



securities sold by Retirement Value. See Exhibits A and J. The background, which is shown by the Travis County district clerk's file in this case, is as follows.

The State of Texas, acting by and through Greg Abbott, then the Attorney General of Texas, and at the request of John Morgan, Securities Commissioner of the State of Texas, brought suit upon verified information complaining of Retirement Value, Wendy Rogers and others.

The suit alleged that Retirement Value, Rogers and others organized Retirement Value to fraudulently sell unregistered securities to the investing public. Specifically, the petition alleged, defendants offered for sale and sold investments in the death benefits of life insurance policies. From April 2009, through February 28, 2010, they raised \$77 million from over 800 investors through the sale of these fraudulent securities.

The State sought receivership, injunctive relief, restitution, disgorgement and other equitable relief under the Texas Securities Act, Tex. Rev. Civ. Stat. art. 581-1 et seq. (hereinafter referred to as the "Texas Securities Act" or the "Securities Act"). The State also sought remedies pursuant to the Attorney General's authority under the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code § 17.41, et seq.

The Court issued Temporary Restraining Orders, and later issued an Agreed Temporary Injunction against Retirement Value, LLC and other defendants. It also appointed Eduardo S. Espinosa as Receiver for Retirement Value ("RV Receiver").

The RV Receiver filed his Third Amended Cross-Claim and Third-Party Claim joining McDermott as an additional Third-Party Defendant in this lawsuit. The RV Receiver asserted claims against McDermott for, among other things, illegally selling unregistered securities, aiding and abetting the illegal sale of unregistered securities by others, and conspiring with and aiding and abetting the officers of RV in breaching their fiduciary duties to Retirement Value.

On December 7, 2011, this court concluded that Retirement Value's product was a security. *See* Exhibit B.

On March 13, 2012, after being served with the Receiver's Third Amended Petition, McDermott filed his Special Appearance, Plea to the Jurisdiction, Plea in Abatement, Special Exceptions, and after and subject thereto, Original Answer.

McDermott later filed a Motion for Clarification of the Court's December 7, 2011 order seeking clarification as to whether it was binding on him, and in response, this court entered an order confirming that it was.

Substantial discovery was developed in the course of the suit, including the deposition of Rogers and other persons associated with Retirement Value.

In August 2012, Rogers entered into a settlement agreement with the State, the Receivers<sup>1</sup> and the intervening investors, which agreement is attached as Exhibit A. McDermott also entered into a settlement agreement with the State, the RV Receiver and

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<sup>1</sup> This court also appointed a separate Receiver, Donald R. Taylor, for Hill Country Funding, LLC.

the intervening investors, which agreement is attached as Exhibit J. Both settlements were approved by this Court.

On February 21, 2013, this court further concluded that Retirement Value had engaged in fraudulent practices in the course of selling unregistered securities, violating section 32(A) of the Texas Securities Act. Pursuant to section 32(B) of the Act, it ordered Retirement Value to make restitution in the amount of \$ 77.6 million. *See* Exhibit C.

In February 2015, Rogers was indicted by a Collin County grand jury for theft of property, money laundering and fraud in connection with Retirement Value's sale of securities. *See* Exhibit D. In February, 2015, McDermott was also indicted for fraud in connection with Retirement Value's sale of securities and theft of property. *See* Exhibit K.

Both Rogers and McDermott allege that these indictments are a breach of their settlement agreements and have filed motions to enforce the settlement agreements and requests for evidentiary hearing. Rogers has also served two notices of depositions for the testimony of Joe Rotunda and Leha Sparks, both TSSB employees (*see* Exhibits F and G) and the TSSB has moved to quash those notices and for a protection order.

