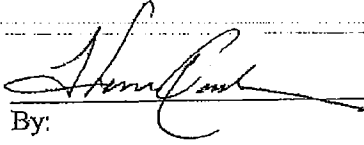
By

Its: AAG

Unofficial copy Travis Co. District Clerk Velva L. Price

QVEST III MASTER FUND, LLC

DR. GARY CAIN



By:

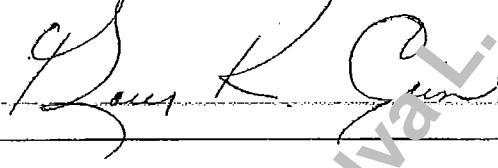
Its:

BARRY EDELSTEIN

Unofficial copy Travis Co. District Clerk Velda L. Price

QVEST III MASTER FUND, LLC

DR. GARY CAIN



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



Unofficial copy Travis Co. District Clerk Velda L. Price

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

MATTHEW C. ALLEN, JR. Individually

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

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

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

STATE OF TEXAS,
Plaintiff,

IN THE DISTRICT COURT

v.

RETIREMENT VALUE, LLC,
ET AL.
Defendants,

OF TRAVIS COUNTY, TEXAS

AND

JAMES SETTLEMENT SERVICES,
LLC, ET AL.
Third-Party Defendants

126th JUDICIAL DISTRICT

**AGREED PERMANENT INJUNCTION ORDER and FINAL JUDGMENT AS TO
DEFENDANT WENDY ROGERS**

On this day came on to be considered the Third Amended Verified Petition and Application for Injunctive Relief, Restitution, the Disgorgement or Economic Benefits, Receivership, and Other Equitable Relief Against Wendy Rogers, and Application for Special Receivership filed by the State of Texas at the request of the Deputy Securities Commissioner of Texas, John Morgan, (the "Deputy Commissioner"). The Petition asked the Court to issue a Permanent Injunction against Defendants Retirement Value, LLC, Richard H. "Dick" Gray ("Gray"), Wendy Rogers ("Rogers"), Hill Country Funding, LLC, a Texas limited liability company and Hill Country Funding, LLC, a Nevada limited liability Company (collectively, "Defendants"), their agents, officers, servants, employees, representatives, attorneys and any other party in active concert with or participation with them who receives actual notice of the order by personal service or otherwise and to enter a final judgment against Defendants.

The Petition further requested the Court maintain the appointment Eduardo S. Espinosa, of K&L Gates, LLP, as Receiver for Defendant Retirement Value, LLC.

On May 5, 2010, the Court issued the First Amended Temporary Restraining Order and Order Appointing Receiver ("First Amended TRO"), which has been extended, by agreement and Court order, and is still in full force and effect.

Plaintiff, the State of Texas, appeared by and through Jack Hohengarten, Assistant Attorney General. Defendant Retirement Value, LLC, in receivership, appeared by and through Michel D. Napoli of K&L Gates, LLP, who represents the Receiver, Eduardo S. Espinosa of K&L Gates, LLP. Defendant Wendy Rogers appeared by and through her attorney Bogdan Rentea of Rentea & Associates.



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 2, 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 in 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 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. Any 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, cancelling, 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 viatical settlement contracts and life settlement contracts or other similar investment, 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 waiver 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(s) 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 _____, 2012.

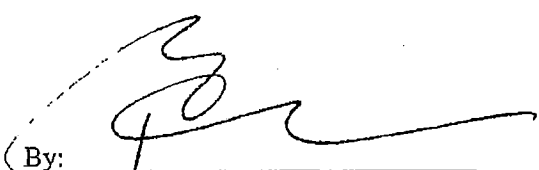
The Honorable Gisela D. Triana
Judge Presiding

APPROVED & ENTRY REQUESTED BY:

By: _____

Jack Hohengarten
State Bar No. 09812200
COUNSEL FOR THE STATE

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 Velva L. Price

SETTLEMENT STATEMENT

Pursuant to the Fee Agreement between Eduardo S. Espinosa in his capacity as Receiver of Retirement Value, LLC and George & Brothers, LLP, the settlement proceeds received from Wendy Rogers shall be disbursed as follows:

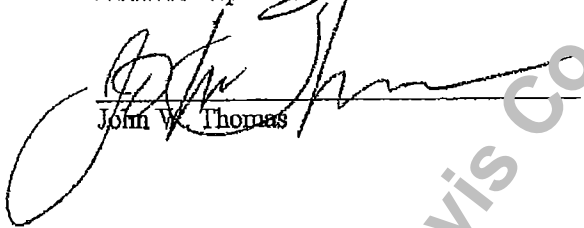
TOTAL SETTLEMENT:	\$200,000.00
LESS:	
ATTORNEYS' FEES (15%)	\$ 30,000.00
NET PROCEEDS TO CLIENTS:	\$170,000.00

Our signatures below indicate that we have reviewed and understand the foregoing settlement statement and are in agreement with the division of the settlement proceeds as set out above.



Eduardo Espinosa

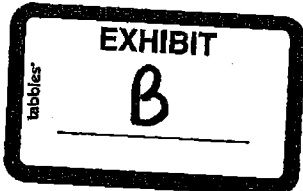
9/5/12
Date



John W. Thomas

9/5/12
Date

Unofficial copy Travis Co. District Clerk Vernal L. Price



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

STATE OF TEXAS,
Plaintiff,

IN THE DISTRICT COURT

RETIREMENT VALUE, LLC,
ET AL.
Defendants,

OF TRAVIS COUNTY, TEXAS

AND

JAMES SETTLEMENT SERVICES,
LLC, ET AL.
Third-Party Defendants

126th JUDICIAL DISTRICT

AGREED PERMANENT INJUNCTION ORDER and FINAL JUDGMENT AS TO
DEFENDANT WENDY ROGERS

On this day came on to be considered, the Third Amended Verified Petition and Application for Injunctive Relief, Restitution of the Disgorgement or Economic Benefits, Receivership, and Other Equitable Relief Against Wendy Rogers, and Application for Special Receivership filed by the State of Texas at the request of the Deputy Securities Commissioner of Texas, John Morgan, (the "Deputy Commissioner"). The Petition asked the Court to issue a Permanent Injunction against Defendant Retirement Value, LLC, Richard H. "Dick" Gray ("Gray"), Wendy Rogers ("Rogers"), Hill Country Funding, LLC, a Texas limited liability company and Hill Country Funding, LLC, a Nevada limited liability Company (collectively, "Defendants"), their agents, officers, servants, employees, representatives, attorneys and any other party in active concert with or participation with them who receives actual notice of the order by personal service or otherwise and to enter a final judgment against Defendants.

The Petition further requested the Court maintain the appointment Eduardo S. Espinosa, of K&L Gates, LLP as Receiver for Defendant Retirement Value, LLC.

On May 5, 2010, the Court issued the First Amended Temporary Restraining Order and Order Appointing Receiver ("First Amended TRO"), which has been extended, by agreement and Court order, and is still in full force and effect.

Plaintiff, the State of Texas, appeared by and through Jack Hohengarten, Assistant Attorney General. Defendant Retirement Value, LLC, in receivership, appeared by and through Michael D. Napoli of K&L Gates, LLP, who represents the Receiver, Eduardo S. Espinosa of K&L Gates, LLP. Defendant Wendy Rogers appeared by and through her attorney Bogdan Rentea of Rentea & Associates.

Filed in the District Court
of Travis County, Texas

NOV 20 2010 2:00 PM

At _____
Amalia Rodriguez-Mendoza, Clerk

Unofficial Copy
District Clerk Velva L. Pate

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.

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 in 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," and 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 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, reorganization 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. Any 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 sale 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, canceling, 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 viatical settlement 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 24 day of November, 2012.



The Honorable Gisela D. Tidana
Judge Presiding

APPROVED & ENTRY REQUESTED BY:

By:


Jack Hohengarten
State Bar No. 09812200
COUNSEL FOR THE STATE


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 Velda L. Price

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	COLLIN COUNTY, TEXAS
	§	
WENDY L. ROGERS	§	
	§	
Defendant.	§	380 TH JUDICIAL DISTRICT

MOTION TO QUASH/DISMISS AND/OR SET ASIDE INDICTMENT

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

1. This motion is brought pursuant to the provisions of the Texas Code of Criminal Procedure (the “Code”), specifically Articles 1.14(b), 21.01, 21.03, 27.02(1) and 27.08(1).
2. On February 26, 2015, a Collin County, Texas grand jury returned an indictment against Rogers for Securities Fraud, under section 29C of the Texas Securities Act. *See Exhibit A.*
3. The indictment alleges that Rogers, directly and through agents, sold or offered for sale, an interest in a Resale Life Insurance Policy Program, (the “RSLIP program” or “RSLIP”), **it being a security under Texas law**, to various persons, between May of 2009 and March of 2010, (the “time period”).
4. As a matter of law and fact, during the time period alleged in the indictment, the RSLIP was specifically not deemed to be a security under Texas law.
5. During the time period alleged in the indictment, the Texas Securities Act (the “Act”), provided at Art. 581-4 A, as follows:

“The term “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. The term applies regardless of whether the "security" or "securities" are evidenced by a written instrument. **Provided, however, that this definition shall not apply to any insurance policy, endowment policy, annuity contract, optional annuity contract, or any contract or agreement in relation to and in consequence of any such policy or contract, issued by an insurance company subject to the supervision or control of the Texas Department of Insurance when the form of such policy or contract has been duly filed with the Department as now or hereafter, by law.**" (Emphasis added)*

6. All policies involved in the RSLIP program were written by insurance companies subject to the supervision or control of the Texas Department of Insurance. *See Exhibit B.* The Policy Participation Agreements signed by each of the persons listed in the indictment, are contracts in relation to such insurance policies, and therefore come within the exception provided by the Act. *See Exhibit C.*
7. Additionally, during the time period alleged in the indictment, the only appellate decision in Texas, addressing products such as the RSLIP, specifically deemed them not to be securities, *See Griffiths v. Life Farmers, Inc.* No.10-01-00271-CV, 2004 WL 1178418 at *4 (Tex. App.—Waco May 26, 2004, no pet.).
8. Two years after the last sale included in the indictment, Joseph Rotunda, an attorney and Director of the Enforcement Division of the Texas State Securities Board ("TSSB"), co-authored an article, which concluded that certainty and clarity on whether a product such as RSLIP is a security, can only come from the Texas Legislature, the Texas Supreme Court, or the Texas Court of Criminal Appeals. *See Exhibit D.*