## II.

### SUMMARY OF ARGUMENT

*First*, with respect to Rogers and McDermott's claims for breach of the settlement agreements, the State is entitled to immunity from suit. The narrow waiver of immunity established in *Texas A & M University-Kingsville v. Lawson*, 87 S.W.3d 518 (Tex.2002) does not apply here. The holding in *Lawson* was expressly limited to suits for alleged

breach of settlement agreements disposing of Whistleblower Act claims. The court reasoned that, “having waived immunity from suit in the Whistleblower Act, the State may not now claim immunity from a suit brought to enforce a settlement agreement reached to dispose of a claim brought under that Act.” Thus, the waiver in *Lawson* was expressly based on the underlying statutory waiver in the Act itself.

Further, this court does not have jurisdiction over criminal proceedings pending before the Collin County district court, and therefore cannot grant the relief requested by Rogers and McDermott in their motions—relief plainly intended to derail the criminal proceedings or effectively undercut the Collin County court’s jurisdiction.

*Second*, the settlement agreements are unambiguous and dispositive as a matter of law; they are expressly limited to civil claims that were or could have been brought in this lawsuit. The agreements are also by their express terms fully integrated. Thus, this court cannot entertain any evidence of extrinsic agreements or understandings.

*Third*, any information relevant to Rogers and McDermott’s motions is protected by section 28 of the Texas Securities Act—and their claims for breach and “enforcement” of the settlement agreements do not come close to establishing “good cause” that would overcome the confidentiality of TSSB investigations. This court should not allow these defendants, under the guise of “enforcing” settlement agreements, to conduct liberal discovery they would not otherwise be entitled to in the Collin County criminal proceeding.

*Fourth*, instances in which TSSB attorneys have served as special prosecutors do not amount to a “rule” as that term is defined in the APA.

### III.

#### ARGUMENTS & AUTHORITIES

##### **A. The State has immunity from claims for breach of the settlement agreement.**

Sovereign immunity refers to the State's immunity from suit and liability. *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 694 n. 3 (Tex.2003); *Lowe v. Tex. Tech Univ.*, 540 S.W.2d 297, 298 (Tex.1976). In addition to protecting the State from suit and liability, it also protects the various divisions of state government, including agencies, boards, hospitals, and universities. *Taylor*, 106 S.W.3d at 694 n. 3; *Lowe*, 540 S.W.2d at 298. Sovereign immunity not only bars suits for money damages but also protects the State against suits to “control state action.” *Texas Logos, L.P. v. Texas Dept. of Transp.*, 241 S.W.3d 105, 118 (Tex. App.–Austin 2007, no pet.).

##### **1. Immunity bars the suit in the absence of express consent.**

Immunity from suit bars an action against the State unless the State expressly consents to the suit. *Tex. Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex.1999) (per curiam); *Federal Sign v. Texas Southern Univ.*, 951 S.W.2d 401, 405 (Tex.1997). The party suing the governmental entity must establish the State's consent, which may be alleged either by reference to a statute or to express legislative permission. *Jones*, 8 S.W.3d at 638. Absent the State's consent to suit, a trial court lacks subject-matter jurisdiction. *Id.*

The claimants—here, Rogers and McDermott—have the burden to plead facts affirmatively showing that the trial court has jurisdiction. *Tex. Ass'n of Bus. v. Tex. Air*

*Control Bd.*, 852 S.W.2d 440, 446 (Tex.1993); *Univ. of N. Tex. v. Harvey*, 124 S.W.3d 216, 220 (Tex. App.—Fort Worth 2003, pet. denied). The absence of subject-matter jurisdiction may be raised by a plea to the jurisdiction, as well as by other procedural vehicles, such as a motion for summary judgment. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex.2000).

**2. The narrow exception identified in *Lawson* and *Kalyanaram* does not apply here.**

Rogers relies on a single case, *Kalyanaram v. University of Texas System*, 2009 WL 1423920 (No. 03-05-00642, March 20, 2009). But that case and a related case *Kalyanaram v. University of Texas System*, 230 S.W.3d 921, 926-28 (Tex. App.-Dallas 2007, pet. denied) (“*Kalyanaram I*”) show that this court does *not* have jurisdiction.