9. Although two appellate courts¹ disagreed with the *Griffits* court, *supra*, (in opinions dated over three years after the last sale referenced in the indictment) the Texas Supreme Court, which has agreed to resolve the conflict between these appellate decisions, has yet to rule on the issue. The Supreme Court heard oral arguments on January 15, 2015, and to date, has not issued a decision.
10. Finally, after Retirement Value LLC was placed in receivership in May of 2010, this Defendant appealed a ruling by the Travis County District Court in which the receivership was pending, that the RSLIP was a security. While the appeal was pending at the Third Court of Appeals, in Austin, Texas, and before oral arguments were held and a decision rendered, this Defendant settled with the State of Texas, and as part of the settlement agreed to dismiss her appeal. Therefore, no appellate court has ruled on whether the RSLIP is a security. More importantly however, the State of Texas and particularly the TSSB, agreed as part of the settlement to abandon its request for a finding that Rogers had sold or offered for sale, or in any manner participated in the sale or offer for sale of a security in Texas. *See Exhibit E*. Therefore, this issue may have been terminated by final order and judgment, and this indictment therefore may necessarily require a determination inconsistent therewith, and be subject to a Special Plea as allowed by Article 27.05 (4) of the Code².
11. Therefore, this indictment should be dismissed, because the product at issue was not deemed to be a security at the time of its sale, and was actually specifically not defined and held to be

¹ *Arnold v. Life Partners, Inc.*, 416 S.W.3d 577, 580 (Tex. App.—Dallas 2013), *reh'g overruled* (Jan. 7, 2014), *review granted* (Dec. 19, 2014)

State v. Life Partners Holdings, Inc., 03-13-00195-CV, 2014 WL 538821, at *1 (Tex. App.—Austin Feb. 6, 2014), *review granted* (Dec. 19, 2014)

² This argument will be the subject of another motion to be filed at a later time.

a security at that time, and it does not appear that an offense could have been committed by this Defendant.

12. Given these circumstances, the prosecutor is hereby requested to join in this motion, given his statutory obligations under Article 2.01 of the Code, which provides that “**It shall be the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done.**” (emphasis added)

WHEREFORE, PREMISES CONSIDERED, WENDY ROGERS respectfully requests that this indictment be quashed and/or dismissed and/or set aside, and that she have any further relief to which she may show herself entitled.

Respectfully submitted,

RENTEA & ASSOCIATES



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

NOTICE OF HEARING

Please be advised that this motion has been set for hearing on **May 22nd 2015 at 9:00 a.m.** in the 380th District Court, Collin County, Texas.



Bogdan Rentea

CERTIFICATE OF SERVICE

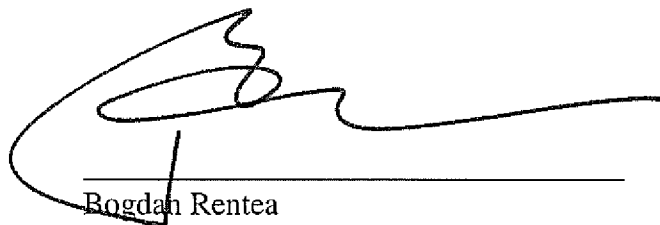
I hereby certify that a true and correct copy of the foregoing document has been served on all counsel of record herein on **April 23rd, 2015** as follows:

Greg Willis
Collin County
Criminal District Attorney
2100 Bloomdale Road, Suite 100
McKinney, Texas 75071
Attorney for State of Texas

Via First Class Mail

Courtesy copy to
Tina Lawrence
Enforcement Attorney
Texas State Securities Board
208 E. 10th Street, 5th Floor
Austin, Texas 78701

Via E-mail



Bogdan Rentea

DEFENDANT Wendy L. Rogers

★ LINAPP
 CHARGE Securities Fraud >\$100K
 Article 581 Section 29C
 Texas Securities Act

Person 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: Lotha 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 presentation 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 Grospron	July 10, 2009	\$584,078.73
A. Samuel & Ruth Palak	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
Terri 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

EXHIBIT
A

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 2, 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 F. Hayes	December 3, 2009	\$70,000.00
Tanner 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	\$74,183.13
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. Kufferauf	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 facts; 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. 03-20433-D, 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 25, 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. Snowien*, 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. 454-09-4367.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.

Andrea Kay Bards
FOREPERSON OF THE GRAND JURY

FILED

2010 FEB 26 PM 2: 29

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

Policies owned by the Combined Estates of Retirement Value & Hill Country Funding						
Internal Code	Carrier	Face Amount	Midwest Medical LE 50%	Date of MWM LE Certificate	MWM Life Expectancy Date (50%)	Deceased
HCF-JHL305-LS	John Hancock	\$750,000	39	1/16/2008	4/16/2011	
HCF-SLF652-LS	Sun Life Financial	\$500,000	39	1/16/2008	4/16/2011	
HCF-JHL442-LS	John Hancock	\$1,500,000	36	7/9/2008	7/9/2011	
HCF-SLF495-LS	Sun Life Financial	\$1,500,000	36	7/9/2008	7/9/2011	
ANI521-102209-BW	American National	\$1,000,000	35	9/11/2009	8/10/2012	
OML446-031909-RL	Old Mutual Life/Fidelity &	\$2,000,000	40	4/17/2009	8/15/2012	
LBL771-110209-MF	Lincoln Benefit Life	\$2,000,000	35	11/2/2009	10/12/2012	
AGL130-012110-PM	American General Life &	\$2,000,000	33	1/11/2010	10/10/2012	
ING283-031909-AJ	ING	\$2,000,000	43	5/28/2009	12/25/2012	
PLI140-111109-DM	Pacific Life	\$10,000,000	38	11/11/2009	1/9/2013	Yes
LFG183-111109-MR	Lincoln Financial	\$5,000,000	40	10/30/2009	2/17/2013	
LFG566-071509-MR	Lincoln Financial	\$4,700,000	43	8/13/2009	3/12/2013	
AGL06L-102009-LM	American General	\$2,500,000	42	9/14/2009	3/14/2013	
WPL982-071509-LB	William Penn Life	\$500,000	44	8/10/2009	4/9/2013	
AVL180-030510-MR	AVIVA Life & Annuity	\$5,000,000	39	2/25/2010	5/26/2013	
HCF-AXA058-PF	AXA Equitable	\$2,500,000	48	5/29/2010	5/28/2013	
AXA597-110209-HM	AXA Equitable	\$1,250,000	46	10/6/2009	8/5/2013	Yes
PLI930-102009-HM	Pacific Life	\$1,250,000	46	10/6/2009	8/5/2013	Yes
LBL165-031909-NL	Lincoln Benefit Life	\$750,000	54	3/17/2009	9/16/2013	
AXA091-012110-PC	AXA Equitable	\$5,000,000	45	12/18/2009	9/16/2013	
LFG782-090409-HO	Lincoln Financial	\$5,000,000	49	8/26/2009	9/24/2013	
SLA534-031909-LC	Sun Life Assurance	\$650,000	54	3/30/2009	9/27/2013	
LFG591-031909-DH	Lincoln Financial	\$1,000,000	55	3/6/2009	10/3/2013	
ENG15J-121409-AK	ING	\$1,000,000	47	12/9/2009	11/7/2013	
ANI852-031909-HO	American National	\$5,000,000	53	6/22/2009	11/20/2013	
LFG272-112009-PS	Lincoln Financial	\$1,300,000	48	11/24/2009	11/23/2013	
PLI980-111109-JS	Pacific Life	\$4,000,000	49	10/26/2009	11/24/2013	
PLI680-102909-JS	Pacific Life	\$1,000,000	49	10/26/2009	11/24/2013	
AXA729-112009-SF	AXA Equitable	\$2,000,000	49	11/18/2009	12/17/2013	
ING201-071509-AG	ING	\$1,000,000	55	7/8/2009	2/4/2014	
HLI814-092509-MI	Hartford Life	\$1,500,000	54	9/3/2009	3/3/2014	
TRA281-071509-RJ	Transamerica	\$1,500,000	56	7/15/2009	3/14/2014	
LFG008-102909-RB	Lincoln Financial	\$3,000,000	53	10/15/2009	3/15/2014	
LFG311-031210-HM	Lincoln Financial	\$5,000,000	49	2/18/2010	3/19/2014	
AXA994-011510-BD	AXA Equitable	\$2,100,000	51	12/31/2009	3/31/2014	
ING036-071509-EB	ING	\$3,000,000	57	8/4/2009	5/3/2014	
LFG006-103009-JC	Lincoln Financial	\$2,000,000	56	9/18/2009	5/18/2014	
LFG117-021710-HW	Lincoln Financial	\$2,000,000	52	1/19/2010	5/19/2014	
LFG248-012610-HM	Lincoln Financial	\$3,000,000	52	1/20/2010	5/20/2014	
SLA338-112009-CD	Sun Life Assurance	\$2,000,000	59	10/29/2009	9/27/2014	
MET650-071509-DF	Met Life	\$1,000,000	62	8/7/2009	10/5/2014	
LFG740-071509-RL	Lincoln Financial	\$5,000,000	63	7/15/2009	10/13/2014	
AXA826-110509-JC	AXA Equitable	\$1,250,000	60	10/23/2009	10/22/2014	
AGL73L-031909-PM	American General	\$3,000,000	70	1/12/2009	11/13/2014	
AGL66L-071509-LB	American General	\$750,000	64	7/15/2009	11/12/2014	
AXA335-122410-PS	AXA Equitable	\$3,000,000	57	2/18/2010	11/17/2014	
AXA141-090409-GJ	AXA Equitable	\$2,000,000	63	9/1/2009	11/30/2014	
LFG773-031909-MC	Lincoln Financial	\$1,500,000	70	2/19/2009	12/19/2014	
AXA104-031909-RM	AXA Equitable	\$4,500,000	69	3/24/2009	12/21/2014	
BL361-021710-SW	Lincoln Benefit Life	\$2,085,000	60	1/27/2010	1/26/2015	
LLI899-102209-AT	Lafayette Life	\$7,000,000	64	9/29/2009	1/27/2015	
MMI860-071509-ML	Mass Mutual	\$1,500,000	69	7/8/2009	4/6/2015	
LFG081-021710-RC	Lincoln Financial	\$1,250,000	64	12/23/2009	4/22/2015	
LFG735-030510-AS	Lincoln Financial	\$5,000,000	64	2/10/2010	6/10/2015	

EXHIBIT
B



457 Landa Street, Suite B, New Braunfels, TX 78130 • Phones: (830) 624-8858 (210) 832-9040 • Fax: (866) 498-4644 • www.retirementvalue.com

POLICY PARTICIPATION AGREEMENT

This Agreement is being entered into by and between:

Participant: Thomas Louis Borok
(hereinafter referred to in the singular "Participant")

Address: [REDACTED] Dallas Texas 75287-7429
(Street address) (City) (State) (Zip code)

Phone No.: (972) [REDACTED] Cell No.: (972) [REDACTED] Fax No.: (972) [REDACTED]

E-mail: tlborok@[REDACTED]

SSN: [REDACTED] DOB: [REDACTED] Marital Status: Single Married
MM DD YYYY Divorced Widow(er)

Joint Participant (if any): N/A
(hereinafter referred to in the singular "Participant")

Address: _____
(Street address) (City) (State) (Zip code)

Phone No.: _____ Cell No.: _____ Fax No.: _____

E-mail: _____

SSN: _____ DOB: _____ Marital Status: Single Married
MM DD YYYY Divorced Widow(er)

and Retirement Value, LLC, a Texas limited liability company, whose principal address is 457 Landa Street, Suite B, New Braunfels, Texas 78130 (mailing address: P.O. Box 310635, New Braunfels, Texas 78131) (hereinafter referred to as "Agent").