In *Kalyanaram I* the plaintiff relied on *Texas A & M University-Kingsville v. Lawson*, 87 S.W.3d 518 (Tex.2002), to argue that the University was precluded from claiming sovereign immunity in a suit for alleged breach of an earlier settlement agreement. See *Kalyanaram I* at 926. *Lawson*, in turn, involved the alleged breach of a settlement disposing of Whistleblower Act claims. A faculty member had sued Texas A & M University at Kingsville, a State employer, for violations of the Whistleblower Act, Texas Government Code sections 554.001 et seq. See *Lawson*, 87 S.W.3d at 518-19. The parties settled, and as part of that settlement the faculty member released his claims. Later, he sued for breach of the settlement agreement, and in response the university filed a plea to the jurisdiction based on sovereign immunity. *Id* at 519.

The Supreme Court affirmed the court of appeals' decision that the university could not claim immunity in a suit for breach of a settlement of Whistleblower Act claims. The court reasoned that, "having waived immunity from suit in the Whistleblower Act, the state may not now claim immunity from a suit brought to enforce a settlement agreement reached to dispose of a claim brought under that Act." *Id.* at 522–23 (emphasis added); *see also* Tex. Gov't Code Ann. § 554.0035 (Vernon 2004) (waiving sovereign immunity for suits by a public employee alleging violation of Whistleblower Act).

Accordingly, *Lawson* established a narrow exception to the rule that in a breach of contract suit the government must consent to the suit and waive its immunity fully through statute or legislative resolution. *See IT–Davy*, 74 S.W.3d at 858. But this exception was expressly grounded on the statutory waiver of immunity in the Whistleblower Act, and that statutory waiver clearly does not apply here.

**3. McDermott's argument that the class-action settlement confers subject-matter jurisdiction on this court is similarly unconvincing.**

For his part, McDermott suggests that this court's Final Order and Judgment Approving Class Settlement and Class Counsel Fees and Expenses—in which the court "retains exclusive jurisdiction over the consummation, performance, administration, effectuation and enforcement of the Settlement Agreement, and this Order"—confers subject-matter jurisdiction on this court to hear his claim for enforcement of the settlement agreement.

*See* Exhibit L at 13.



But that order refers to the court's approval of the class-action settlement. Nowhere in the court's order is there a suggestion that the court viewed itself as having continuing jurisdiction over *the State's* settlement with McDermott. In any case, district courts cannot enlarge their subject-matter jurisdiction via their own orders. It is also axiomatic that the parties themselves cannot confer subject-matter jurisdiction on the court by agreement. The State's consent to suit can only be established by reference to a statute or to express legislative permission. *See Jones*, 8 S.W.3d at 638; *see also In-Davy*, 74 S.W.3d at 858.

**B. Section 3 of the Texas Securities Act vested the Collin County district court with jurisdiction over the criminal proceedings, and, accordingly, this court lacks jurisdiction to grant relief that would interfere with the those proceedings.**

In her motion and brief, Rogers claims that she is “not asking this court to take any action, or make any ruling regarding the indictments themselves, as that action can only be taken by the Collin County District Court.” Rogers Brief at 1. But the relief sought in her motion belies this representation. In fact, Rogers is requesting an order that the State “withdraw[] any and all complaints upon which the indictments are based” and that this court decide “whether Rogers’ due process rights have been violated by the State, when she was asked to give up legal rights, without being informed or warned that a criminal complaint(s) were being contemplated against her.” *See* Rogers Amended Motion at 4. McDermott is more direct: he requests in his motion that this Court “enjoin the TSSB from further prosecuting” him. McDermott Motion at 45. These requests for relief can only be characterized to collaterally attack, interfere with or undermine the criminal proceedings in Collin County.

But neither defendant persuasively addresses two threshold issues: (1) how exactly the State has “breached” its agreement so as to give rise to a claim to “enforce” the settlement; and (2) how, in any case, such a claim could divest the Collin County court of its jurisdiction over the criminal proceedings, or alternatively, support concurrent jurisdiction in this Travis County court *and* the Collin County court.

As to the first threshold issue, neither Rogers nor McDermott can overcome the legally dispositive language in the settlement agreements. Both agreements establish as a matter of law that criminal proceedings are not barred by the agreements. McDermott in particular has spilled considerable ink arguing that attorneys employed by the TSSB may not serve as special prosecutors in criminal proceedings. But even setting aside the question of whether his analysis is convincing, *it has nothing to do with his settlement agreement*—which plainly does not relate to or preclude criminal proceedings.

The second threshold issue is just as important—and both Rogers and McDermott fail to explain how or why this court rather than the Collin County court has jurisdiction to hear claims relating directly to the criminal proceedings.

**1. The settlement agreements show as a matter of law that criminal proceedings are not barred.**

Although the defendants have asserted claims in this court under the guise of enforcing their settlement agreements, those agreements show as a matter of law that they have nothing to do with criminal proceedings in Collin County—that such proceedings were not, and could not have been, released by the agreements.

Rogers' settlement includes the following:

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 actions, 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, *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 Hi Country Finding, and which occurred prior to this settlement.*

See Exhibit A at 10-11 (emphasis added).

The agreement states at least twice that the only claims being released are those that could have been asserted in “the Pending Case”—that is, *this* civil lawsuit. “Pending Case” is specifically defined in the settlement agreement as Cause No. D-1-GV-10-000454, *State of Texas v. Retirement Value LLC, et al.*, in the 126<sup>th</sup> District Court of Travis County. See Exhibit A at 2.

McDermott's agreement contains nearly identical language. The release extends to all claims whether in law or equity “arising out [of] Retirement Value, which were or could have been asserted by [the Releasing Parties] *in the Lawsuit*.” See Exhibit J. “Lawsuit” is expressly understood to mean this civil action. See Exhibit J at 2 (emphasis added).

It is fundamental that neither the Attorney General nor the Securities Commissioner had authority to bring criminal proceedings in this lawsuit. Section 32 of the Texas

Securities Act specifically describes the type of relief that can be obtained in this suit. Tex. Rev. Civ. Stat. Ann. art. 581-32 (West 2015).

Further, the duty of criminal prosecution in the trial courts resides in the county attorney and the district attorney (or criminal district attorney). *E.g., Saldano v. State*, 70 S.W.3d 873, 876 (Tex. 2002). Section 3 of the Securities Act provides in pertinent part that:

In the event of neglect or refusal of [the district or county] attorney to prosecute such violation, the Commissioner shall submit evidence to the Attorney General, who is hereby authorized to proceed therein with all rights, privileges and powers conferred by law upon district or county attorneys, including the power to appear before grand juries and interrogate witnesses before such grand juries.

It is undisputed that the Collin County DA did not refuse or neglect to prosecute the securities fraud but instead sought and obtained grand jury indictments. Thus, the conditions for the Attorney General's instituting criminal proceedings under section 3 were not present. Tex. Rev. Civ. Stat. art. 581-3. In short, it goes without saying—or should go without saying—that the State of Texas, the Attorney General, and the Securities Commissioner could not have commenced criminal proceedings in this lawsuit.

Next, the settlement agreements, and releases contained therein, say nothing about “crimes, criminal actions, prosecution, or similar concepts.” *See U.S. v. Brekke*, 97 F.3d 1043, 1049 (8th Cir. 1996). In order for the settlement agreements to have precluded the Collin County indictments, they needed to specifically mention crimes, criminal actions, prosecutions, or an offer of immunity. *Id.*

In *Brekke*, the Eighth Circuit denied issue preclusion where the only fact contained in the judgment of dismissal was that the parties stipulated to the dismissal of the action. *Id.* The criminal defendants in *Brekke* had earlier settled False Claims Act civil litigation brought against them by the Small Business Administration. *Id.* The court held that the settlement's stipulation for dismissal did not establish issue preclusion in the subsequent prosecution for bank fraud arising out of the same transaction.