WHEREAS, Agent is in the business of acquiring sole-ownership in re-sale life insurance policies acquired from various re-sale life insurance policy sources;

WHEREAS, Participant desires to facilitate acquisition by the Agent of one or more re-sale life insurance policies and participate on a pro-rata basis as an irrevocable co-beneficiary;



WHEREAS, Participant approves and adopts the standard(s) used by Agent to evaluate and qualify re-sale life insurance policies for Agent's investment purchase as sole owner of said re-sale life insurance policies;

WHEREAS, both parties understand and agree that the relationship of the Participant to the Agent is to provide funding to facilitate the acquisition of re-sale life insurance policies; and

WHEREAS, both parties understand and agree that this model of participation in a re-sale life insurance policy is not considered to be a security and therefore participation in a re-sale life insurance policy is not construed as the sale of a security by the Agent or the purchase of a security by the Participant.

NOW, THEREFORE, both parties wish to enter into a mutual agreement in which the Client will assist the Agent in acquiring, purchasing and becoming sole owner of certain re-sale life insurance policies through participation. The Client's participation is effected through and by an irrevocable co-beneficiary status in one or more re-sale life insurance policies pursuant to the Participant's instructions as set forth in Exhibit A of this Agreement.

I. General Disclosure Statement - Terms of Agreement

1.1 Agreement. You are entering into an Agreement whereby you will become a Participant in a re-sale life insurance policy(ies) of which Agent will be the sole owner and for which the law firm of Kiesling, Porter, Kiesling & Free, P.C., located at 248 East San Antonio Street, New Braunfels, Texas 78130 (hereinafter referred to as "Escrow Agent"), will become the Escrow Agent. As a Participant in a re-sale life insurance policy you will acquire a safeguarded irrevocable co-beneficiary status in the death benefit based upon your initial participation or basis plus a base-line expected gain paid for the use of your funds during the time outlined in this Agreement. Your participation in a policy will fund the following activities: (a) purchase of a re-sale life insurance policy(ies) by Agent; (b) payment of premiums by the Escrow Agent to maintain at all times the in-force status of the re-sale life insurance policy(ies) after purchase; (c) payment of administrative costs and fees associated with this transaction, including a "death tracking" service, commissions, Escrow Agent and bank fees, and interest payments as needed.

1.2 Effective Date. This Agreement shall not be effective until funds are transferred from Participant and received into the Escrow Account maintained by Escrow Agent at Wells Fargo, Bank, N.A., and the Agreement has been approved by Agent on a reasonable and timely basis.

1.3 Insured. The person whose life insurance policy has been sold is called the Insured and this person remains the Insured on a re-sale life insurance policy but no longer is the beneficiary for that policy. The Insured and his / her designated beneficiaries have given up all rights and interests in the re-sale life insurance policy. The Insured typically is of advanced age with a Life Expectancy ("L.E.") of between 3 and 10 years.

1.4 Maturity. Maturity of a policy is when the Insured passes away and written notice has been received by the Agent.

1.5 Policy Model. Re-sale life insurance policies are policies that have been sold already in the open market by the original Insured or the original owner, with the Agent as the new policy owner purchasing the death benefit of a life insurance policy at a discount to the "face value" or death benefit of the policy. The resale life insurance policy model developed by Agent is a private transaction in which one investor (Agent) buys policies from another investor (the policy supplier).

1.6 Policy Election. You may elect to be the irrevocable co-beneficiary for an entire re-sale life insurance policy, participate in only one policy, or spread your participation over several policies of your choosing. If you participate in one or more policies, understand that the Agent may obtain the balance of the purchase price and other associated costs, fees and expenses from additional participants. When the Insured passes away, you will receive the base-line expected gain for your pro-rata participation on that policy.

1.7 Policy Replacement. Understand it is possible that at the time you elect participation in any re-sale life insurance policy it may have been fully subscribed already. In this situation, Agent will notify your Licensee immediately and will, pursuant to the terms of this Agreement, offer a replacement policy of a similar or greater total value based on the policy face amount and the Life Expectancy of the Insured.

1.8 Net Income. Understand that no one can predict with 100% accuracy the actual Life Expectancy of the Insured. Some factors that may affect the accuracy of an LE prediction are: (a) the experience and qualification of the medical personnel setting the LE; (b) the nature of the Insured's illness(es) or health condition(s); (c) future improvements in medical treatment(s) and cures. In this context, your net earnings may vary substantially from the base-line expected gain because true net earnings will be higher if the Insured passes away earlier than the expected LE or it will be lower if the Insured passes away later than the expected LE. If the Insured passes away earlier than expected, you also will receive a pro-rata refund of your portion of the premium escrow amounts which were not used to pay premiums.

1.9 Tax Consequences. This transaction may have tax consequences for you. You are agreeing to participate with a sum of money upon which Agent will pay a base-line expected gain in accordance with this Agreement. The net earnings you receive will, in most cases, if not all, be considered a taxable gain to you. You will need to consult with your tax advisor regarding this transaction so that you completely understand the tax implications of the transaction.

1.10 Non-Liquid. Monies used for participation are not liquid during the entire term outlined in the Policy Participation Agreement. Therefore, great care should be exercised and great caution observed in determining a proper, balanced participation amount for use in this re-sale life insurance policy transaction.

1.11 Participant's Demise. Please note, especially, that if the Participant passes away during the term of this Agreement, alternate or contingent beneficiaries will inherit or acquire this Agreement. However, said Agreement must remain in force until maturity due either to: (a) the passing of the Insured or (b) pay-out by the insurer. The policy does not become a "cash disbursement" in the hands of any Participant or heir(s) until maturity occurs. The death of the Insured – not the death of the Participant – determines the maturity date of this transaction.

1.12 Full Disbursement. Whenever maturity occurs due to the passing of the Insured, even if the Insured's passing is prior to the expiration of the calculated LE, Participant will receive a full net disbursement of their original participation plus expected gains for the full term of this Agreement, and will not be paid only a pro-rated partial return. Example: if the entire term of the policy is 48 months and the policy matures after 12 months due to the death of the Insured, the full 48 month expected gain will be paid to the Participant, as well as a pro-rata share of any unused premiums remaining in the escrow sub-account for that policy.

1.13 Premium Escrow Sub-account. In the event that the Insured lives beyond the Life Expectancy period plus twenty-four (24) months and the premium escrow sub-account has been depleted, then upon the depletion of said premium escrow sub-account, Participant will be contacted and requested, on a pro-rata share basis, to pay future premiums until the Insured passes away. If a contingent co-beneficiary(ies) has inherited the policy(ies) upon the passing of the Participant, the contingent co-beneficiary(ies) will be contacted and it will be the responsibility of the contingent co-beneficiary(ies) to pay future premiums in accordance with this paragraph. Failure of Participant to make premium payments into the premium escrow sub-account under these circumstances will result in total forfeiture of all their participation in this policy and will result in the loss of both the original basis amount and all base-line expected gain. In the event this occurs, Agent will then have the license to offer Participant's pro-rata portion in the policy to another person for payment of the necessary premium contribution amount. Participant also acknowledges Retirement Value, LLC or its Licensee provided very specific dollar amounts to illustrate this potential future risk.

Participant Participant

INITIAL HERE

II. Affirmative Representations of Agent

2.1 The Agent is a viable company whose business activities include the purchase of re-sale life insurance policies. Agent has no prior knowledge of your investment experience or your financial wherewithal to fund this transaction. Your decision to enter into this transaction will be based on your own independent investigation, but Agent takes the following specific steps to safeguard the monies you advance for this transaction:

- (a) Only insurance carriers rated "A-" or better by A.M. Best are used for re-sale life insurance policies;
- (b) All funds are maintained in or pass through the Escrow Agent and are deposited in a cash or cash equivalent account with Wells Fargo, N.A., 1000 North Walnut Street, New Braunfels, Texas 78130 (hereinafter the "Escrow Account") in an FDIC-Insured account, to be used for the purpose of purchasing the re-sale life insurance policy and the payment of premiums and other necessary payments peculiar to the Agent taking ownership of a policy. Notwithstanding, re-sale life insurance policies are not endorsed by any bank; outcomes are not guaranteed by any bank; and, this is not an FDIC-Insured financial transaction;
- (c) Funds used to purchase any re-sale life insurance policy noted in this Agreement are transferred to and exclusively handled by Pacific Northwest Title Company of Oregon, 111 Southwest Columbia Avenue, Suite 200, Portland, Oregon 97201;

- (d) Monies accumulated for paying all premiums due for each of the re-sale life insurance policies are maintained in an escrow sub-account at Wells Fargo Bank, N.A. and administered by the Escrow Agent;
- (e) Interest from all Escrow Accounts will be the property of the Agent, being part of the Agent's fee structure and will not be owned by or distributed to Participant; and
- (f) Agent or its Escrow Agent will not in any way use Participant's participation money in any manner whatsoever other than what is directed by the Participant in this Agreement.

2.2 During the Term of this Agreement, Agent shall:

- (a) provide to Participant all documentation pertinent to the Participant's co-beneficiary interest in the policy;
- (b) provide a copy of this Agreement to the designated Escrow Agent; and
- (c) create and maintain accurate records on Participant that pertain to the participation in the policy and from time to time, as appropriate, provide reports to Participant.

2.3 No Additional Duties. Except as set forth in paragraph 2.2, Agent shall have no other duties or obligations to Participant other than to use reasonable efforts to assist Participant if requested.

2.4 Right to Grant Additional Interest. Agent may grant to additional Participants an interest in the policy, provided that Agent will not allow the combined interest to exceed the face amount or death benefit of the policy.

III. Affirmative Representations, Rights & Obligations of Participant

3.1 Participant hereby confirms that he / she has read and understands the above. Participant further hereby confirms that Thomas Louis Borok (Licensee) has explained fully a re-sale life insurance policy transaction together with all associated risks.

3.2 Free Will. Participant acknowledges that he / she has carefully examined his / her financial resources, investment objectives, and tolerance for risk and that after considering the benefits and risks associated with this transaction, Participant freely elected to enter into this transaction with Agent.

3.3 Due Diligence. Participant represents and warrants that Participant is sufficiently sophisticated in financial matters of this type to make an independent, informed, wise and balanced decision to participate in a re-sale life insurance policy and that this matter was thoroughly reviewed with his / her Retirement Value, LLC Licensee and Participant has had the opportunity to obtain such additional information necessary to verify the accuracy of the information contained herein and satisfy his / her due diligence efforts on this transaction in order for him / her to evaluate the merits and risks of this Agreement. Participant further represents and warrants that Participant has access to professional investment advice, has adequate means of providing for current and future financial needs and possible contingencies,

has no need for liquidity for these funds, is able to bear the risk of an interest in a policy(ies) for an indeterminate period of time, could afford a complete loss of this participation and is committing to a participation which bears a reasonable relationship to Participant's total net worth.

Participant TSB 4-7-09 Participant 1/A INITIAL HERE

3.4 Confidentiality. Participant will maintain the confidentiality of all medical and insurance information received in connection with participation on a policy(ies) and the Agent's purchase of the re-sale life insurance policy(ies) at issue in this transaction.

3.5 No Contact With Insured. Participant agrees not to contact the insured third party named in the policy, and acknowledges that, under Texas law, only Agent (if Agent is a "provider"), or the Agent's designee, can contact Insured to determine health status.

3.6 Buy and Hold. Participant understands and agrees that this Agreement is of a "buy and hold" nature; that there is no offer made or any offer implied of liquidity during the entire period of Agreement; that Agent offers no buy-back guarantee; that the Participant understands that even upon his / her death, a contingent beneficiary(ies) "inherit(s)" this Agreement but must wait for its full maturity before realizing any "cash distribution" from this resale life insurance policy program.

3.7 Waiver of Right to Disclosure. Participant waives any right of disclosure that Participant may possess from Agent relating to Agent's fees paid to the policy supplier, any broker, attorney, and / or necessary service company(ies), accountant(s) or consultant(s) in the acquisition of the policy.

3.8 Ownership Status. Participant represents and warrants that he / she will retain sole ownership in the pro-rata status in the policies that he / she is selecting and that Participant will not sell, assign or distribute his / her portion in said policies to any other person or entity.

3.9 Reliance on Agent or Licensee. Participant represents and warrants that he / she has not relied on Agent for any legal, tax or investment advice whether expressly stated, inferred or assumed, any statements, representations or warranties, whether verbal or in writing, made by Agent, its Licensees or employees, with respect to his / her decision to enter into this transaction. For example, if Participant lives in a community property state, the special, legal, and tax requirements of that state must be fully met with the assistance of their own advisors.

3.10 No Guarantee. Agent has not provided or guaranteed any of the following: (i) a specific return on investment, (ii) a specific amount to be paid to Participant, (iii) a "buy back" guarantee, or (iv) a specific date of Maturity.

3.11 Accuracy. Participant further represents that the information contained herein is true, complete and accurate and may be relied on by Agent in entering into the transaction described herein.

IV. Miscellaneous

4.1 Venue. Venue for any lawsuit arising out of this Agreement shall be in Comal County, Texas and, in the case of federal jurisdiction, in the United States District Court for the Western District of Texas, San Antonio Division.

4.2 Amendment. The terms and conditions of this Agreement may only be amended by a writing signed by the Parties.

4.3 No Waiver. Except as expressly provided herein, the rights and remedies herein provided shall be cumulative and not exclusive of any other rights or remedies provided by law or otherwise. Failure by a Party to detect, protest, or remedy any breach of this Agreement shall not constitute a waiver or impairment of any such term or condition, or the right of such Party at any time to avail itself of such remedies as it may have for any breach or breaches of such term or condition. A waiver may only occur pursuant to the express written permission of an authorized officer of the Party against whom the waiver is asserted.

4.4 Severability. In the event any term, condition, or provision of this Agreement is declared or found by a court of competent jurisdiction to be illegal, unenforceable, or void, the Parties shall endeavor in good faith to agree to amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the Parties fail to agree on such amendments, such invalid term, condition, or provision shall be severed from the remaining terms, conditions, and provisions, which shall continue to be valid and enforceable to the fullest extent permitted by law.

4.5 Assignment. Except as otherwise provided herein, neither this Agreement nor any rights granted hereunder may be assigned or otherwise transferred by any Party, in whole or in part, whether voluntarily or by operation of law. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

4.6 Notices. Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) sent by registered or certified mail, postage prepaid, or (iii) sent by facsimile, and addressed as follows:

To Participant:

At the address for Participant(s) specified on page 1 of this Agreement.

To Agent:

Retirement Value, LLC
457 Landa Street, Suite B
New Braunfels, Texas 78130
Fax: (866) 498-4644

Mailing Address:

Retirement Value, LLC
P.O. Box 310635
New Braunfels, Texas 78131

Either Party may amend its address by written notice to the other Party in accordance with this section. Notices will be deemed to have been given at the time of actual receipt.

4.7 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties and supersedes and cancels, revokes, and rescinds all previous negotiations, agreements, and commitments, whether oral or in writing, with respect to the subject matter described herein, and neither party shall be bound by any term, clause, provision, or condition save

as expressly provided in this Agreement or as duly set forth in writing as a subsequent amendment to this Agreement, signed by duly authorized officers of each Party.

Mutual Agreement

The Parties agree that this transaction will be construed under the laws of the State of Texas, without regard to choice-of-law rules of any jurisdiction. Participant(s) and Agent agree that all claims, disputes, controversies, differences or other matters in question arising out of the relationship between Participant and Agent (and its officers, directors, agents and / or employees), related to this Agreement, or otherwise, shall be settled finally, completely and conclusively by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, by one or more arbitrators, chosen in accordance with the Rules. The decision of the arbitrator(s) shall be final and binding on all parties. Any arbitration held in accordance with this paragraph shall be private and confidential. On request of either party, the record of the proceeding shall be sealed and may not be disclosed except insofar, and only insofar, as may be necessary to enforce the award of the arbitrator(s). The prevailing party shall be entitled to recover all reasonable and necessary attorney's fees and costs from the non-prevailing party.


EXECUTED this 7th day of September, 2009.

Participant:


Signature

Thomas Louis Borok
Print Participant's Name (Print)

Participant:


Signature

N/A
Print Participant's Name (Print)

RETIREMENT VALUE, L.L.C.
a Texas limited liability company

By: 
Member

Dated: Sept 28, 2009

Licensee Information:		Licensee Number: borok1023	
Name: Thomas Louis Borok			
Tel: (972) [REDACTED]	Cell: (972) [REDACTED]	Fax: (972) [REDACTED]	



457 Landa Street, Suite B, New Braunfels, TX 78130 • Phones: (830) 624-8858 • (210) 833-9040 • Fax: (866) 498-1644 • www.retirementvalue.com

DISCLOSURE ACKNOWLEDGMENT

Please read carefully before initialing.

1. § 1 I have received and reviewed a Suitability Form and the Policy Participation Agreement describing the nature and risks associated with the participation in a re-sale life insurance policy.

2. 1
N/A I understand the undersigned financial consultant* (if such is signing) is my financial consultant, and is not an agent, employee, or representative of Retirement Value, LLC ("Retirement Value"). I further understand that any representations, advice, opinions or recommendations made by the undersigned financial consultant are his / hers alone and not the representations, advice, opinions or recommendations of Retirement Value, LLC.

3. § 1 I understand that any projected base-line expected gain from this transaction is calculated based on an estimated life expectancy for the person insured under the policy; that the actual earnings may vary substantially from the base-line expected gain because the actual life of the insured almost certainly will be less than or greater than rather than exactly equal to the estimated life expectancy; the net actual earnings will be higher if the insured passes away earlier than the life expectancy and lower if the insured passes away later than the life expectancy – due to the pro-rata refund of un-used premiums or having had to pay a pro-rata share of premiums due.

4. § 1 I understand that the insured in whose life insurance policy I am participating may outlive me, particularly if I am of advanced age.

5. § 1 I have been advised to consult my own tax advisor regarding the tax consequences of participating in a re-sale life insurance policy.

6. § 1 I understand and have been advised that I have the right to rescind or cancel my participation in any re-sale life insurance policy for ten (10) calendar days even after Retirement Value, LLC has received and accepted my application for participation and that if I elect to rescind my participation to receive a full refund of all initial participation funds without penalty or fee of any kind.

Unofficial copy. This document is for informational purposes only. It is not intended to be used as a substitute for legal or financial advice. Retirement Value, LLC is not responsible for any errors or omissions in this document. Price

7. [Signature]

I understand that re-sale life insurance policies are illiquid, that I will not have access to the funds used to participate in the re-sale life insurance policies until the policies mature due to the death of the insured, and that no one can determine with exact certainty when any policy will mature. Accordingly, I have determined that I have sufficient liquid assets or other income to provide for daily and emergency needs and thus can bear the risk of participating in these re-sale life insurance policies and not having access to these funds for an indeterminate period of time.

8. [Signature]

All of my questions concerning the re-sale life insurance policies I am considering have been answered. I understand the risk involved and have decided to participate with the understanding that any earnings on these policies will be realized by my estate, heirs or devisees should I pass away before the insured.

EXECUTED the 7th day of September, 2009.

PARTICIPANT
[Signature]
Signature

PARTICIPANT
N/A
Signature

FINANCIAL CONSULTANT*
N/A
Signature

* NOT a Retirement Vendor, LLC Licensee.

Unofficial copy Travis Co. District Clerk Melva Price

RETIREMENT
YOUR KEY TO A SECURE FUTURE
VALUE, LLC

457 Landa Street, Suite B, New Braunfels, TX 78130 • Phones: (830) 624-8838 (210) 832-9040 • Fax: (866) 498-4644 • www.retirementvalue.com

PARTICIPANT SUITABILITY FORM – ONE FOR EACH PARTICIPANT

Client-Participant information:

Name: Thomas Louis Borok
(Individual Name / Trust / Company)

If Trust – date of Trust: N/A

Spouse's Name: N/A

I am of sound mind and am able to determine on my own that participating in this program is a correct use of a portion of my net worth. I can afford to participate in this program knowing that my participation is illiquid for an indeterminate period of time. I feel that I have sufficient knowledge and experience in business and financial matters to determine whether or not this is a good use of a portion of my funds.