The court explained that any "general language is qualified by the specific language which precedes it" and because each of the claims specifically released by the parties was civil, the parties did not understand the settlement to be a non-prosecution agreement. *Id.* Thus, because the agreement did not mention "crimes, criminal actions, prosecution, or similar concepts", it did not preclude the government from prosecuting the defendants criminally. *Id.*

The defendants' breach of settlement claims are also contradicted by express language in their agreements confirming that the terms represent the *entire* agreement between the parties, and supersede any prior or contemporaneous agreements or understandings, oral or written. *See* Exhibit A at 14; Exhibit J at 16. McDermott and Rogers also expressly affirmed that they had not relied on any statement or representation other than those expressly contained in the agreements, that they each had separate counsel, and that their settlement agreements had been explained to them by their attorneys. *See* Exhibit A at 14; Exhibit J at 17.

Notwithstanding this explicit language, Rogers and McDermott now claim they entered into settlements with an understanding that they would not be prosecuted—and relied on it in executing their agreements. But it is beyond credulity to suppose—as defendants are asking this court to suppose—that in a \$77.6 million securities fraud, it never occurred to these defendants or their attorneys that there existed a risk of criminal prosecution, or alternatively, that any such risk had been effectively eliminated by the settlement agreements.

Further, this very line of argument has already been rejected by the courts. In *Kalyanaram II*, the court concluded:

Kalyanaram alleges that the University orally represented it would “abandon” its criminal charges if the parties settled. This allegation does not constitute evidence of fraud for two reasons. First, the settlement agreement expressly states that it “constitutes the entire agreement between the parties [and] shall not be varied by . . . oral representation.” It also states that the parties “have each read this Agreement, and have consulted with their counsel concerning it, or have had the opportunity during a period of at least 21 days to consult with their counsel and consider the Agreement, and understand that this is a full and final release of all possible claims.” Thus, Kalyanaram cannot argue that he relied on oral representations made before the agreement.

2009 WL 1423920 at \*4: *Id.* (citing *Sun Oil Co. v. Madeley*, 626 S.W.2d 726, 731-32 (Tex.1981).

**2. The Collin County district court cannot be divested of jurisdiction by an alleged defect in the criminal proceedings.**

In addition to the dispositive language in the settlement agreements, this court does not have jurisdiction over the criminal proceedings in Collin County, and therefore it does

not have jurisdiction to grant the requested relief. Because the Texas Constitution vests the district courts with their power to hear cases, this court must first look to the Constitution's text when determining whether it has jurisdiction. Article V, section 8 of the Texas Constitution authorizes the creation of the district courts and it states:

District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, *except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body.*

Tex. Const. Art. V §8 (emphasis added). "It is well settled that '[a] judgment may properly be rendered against a party only if the court has authority to adjudicate the type of controversy involved in the action.'" *Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 74-75 (Tex. 2000) (quoting Restatement (Second) of Judgments § 11).

Although the Texas district court is a court of general jurisdiction, "where the cause of action and remedy for its enforcement are derived not from the common law but from the statute, the statutory provisions are mandatory and exclusive, and must be complied with in all respects or the action is not maintainable. *Id.* at 75.

Here, statutory law has vested the Collin County court with the jurisdictional authority to hear the contested criminal proceedings. Tex. Rev. Civ. Stat. Ann. art. 581-3 (West 2015). Section 3 of the Securities Act grants to the Securities Commissioner and the Attorney General the power to make such investigations as will detect or prevent violations of the Securities Act. Further, under section 3, the Commissioner "shall at once" lay evidence of criminality "before the District or County Attorney of the proper county."