Please initial each line below that applies to you.

Investing Experience:

- I have the experience to analyze and determine whether participation in certain investments is suitable for me.
- If I feel it necessary, I will consult with a financial advisor before making any decisions.
- I have in the past or presently am invested in stocks, bonds, and ^{REITs} mutual funds traded on a national security exchange.
- I have in the past or presently am invested in commodities or future contracts.
- I have participated in other re-sale life insurance policies.
- I have a relationship with partners or companies that invest in real estate; ^{REITs FUNDS}
- I have other types of investments other than above, ^{municipal bonds and their funds; REITs}

Individual Annual Income	<input type="checkbox"/> \$50,000-\$150,000	<input checked="" type="checkbox"/> \$150,000-\$250,000	<input type="checkbox"/> \$250,000+
Total Household Income	<input type="checkbox"/> \$50,000-\$150,000	<input checked="" type="checkbox"/> \$150,000-\$250,000	<input type="checkbox"/> \$250,000+
Approximate Net Worth (Excluding primary residence)	<input type="checkbox"/> \$50,000-\$150,000	<input type="checkbox"/> \$150,000-\$250,000	<input checked="" type="checkbox"/> \$250,000-

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This section to be completed ONLY if an ADVISOR other than Retirement Value, LLC or its Licensees has assisted with this application.

- I have a professional advisor who is not affiliated with Retirement Value, LLC in any way and who has sufficient knowledge in business and financial matters to advise me in connection with my participation in this product and to determine that this is a viable option for a portion of my money.

Professional Advisor: _____

Address: _____

Telephone No.: _____

Title: _____

This section to be completed ONLY if Participant is a TRUST.

As the Trustee of a Trust, the Trust is interested in participating in the re-sale life insurance policies offered by Retirement Value, LLC and in receiving a pro-rata irrevocable co-beneficiary share of the death benefit of one or more of the policies for the Trust. I represent the following (please check any and all statements that pertain to you):

- I represent and warrant that I have full authority to enter into any agreement on behalf of the Trust. I am able to determine that participating in this program is a correct use of a portion of the net worth of the Trust. The Trust can afford to participate in this program knowing that the participation is illiquid for an indeterminate period of time. I feel that I have sufficient knowledge and experience in business and financial matters to determine whether or not this is a good use of a portion of the Trust's funds.

- The Trust has a professional advisor who is not affiliated with Retirement Value, LLC in any way and who has sufficient knowledge in business and financial matters to advise me in connection with the Trust's participation in this product and to determine that this is a viable financial option for the Trust.

Professional Advisor: _____

Address: _____

Telephone No.: _____

Title: _____

REPRESENTATIONS AND WARRANTIES

I represent that I have carefully read and examined the Policy Participation Agreement and determined that participation in one or more re-sale life insurance policies is appropriate and suitable for me. I understand the risks involved as explained by our Licensee. Understanding that participation in a re-sale life insurance policy is not liquid, I have adequate means to provide for day-to-day financial needs and would be able to meet financial obligations without this monetary participation. I represent that I can bear the financial risk for an indefinite period of time. I represent and warrant that I have read this Suitability Form and represent and warrant that the information contained in it is true, correct and accurate and may be relied on by Retirement Value, LLC.

[Signature] 9-7-09
Participant

09/07/2009
Date

SIGN HERE

N/A
*Joint Participant (only if Spouse of above Participant)

09/07/2009
Date

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Unofficial copy Travis Co. District Clerk Vonda Price



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LIMITED POWER OF ATTORNEY
RETIREMENT VALUE, LLC / CLIENT-PARTICIPANT

(Limited Power of Attorney is required for each Participant)

This Power of Attorney is made by and between Thomas Louis Borok
(hereinafter referred to as "Participant") and Retirement Value, LLC (hereinafter referred to as "Agent" or "Attorney-in-fact") appointing Retirement Value, LLC as Participant's true and lawful Agent and Attorney-in-fact for transacting Participant's acquisition of an irrevocable co-beneficiary status in a re-sale life insurance policy(ies).

My Attorney-in-fact is hereby authorized to act for me in my name, place and stead, and for my use and benefit, and to do, execute, or to concur with persons jointly interested with myself therein in the doing or executing of all or any of the acts, deeds and things set forth below as if same were my acts and deeds. My Attorney-in-fact shall have the following powers:

1. A. Enter into any and all contracts, agreements or documents necessary to facilitate the purchase by the Agent of a re-sale life insurance policy or policies or certificate(s) if a group policy in which I shall acquire an irrevocable co-beneficiary status through a Policy Participation Agreement executed by me.

B. Complete, record and file any document(s) necessary for the transfer of ownership with the insurance carrier and for irrevocable assignment of co-beneficiary status with the Escrow Agent of the purchased re-sale life insurance policy or certificate(s) if a group policy through a Policy Participation Agreement executed by me.

C. Concerning the disbursement of funds by the Escrow Agent, instruct and direct Escrow Agent in the funding or purchase of a policy or policies, payment of premiums to maintain said policy or policies in an in-force status, payment of any and all administrative, bank and escrow fees, including commissions, that are associated with the purchase of a re-sale life insurance policy or policies or certificate(s) if a group policy in which I shall acquire an irrevocable co-beneficiary status through a Policy Participation Agreement executed by me.

D. Do any and all other actions that may be necessary to facilitate the acquisition of a policy or policies designated by a Policy Participation Agreement executed by me.

E. Notify Participant of any additional premium monies needed if it becomes necessary for the Participant to contribute additional funds to keep the re-sale life insurance policy designated by a Policy Participation Agreement executed by me in-force.

F. Upon the death of any insured, obtain the death certificate and instruct the Escrow Agent as to the disbursement of the death benefit to the Participant or the Participant's designee.

G. If for whatever reason Escrow Agent resigns or terminates its contract with Agent, Agent can appoint another escrow agent to take its place and Agent can transfer all funds and related records to the successor escrow agent and the successor escrow agent shall then assume all duties and obligations of the Escrow Agent. The Escrow Agent shall have no liability for the successor escrow agent.

2. This Power of Attorney is for the sole purpose of designating Agent as the Participant's Attorney-in-fact for the purpose of purchasing a re-sale life insurance policy(ies) to be owned by the Agent, to facilitate the acquisition and maintaining of an irrevocable co-beneficiary standing by the Participant through the Escrow Agent with regard to said policy or policy(ies), and shall convey no other authority.

3. This Power of Attorney DOES NOT give license to Attorney-in-fact to change in any way the designation of the Participant's contingent irrevocable co-beneficiary(ies) for any re-sale life insurance policy designated by a Policy Participation Agreement executed by me.

4. This Power of Attorney DOES NOT give Agent authority to take any action to deny or deprive Participant of Participant's irrevocable co-beneficiary status in any policy or policies without specific instructions from Participant.

5. This Power of Attorney DOES NOT give Attorney-in-fact authority to disburse Participant's funds for any purpose not specifically delineated within this Power of Attorney.

6. This Power of Attorney may be terminated at any time by either party with written notice to the other.

7. This Power of Attorney represents the entire and sole agreement between the Parties herein with all provisions to be enforced as provided herein. No other representations, agreements or covenants, whether written or oral, shall govern this relationship.

RETIREMENT VALUE. LLC
a Texas limited liability company

By: W. Leddy
Member

Dated: Sept. 25, 2009

Participant

Thomas Louis Borok
Signature

Thomas Louis Borok
Print Name

Dated: 09/07/2009

SIGN HERE

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SPECIAL POWER OF ATTORNEY
LICENSEE / CLIENT-PARTICIPANT
(Special Power of Attorney is required for each Participant)

The undersigned ("Client-participant") hereby appoints Thomas Louis Borok ("Licensee") as its Agent and Attorney-in-fact to review, evaluate, and direct Retirement Value, LLC ("Retirement Value") as to Client-participant's participation in re-sale life insurance policy on the Client-participant's behalf. In all such participation, Retirement Value, LLC is authorized to follow the instructions of Client-participant's Agent in every respect concerning the Client-participant, and is authorized to act for the Client-participant and in the Client-participant's behalf in the same manner and with the same force and effect as Client-participant might or could with respect to any such participation, as well as with respect to all other things necessary or incidental to the furtherance or conduct of such participation or the maintenance or protection of any interest in any re-sale life insurance policy which Client-participant selects.

Client-participant hereby acknowledges that Retirement Value, LLC will rely on this authorization in taking instruction and direction from Client-participant's Agent on behalf of the Client-participant. Client-participant agrees to indemnify and hold Retirement Value, LLC harmless from any and all claims or damages whatsoever arising out of compliance with instructions or directions issued by Client-participant's Agent pursuant to Agent's authorization.

Retirement Value, LLC does not by implication or otherwise endorse the operational methods of Agent. Client-participant further understands that Retirement Value, LLC relies on the direction and instruction of Client-participant as to the selection and amount of any re-sale life insurance policy interest participated in and that, by granting this power to Client-participant's Agent to exercise Client-participant's rights of discretion and instruction to Retirement Value, LLC, Client-participant does so at its own risk.

Client-participant hereby ratifies and confirms any and all transactions with Retirement Value, LLC heretofore and hereafter made by Client-participant's Agent on behalf of the Client-participant.

This authorization and indemnity is in addition to (and in no way limits or restricts) any rights which Retirement Value, LLC may have under any other agreement or agreements between the Client-participant and Retirement Value, LLC. This authorization and indemnity is continuing, and shall remain in full force and effect until revoked by the Client-participant via written notice addressed to and received by Retirement Value, LLC at 457 Landa Street, Suite B, New Braunfels, Texas 78130 (mailing address: P.O. Box 310635, New Braunfels, Texas 78131-0635). Any such revocation shall not affect any liability in any way resulting from transactions initiated prior to such revocation.

This authorization and indemnity shall inure to the benefit of Retirement Value, LLC and any successors or assigns.

Client-participant understands fully the obligations which Client-participant has assumed by executing this Power of Attorney. Client-participant understands that Client-participant's Agent is not an agent, employee, partner or affiliate of Retirement Value, LLC and that Retirement Value, LLC is in no way responsible for any loss or damages occasioned by the actions or advice of the individual or organization named above.

Licensee

Thomas Louis Borok 9-7-09
Signature

Thomas Louis Borok
Print Name

Dated: 09/07/2009

Client-Participant

Thomas Louis Borok 9-7-09
Signature

Thomas Louis Borok
Print Name

Dated: 09/07/2009

SIGN HERE

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Unofficial copy Travis Co. District Clerk Velda L. Price

FROM STOCKS AND BONDS THROUGH BETTING ON DEATH THE APPLICABILITY OF SECURITIES LAWS AND THE REGULATION OF NEW AND CREATIVE INVESTMENTS

BY JOSEPH J. ROTUNDA & MOGEY LOVELLE

WIDESPREAD SKEPTICISM OF VOLATILE SECURITIES markets and fears of crooked securities dealers are not modern phenomena. Swindlers and scoundrels have peddled worthless paper to the investing public for well over a century. The Texas legislature and other state governments responded by enacting statutes to protect investors while promoting legitimate capital markets.

The state statutes complement federal law, and together they establish a broad framework that regulates the nationwide sale of securities. The flexibility of the laws, however, has resulted in the inconsistent regulation of new and innovative offerings, such as investments in viatical and life settlement contracts. These products typically involve the purchase of an interest in the proceeds of a third-party's life insurance policy. The profitability of the investments generally correlate with the life of an insured person, and the purchase of the investments is therefore referred to as "betting on death."

The History of State Securities Regulation
In 1911, the Kansas legislature enacted the first statute that regulated the sale of securities to the public.¹ The law is commonly known as a "blue sky law"² as a reference to scam artists who promised to alleviate a severe drought by providing rain.³ Instead of changing the weather, they provided only a clear blue sky.

At the time, Texas was also beset by con men who were selling phony and fraudulent investments.⁴ In 1913, the Texas Legislature responded by enacting the state's first law that regulated securities transactions.⁵ The statute was amended and supplemented by a series of laws.⁷ These laws provided only the modest regulation of securities transactions and therefore did not effectively protect the public from traveling charlatans and fly-by-night swindlers.⁸

In 1957, the Texas legislature enacted a new statute that established the modern framework for the state's regulation of securities.⁹ The law became known as the Securities Act,¹⁰ and it established a foundation that required the registration of securities offerings and the registration of persons engaging in securities transactions.¹¹ The new statute also required that all persons involved in the offer and sale of securities be truthful and disclose all material facts to the public.¹²

The foundation established by state law is similar to the framework established by federal law, except that the federal statutes are primarily designed to regulate securities transactions that involve interstate commerce, institutional investment advisers, national securities markets and exchange-traded investments.¹³ For example, the Securities Act of 1933 regulates interstate securities transactions and prohibits fraudulent securities schemes.¹⁴ The Securities and Exchange Act of 1934 expanded the scope of these provisions by incorporating the regulation of prominent securities exchanges and the brokerage industry.¹⁵ Together, the Texas Securities Act, other state securities laws, and the federal laws serve as the predicate for the nationwide regulation of securities transactions.

Together, the Texas Securities Act, other state securities laws, and the federal laws serve as the predicate for the nationwide regulation of securities transactions.

The Applicability of the Securities Laws to Traditional Securities Offerings

The federal and state laws broadly apply to transactions that involve securities.¹⁶ The Securities Act of 1933 and the Securities and Exchange Act of 1934 define the term "security" to include a virtual laundry list of instruments, including notes, stock, bonds, debentures and other instruments commonly known as securities.¹⁷ The Texas Securities Act contains a similar definition.¹⁸

The expansive scope of the laws was necessary to restore confidence in the unregulated securities markets¹⁹ and eliminate dishonesty and fraudulent practices.²⁰ The statutes

EXHIBIT
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do not, however, provide a general remedy for all fraud or regulation of all financial transactions.²¹ They apply only to transactions involving securities. The courts are largely responsible for determining whether a particular instrument constitutes a security subject to regulation.²² This determination is necessary even when a particular instrument is specifically named as a security under the law.

For example, in *United Housing Foundation, Inc. v. Forman*, the United States Supreme Court considered whether an instrument referred to as "stock" actually constituted "stock" as that term is set forth in the securities laws.²³ The case involved stock that was issued by a company that owned and operated an innercity housing project.²⁴ Low income families were required to purchase the stock to obtain the right to occupy an apartment. They were not purchasing the stock as an investment and were contractually forbidden from selling the stock for a profit.²⁵ The purchase of stock was essentially a recoverable deposit on the apartment.²⁶

The Court reasoned that the characterization of a particular transaction did not conclusively determine whether it constituted a security.²⁷ Instead, the Court reasoned that nomenclature has some relevance to the nature of the transaction,²⁸ but also that "form should be disregarded for substance and the emphasis should be on economic reality."²⁹ In following this principle, the Court determined that the economic reality was that families were induced to purchase the stock simply to occupy an apartment and that they were not purchasing instruments to secure a profit.³⁰ It therefore held that the stock did not constitute a security.³¹

Likewise, in *Reves v. Ernst & Young*, the United States Supreme Court analyzed whether a note issued by cooperative constituted a security.³² The notes were not collateralized, paid a variable rate of interest and were sold to members and nonmembers to raise money to support general business operations.³³ The Court held that all notes are presumed to be securities, but that the presumption could be rebutted when the instrument bears a "strong resemblance" to a series of factors referred to as the "family resemblance test."³⁴ These standards were designed to distinguish between notes sold as investments and notes that are clearly not securities, such as notes secured by a mortgage on a home or a note delivered in a commercial financing transaction.³⁵ In applying these factors, the Court

held that the notes issued by the cooperative constituted securities.³⁶

The Applicability of the Securities Laws to Creative Securities Offerings

The scope of the securities laws is not limited to stocks, notes and other traditional investments. Instead, the definition of 'security' is "sufficiently broad to encompass virtually any instrument that might be held as an investment."³⁷ The United States Supreme Court has explained that

[T]he reach of the [1933] Act does not stop with the obvious and commonplace. Novel, uncommon, or irregular devices, whatever they appear to be, are also reached if it be proved as matter of fact that they were widely offered or dealt in under terms or courses of dealing which established their character in commerce as 'investment contracts.'³⁸

The Court reasoned that nomenclature has some relevance to the nature of the transaction, but also that "form should be disregarded for substance and the emphasis should be on economic reality."

In *SEC v. W.J. Howey Co.*, the United States Supreme Court set forth a test to determine whether a particular instrument constituted an "investment contract."³⁹ The case involved an issuer that sold plots of land used to grow citrus.⁴⁰ Most investors purchased the plots and contracted with an affiliated

company to cultivate and develop the groves and harvest and market the fruit.⁴¹ They were told that the management of the citrus groves should generate a ten percent annual return over a ten year period.⁴²

The Court considered whether the purchase and management agreements constituted "investment contracts." It established a standard previously recognized by state courts⁴³ and inferior federal courts,⁴⁴ reasoning that an investment contract was a scheme that involves an investment of money in a common enterprise with profits to come solely from the efforts of the promoter or a third party.⁴⁵ It also explained that this test "embodies a flexible, rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits."⁴⁶ It applied this broad standard to the contracts for the purchase of land and the contracts for the management of citrus groves and determined that together they constituted investment contracts and were therefore securities.⁴⁷

The Texas Supreme Court adopted this standard in *Searsy*

*v. Commercial Trading Corp.*⁴⁸ The Court also, however, reasoned that any requirement that profits be derived exclusively from the promoter or a third party would be a "blind and mechanical" application of the law that could be readily evaded by simply requiring an investor to "exert some modicum of effort."⁴⁹ It therefore drew upon federal and state precedent to restate the test as (1) an investment of money (2) in a common enterprise (3) with an expectation of profits (4) where the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.⁵⁰

The standards set forth in *Howey* and *Sears* were recently revisited in *SEC v. Edwards*.⁵¹ The case involved an issuer that sold investments whereby investors purchased payphones and leased the payphones to the promoter in exchange for a fixed monthly return.⁵² The promoter, in turn, selected the site for the payphone, installed the payphone, arranged for service and collected revenues.⁵³ The promoter promised to refund investors' principal at the end of the term of the lease.⁵⁴

The Eleventh Circuit Court of Appeals held that the investments did not qualify as investment contracts because investors were promised a fixed return instead of a variable return.⁵⁵ The Court explained that, in this context, profits were not derived from the efforts of others because investors would receive a predetermined payment regardless of the profitability of the payphones.⁵⁶ It therefore held that the investments did not qualify as investment contracts and they were not securities.

The United States Supreme Court granted certiorari to consider whether an investment that purported to provide investors with a fixed return could constitute an investment contract.⁵⁷ The Court reaffirmed the flexible test articulated in *Howey* and the congressional intent to "regulate investments, in whatever form they are made and by whatever name they are called."⁵⁸ It applied these principles and determined that instruments can qualify as investment contracts regardless of whether they promised to provide fixed or variable returns.⁵⁹

Many other state courts also adopted some version of the standards articulated in *Howey* and reaffirmed in *Edwards*, and the investment contract analysis has since been applied to a wide variety of innovative instruments.⁶⁰ These products include investments in earthworm farms,⁶¹ truck-mounted mobile billboards,⁶² chinchilla ranches,⁶³ and programs

that purportedly generated revenue through the trading of American rice for African diamonds.⁶⁴

The Regulation of Investments in Viatical and Life Settlement Contracts

The federal and state courts have continued to apply the investment contract analysis to new and unique offerings. These creative offerings include sales of investments in viatical and life settlement contracts,⁶⁵ which typically involve the purchase of an interest in a portion of the proceeds of a life insurance policy.⁶⁶ Investors generally pay a specified amount of money to purchase the investment and also contribute enough money to pay their pro rata share of premiums that will come due and owing during the estimated life of the insured person.⁶⁷ When the insured dies, the investor receives a return derived from the proceeds of the life insurance policy.⁶⁸

An overwhelming majority of states regulate investments in viatical and life settlement contracts as securities.⁶⁹ Federal appellate courts and Texas courts applying the flexible *Howey* and *Sears* tests, however, have not reached a consensus about whether these investments constitute investment contracts.⁷⁰

For example, in *SEC v. Life Partners, Inc.*, the Court of Appeals for the District of Columbia Circuit analyzed whether fractional interests in viatical settlements sold by Life Partners, Inc., constituted investment contracts.⁷¹ In connection with the sale of these fractional interests, Life Partners performed "a number of pre-purchase functions."⁷² The company was responsible for evaluating the insured's medical condition, reviewing his or her insurance policy, negotiating the sale of the insurance policy and preparing the necessary legal documents.⁷³ At various times during the litigation at the trial court, Life Partners also performed a number of post-purchase functions, such as monitoring the health of the insured and ensuring that premiums were paid and that the insurance policy did not lapse.⁷⁴

The Court's application of the *Howey* test focused on the fourth factor: whether the services provided by Life Partners qualified as "managerial efforts of others."⁷⁵ Instead of broadly applying this standard, the Court drew a distinction between pre-purchase services and post-purchase.⁷⁶ It reasoned that

[w]hile we doubt that pre-purchase services should ever count for much, for present purposes we need only agree... that pre-purchase services cannot by themselves suffice to make the profits of an investment arise predominantly from the efforts of

others, and that ministerial functions should receive a good deal less weight than entrepreneurial activities.⁷⁷

The Court explained that profits derived from the fractional interests were not attributable to Life Partners' pre-purchase or post-purchase services.⁷⁸ Instead, it reasoned that the longevity of the insured was "of overwhelming importance to the value of the viatical settlements marked by [Life Partners]."⁷⁹ It therefore held that the viatical settlements were not securities.⁸⁰

In *Griffitts v. Life Partners, Inc.*,⁸¹ the Tenth Circuit of Appeals of Texas also considered whether investments in viatical settlements sold by Life Partners constituted investment contracts. It relied heavily on *Life Partners* in reasoning that the profitability of the viatical settlements was not the result of managerial efforts but rather the result of the mortality of insured.⁸² It therefore held that viatical settlements did not constitute investment contracts and were therefore not subject to regulation as securities under state law.

The applicability of the *Howey* test to investments in viatical settlements was recently revisited by the Eleventh Circuit Court of Appeals in *SEC v. Mut. Benefits Corp.*⁸³ The Eleventh Circuit therein rebuked *SEC v. Life Partners* in holding that a promoter's viatical settlement contracts constituted investment contracts and were therefore securities. It stressed that the test for an investment contract requires the courts to "broadly apply" the securities laws to all "schemes derived by those who seek the use of money of others on the promise of profits"⁸⁴ and held that the promoter

offered what amounts to a classic investment contract. Investors were offered and sold an investment in a common enterprise in which they were promised profits that were dependent on the efforts of the promoter. [A]ll investors here relied on the pre- and post-purchase managerial efforts of [the issuer] to make a profit on the investment in viatical settlement contracts. The investors here relied on [the issuer] to identify terminally ill insured, negotiate purchase prices, pay premiums, and perform life expectancy evaluations critical to the success of the venture. The flexible test we are instructed to apply by *Howey* and *Edwards* covers these activities, qualifying [the issuer's] viatical settlement contracts as "investment contracts . . ."⁸⁵

The Texas appellate courts have not considered the application of the *Howey* and *Sears* tests to investments in viatical or life

settlement contracts since *SEC v. Mut. Benefits Corp.* Several district courts have considered the issue, but their rulings have only served to foster uncertainty about the applicability of the Texas Securities Act to investments in the proceeds of life insurance policies.⁸⁶ The inconsistency will remain unless the matter is conclusively resolved by the Texas Legislature, the Texas Supreme Court or the Texas Court of Criminal Appeals.

Conclusion

The state and federal securities laws establish the framework that regulates securities transactions. These laws account for the sale of traditional investments, such as stocks and notes, as well as the sale of innovative investments frequently characterized as "investment contracts." The flexibility of the scope of the law, however, has created an inconsistency in the treatment of investments in viatical and life settlement contracts. These issues will not be resolved until addressed by the legislature or higher courts.

Joseph J. Rotunda is an attorney and the Director of the Enforcement Division of the Texas State Securities Board. Moge Lovelle is an attorney and an Assistant Director for the Enforcement Division of the Texas State Securities Board. ✽

1 1913 Kan. Sess. Laws Ch. 133.
2 See 100 Years of Securities Law: Examining a Foundation Laid in the Kansas Blue Sky, WASHBURN LAW JOURNAL, Volume 50, No. 3. (crediting the Kansas Banking Commissioner with first referring to the state's securities law during sworn testimony to the Kansas legislature). The phrase has also been attributed to other sources, see 12 JOSEPH C. LONG, BLUE SKY LAW § 1:01 (November 2009) (explaining that the phrase "blue sky laws" originated from "a comment by the United States Supreme Court").
3 Id.
4 Id.
5 TEX. STATE SEC. BD., THE FIRST FIFTY YEARS, A HISTORY OF THE TEXAS STATE SECURITIES BOARD 1957-2007 1 (2007). (Texas Banking Commissioner B. L. Gill warned that "because other States are adopting laws to control the sale of stocks . . . sharks are coming in droves to those states, like Texas, which have no laws controlling the sale of stock.")
6 Id.
7 Id. at 2-8.
8 Id. at 8.
9 Id. at 7-8.
10 The statute is now cited as the Securities Act, Tex. Rev. Civ. Stat. Ann. art. 581-1 et seq. (West 2010 & Supp. 2011). This article refers to the Securities Act as the "Texas Securities Act" to avoid confusion with other statutes, such as the Securities Act of 1933 and the Securities and Exchange Act of 1934.
11 The statute has since been amended to include a number of

exemptions from the registration requirements. Tex. Rev. Civ. Stat. Ann. art. 581-5 (West 2010) (Exempt Transactions) and art. 581-6 (West 2010) (Exempt Securities). The exemptions are similar to exemptions codified in federal statutes and other blue sky laws. The exemptions are matters of public policy, such as the recognition that the protections provided by registration are not necessary for large institutional investors. 12 LONG, *supra* note 2 at § 4.01.

¹² THE FIRST FIFTY YEARS at 8.

¹³ The Senate Report for the Securities Act of 1933 explained that "the purpose of this bill is to protect the investing public and honest business. The basic policy is that of informing the investor of the facts concerning securities to be offered for sale in interstate and foreign commerce and providing protection against fraud and misrepresentation. S. REP. NO. 47, 73d Cong., 1st Sess. 1 (1933) (emphasis added); 12 LONG, *supra* at § 1:01 et seq. (discussing the differences between the scope of federal law and state law").

¹⁴ Securities Act of 1933, 15 U.S.C. § 77a et seq. (2006 & Supp. IV 2010).

¹⁵ Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq. (2006 & Supp. IV 2010).

¹⁶ SEC v. W. J. Howey Co., 328 U.S. 293, 299 (citing H.R. REP. NO. 73-85 at 11 (1933) (referencing "the many types of instruments that in our commercial world fall within the ordinary concept of a security")); *Reves v. Ernst & Young*, 494 U.S. 56, 61 (1990) (explaining that "Congress' purpose in enacting the securities laws was to regulate investments, in whatever form they are made and by whatever name they are called").

¹⁷ 15 U.S.C. § 77a at 2(a)(1) and 15 U.S.C. § 78a at 1(a)(10).

¹⁸ The Texas Securities Act specifically defines the term to 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 right, 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." Tex. Rev. Civ. Stat. Ann. art. 581-4A (West 2010).

¹⁹ *Marine Bank v. Weaver*, 455 U.S. 551, 556 (1982) (explaining that the definition of "security" is "quite broad" and that the federal securities laws were "adopted to restore investors' confidence in the financial markets").

²⁰ The United States Senate explained that the purpose of the Securities Act of 1933 is to protect the investing public and honest business. The basic policy is that of informing the investor of the facts concerning securities to be offered for sale in interstate and foreign commerce and providing protection against fraud and misrepresentation. The aim is to prevent further exploitation of the public by the sale of unsound, fraudulent, and worthless securities

through misrepresentation; to place adequate and true information before the investor; to protect honest enterprise, seeking capital by honest presentation, against the competition afforded by dishonest securities offered to the public through crooked promotion; to restore the confidence of the prospective investor in his ability to select sound securities; to bring into productive channels of industry and development capital which has grown timid to the point of hoarding; and to aid in providing employment and restoring buying and consuming power.

Maura K. Monaghan, An Uncommon State of Confusion: The Common Enterprise Element of Investment Contract Analysis, 63 *Fordham L. Rev.* 2107, 2140-41 (1995) (citing S. Rep. No. 47, 73d Cong., 1st Sess. 1 (1933)); Tex. Rev. Civ. Stat. Ann. art. 581-10-1.B (West 2010) (this Act may be construed and implemented . . . to protect investors.");

²¹ *Marine Bank*, 455 U.S. at 556 (explaining that "Congress, in enacting the securities laws, did not intend to provide a broad federal remedy for all fraud") (citing *Great Western Bank & Trust Co.*, 532 F.2d 1252, 1253 (9th Cir. 1976) and *Bellah v. First National Bank*, 495 F.2d 1109, 1114 (5th Cir. 1974)).

²² *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 848 (1975) (explaining that the courts ultimately decide "which of the myriad financial transactions in our society" are securities).

²³ *Id.* at 840.

²⁴ *Id.* at 841-44.

²⁵ *Id.* at 842-43.

²⁶ *Id.* at 842.

²⁷ *Id.* at 848.

²⁸ *Id.* at 850-51.

²⁹ *Id.* at 848 (quoting *Tcherepnin v. Knight*, 389 U.S. 332 (1967)).

³⁰ *Id.* at 851. The Court also emphasized that the instruments did not provide many of the common characteristics of traditional stock. It explained, for example, that the instruments were not negotiable, could not be pledged and did not confer any proportional voting rights. The instruments also lacked "the most common feature of stock: the right to receive 'dividends contingent upon an apportionment of profits.'" (quoting *Tcherepnin*, 389 U.S. at 339).

³¹ *Id.* at 859-60.

³² *Reves*, 494 U.S. 56 at 58.

³³ *Id.* at 58-59.

³⁴ *Id.* at 67.

³⁵ *Id.* at 63-64; *Exchange Nat'l Bank of Chicago v. Touche Ross & Co.*, 544 F.2d 1126, 1137 (2d Cir. 1976) (identifying notes that are clearly not securities).

³⁶ *Id.* at 70.

³⁷ *Id.* at 61.

³⁸ *SEC v. C.M. Joiner Leasing Corp.*, 320 U.S. 344, 351 (1943).

³⁹ *W.J. Howey*, 328 U.S. at 294.

⁴⁰ *Id.* at 294-95.

⁴¹ *Id.*

⁴² *Id.* at 296.

⁴³ *Id.* at 298 (explaining that the term "investment contract" had been "broadly construed by state courts . . ."; *State v. Gopher Tire*

& Rubber Co., 177 N.W. 937 (1920), *Stevens v. Liberty Packing Corp.*, 161 A. 193 (1932)).

⁴⁴ *Id.* at 299 (citing *Acherton v. United States*, 128 F.2d 463; *Penfield Co. v. SEC*, 143 F.2d 746; *SEC v. Universal Service Ass'n.*, 106 F.2d 232; *SEC v. Crude Oil Corp.*, 93 F.2d 844; *SEC v. Bailey*, 41 F. Supp. 647; *SEC v. Payne*, 35 F. Supp. 873; *SEC v. Bourbon Sales Corp.*, 47 F. Supp. 70; *SEC v. Wickham*, 12 F. Supp. 245; *SEC v. Timetrust, Inc.*, 28 F. Supp. 34; *SEC v. Pyne*, 33 F. Supp. 988).

⁴⁵ *Id.* at 298-99.

⁴⁶ *Id.* at 299.

⁴⁷ *Id.* at 299-300.

⁴⁸ *Searsy v. Commercial Trading Corp.*, 560 S.W.2d 637, 639-40 (1977) (citing *Clayton Brokerage Co. of St. Louis v. Mauer*, 520 S.W.2d 802 (Tex. Civ. App.—Austin, writ ref'd n.r.e.), *dismissed as moot on reh'g per curiam*, 531 S.W.2d 805 (Tex. 1975) and *King Commodity Co. of Tex. v. State*, 508 S.W.2d 439 (Tex. Civ. App.—Dallas 1974, no writ)).

⁴⁹ *Id.* at 641. The Texas Supreme Court specifically reasoned that judicially cases construing the *Howey* test gave literal effect to the phrase "solely from the efforts of others." The investor was required to have exerted no effort with regard to the investment. The more recent trend, however, and in our view the more reasonable approach, is to use a more realistic test which inquires whether the investor made any significant efforts. The "solely from the efforts of others" requirement could be easily evaded by requiring the investor to exert some modicum of effort, such as picking one orange in the *Howey* citrus groves. This would be a blind and mechanical view of what constitutes an investment contract.

⁵⁰ *Id.* at 640.

⁵¹ *SEC v. Edwards*, 540 U.S. 389 (2004).

⁵² *Id.* at 391.

⁵³ *Id.* at 391-92.

⁵⁴ *Id.* at 392.

⁵⁵ *SEC v. ETS Payphones, Inc.*, 300 F.3d 1281, 1284-85 (11th Cir. 2002) (per curiam).

⁵⁶ *Id.* at 1285.

⁵⁷ *Edwards*, 540 U.S. at 391.

⁵⁸ *Id.* at 393-94.

⁵⁹ *Id.* at 397.

⁶⁰ Timothy P. Davis, *Should "Virtual Settlements Be Considered "Securities" Under the 1933 Act?*, 6 KAN. J.L. & PUB. POL'Y 75, 78 (1997) (identifying a wide variety of cases that involved the application of the investment contract test).

⁶¹ *Smith v. Gross*, 504 F.2d 639 (9th Cir. 1979).

⁶² *SEC v. Mobile Billboards of America*, Civil Action No. 1:04-CV-2763 (N.D. Ga. Sept. 21, 2004).

⁶³ *Miller v. Cent. Chinchilla Group, Inc.*, 494 F.2d 414 (8th Cir. 1974).

⁶⁴ *Calwell v. State*, 95 S.W.3d 563 (Tex. App. — Houston [1 Dist.] 2003, pet. ref'd).

⁶⁵ Virtual settlements and life settlements are substantially similar. Virtual settlements typically involve the sale of life insurance policies that insure the lives of persons suffering from a serious or terminal medical condition. Life settlements primarily differ in

that the insured does not suffer from a serious or terminal medical condition. United States Government Accountability Office, Report to the Special Committee on Aging, U.S. Senate, *Life Insurance Settlements, Regulatory Inconsistencies May Pose a Number of Challenges* at 12 (July 2010) (describing the differences between life settlements and viatical settlements); Kelly J. Brozanic, *An Investment to Die For: From Life Insurance to Death Bonds, the Evolution and Legality of the Life Settlement Industry*, 230 Penn State Law Rev. 113 (2008).

⁶⁶ Brozanic at 233-34.

⁶⁷ Miriam R. Albert, *Selling Death Short: The Regulatory and Policy Implications of Viatical Settlements*, 61 ALB. L. REV. 1013 (1998).

⁶⁸ Investments in life settlements are created and offered in various forms and this explanation should not be taken as an exhaustive definition of the structure of all such offerings.

⁶⁹ United States Government Accountability Office, Report to the Special Committee on Aging, U.S. Senate, *Life Insurance Settlements, Regulatory Inconsistencies May Pose a Number of Challenges* at 12 (July 2010) (recognizing that "all but two states regard investments in life settlement[s] as securities under their securities laws").

⁷⁰ Miriam R. Albert, *The Howey Test Turns 64: Are the Courts Grading this Test on a Curve?*, 2 WM. & MARY BUS. L. REV. 1, 20 (2011) (discussing the manner in which the flexibility of the scope of the securities laws has resulted in "inconsistent outcomes" and recognizing that "this is . . . the case with resale of pools of fractionalized interests in life insurance policies").

⁷¹ *SEC v. Life Partners, Inc.*, 87 F.3d 536, 538 (D.C. Cir. 1996).

⁷² *Id.* at 539.

⁷³ *Id.*

⁷⁴ *Id.* at 540.

⁷⁵ *Id.* at 544-49. Although the court referred to this factor as the "third part of the *Howey* test," this article will continue to refer to it as the fourth element.

⁷⁶ *Id.* at 548.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Griffitts v. Life Partners, Inc.*, No. 10-01-00271-CV, 2004 WL 1178418 (Tex. App. —Waco, May 26, 2004, no pet.) (mem. op., not designated for publication).

⁸² *Id.*

⁸³ *SEC v. Mut. Benefits Corp.*, 408 F.3d 737 (11th Cir. 2005).

⁸⁴ *Id.* at 743 (citing *SEC v. W.J. Howey*, 328 U.S. 293, 299 (1946)).

⁸⁵ *Id.*

⁸⁶ E.g., in *Arnold v. Life Partners, Inc.*, No. DC-11-02995 (14th Dist. Ct., Dallas County, Tex. Nov. 29, 2011), the 14th Judicial District Court of Dallas County granted a motion for summary judgment in favor of the seller of investments in the proceeds of life insurance policies. However, in *State v. Ret. Value, I.I.C.*, No. D-1-GV-10-000454 (126th Dist. Ct., Travis County, Tex., Dec. 7, 2011), the 126th Judicial District Court of Travis County, Texas,

granted the State's motion for summary judgment and held that the underlying investments in life settlement contracts constituted securities. Additionally, after litigation at the State Office of Administrative Hearings, the Securities Commissioner recently found that two different investments that were predicated upon life settlement contracts were securities. Tex. State Sec. Bd., *In the Matter of AGAP Life Offerings, LLC, Charles D. Madden and Matthew Scarle*, Order No. ENF-L-CDO-1697, 2011 WL 280998 (Jan. 20, 2011) (order modifying emergency cease and desist order), and Tex. State Sec. Bd., *In the Matter of The Stamford Group, Inc., Stamford Portfolio Management, LLC, Stamford Group 2004C, LLC, Deborah A. Wilcox, Keith Halcomb and David R. Jung*, Order No. ENF-CDO-1699, 2011 WL 772242 (Feb. 24, 2011) (order modifying emergency cease and desist order). Orders also available at http://www.ssb.state.tx.us/Enforcement/Recent_Enforcement_Actions.php.

Unofficial copy Travis Co. District Clerk Velva L. Price

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 Edelstein and Qvest III Master Fund LLC, Matthew C. Allen, Jr., Trustees 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 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 Intervenor has 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 320 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 R. 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 in 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 s/he 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 paragraphs 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. Rogers 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 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 other person including without limitation Wells Fargo Bank, N.A., Wells Fargo Advisors, LLC, Wells Fargo Investments, LLC, Whitney Giles, Ronald Jones, 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 role 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 Settlement 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 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 Intervenor Releasers or those asserting a claim by, through or under them. By this release, the Intervenor 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 LLC, 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 Releasor") 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 Intervenor 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 Term. 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.

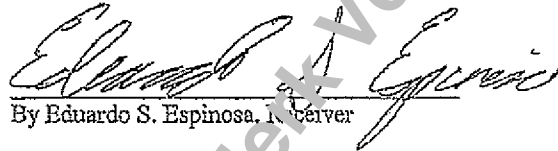
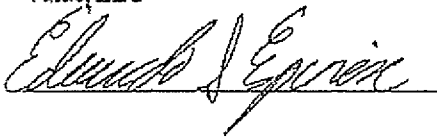
(j) Counterparts. This instrument may be executed in multiple original counterparts, each of which shall be deemed an original for all purposes. No single counterpart of this Agreement need be executed by all of the Parties, so long as each of the Parties shall have executed at least one counterpart.

[SIGNATURE PAGES FOLLOW]

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

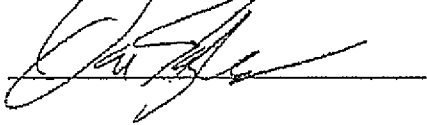
EDUARDO S. ESPINOSA, in his capacity as the court-appointed Receiver for Retirement Value, LLC

RETIREMENT VALUE, LLC


By Eduardo S. Espinosa, Receiver

Unofficial copy Travis Co. District Clerk Velda 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

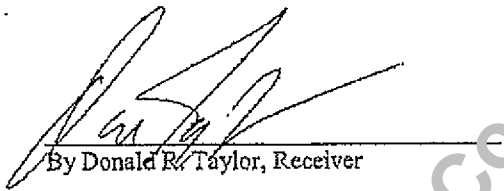


HILL COUNTRY FUNDING, LLC (TEXAS)



By Donald R. Taylor, Receiver


HILL COUNTRY FUNDING, LLC (NEVADA)



By Donald R. Taylor, Receiver

Unofficial copy Travis Co. District Clerk Velda 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: _____

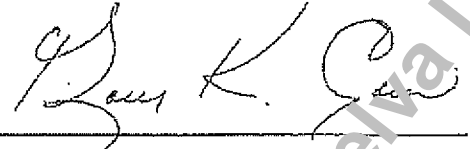
Its:

BARRY EDELSTEIN

Unofficial copy Travis Co. District Clerk Velda L. Price

QVEST III MASTER FUND, LLC

DR. GARY CAIN



By: _____

Its:

BARRY EDELSTEIN

Unofficial copy Travis Co. District Clerk Velda 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 Velva L. Price

MATTHEW C. ALLEN, JR., TRUSTEE under the
Matthew 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

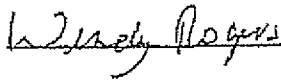
LADDELL HARRISON

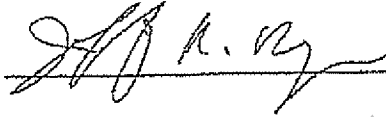
Teddie Allen

LaddeLL Harrison

WENDY ROGERS

JEFF R. ROGERS

 _____

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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 or 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 in 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 28 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. Any 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 corporation 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, canceling, 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 viatical settlement 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(s) appointing him Receiver of Retirement Value, LLC.

IT IS FURTHER ORDERED that no bond is required of the State of Texas pursuant to TEX. GOVT 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