Because the criminal activity with which Rogers and McDermott are charged occurred in Collin County, and because the Collin County DA has initiated criminal proceedings, exclusive jurisdiction has been conferred on the district court in that county. Any attempt by this court to order the TSSB to withdraw its complaint, to enjoin the criminal prosecution or to find that defendants' due process rights have been violated by the criminal proceedings, would amount to impermissible interference with the Collin County court's jurisdiction. *See Counsel Fin. Servs. L.L.C. v. Leibowitz*, 2011 WL 2652158, at \*7 (Tex. App. July 1, 2011); *Scott v. Graham*, 292 S.W.2d 324, 327 (1956).

Even if the parties had had the power to enter into a non-prosecution agreement and had in fact entered into such an agreement, the agreement could not have waived a subsequent court's subject-matter jurisdiction or granted to this court subject-matter jurisdiction that it did not otherwise have. *See* U.S. Const. art. III; *United States v. Cotton*, 535 U.S. 625, 630 (2002) (finding that "subject matter jurisdiction ... can never be forfeited or waived."); *Id.* at 598-99. As discussed above, the settling parties cannot purport to grant this court jurisdiction over the Collin County criminal proceedings unless this court already had jurisdiction over those proceedings. It did not and does not.

Finally, McDermott's argument that an attorney employed by the TSSB may not serve as a special prosecutor does not give rise to jurisdiction in this Court or divest the Collin County court of its jurisdiction. Even assuming *arguendo* that the TSSB attorney's prosecutorial role constituted a defect in the criminal proceedings, that defect would not be jurisdictional. Assuming *arguendo* that Collin County indictment was incorrect or



defective—due to the TSSB’s role as the complaining party or Dale Barron’s role as the special prosecutor—such defects would not be jurisdictional. Thus even if defendants allege that the Collin County indictment was improper, or that the TSSB employees’ deputation as special prosecutors was improper, such defects would not deprive the Collin County court of its authority to hear the case under section 3 of the Texas Securities Act.<sup>2</sup>

**C. Any information relevant to Rogers’ amended motion is protected by the attorney-client privilege or by the confidentiality provisions in the Texas Securities Act.**

Finally, both Rogers and McDermott request an evidentiary hearing. And Rogers has served notices of deposition on two TSSB employees in connection with her request. *See* Exhibits F and G. But the Securities Act—along with the affidavits submitted by the TSSB employees (Exhibits H and I) in support of TSSB’s motion to quash—shows that the information sought is protected under Tex. Rev. Civ. Stat. Ann. art. 581–28 (Vernon 2010). It provides:

A. Investigations by Commissioner. The Commissioner shall conduct investigations as the Commissioner considers necessary to prevent or detect the violation of this Act or a Board rule or order. For this purpose, the Commissioner may require, by subpoena or summons issued by the Commissioner, the attendance and testimony of witnesses and the production of all records, whether maintained by electronic or other means, relating to any matter which the Commissioner has authority by this Act to consider or investigate, and may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence; provided however, that all information of every kind and nature received in connection with an investigation and all internal notes, memoranda, reports, or communications made in connection with an investigation shall be

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<sup>2</sup> *U.S. v. Cotton*, 535 U.S. 625, 630 (2002); and *see U.S. v. Williams*, 341 U.S. 58, 66 (1951) (holding that a ruling “that the indictment is defective does not affect the jurisdiction of the trial court to determine the case presented by the indictment.”).

treated as confidential by the Commissioner and shall not be disclosed to the public except under the order of court for good cause shown ....

Section 28 protects the Commissioner's law enforcement file which includes the TSSB's internal attorney's notes, communications with investors, and witness statement notes. The broad language of this confidentiality statute clearly encompasses testimony about the Board's investigations, as well as requests for documents. Section 28 protects "all internal notes, memorandums, reports or *communications made in connection with an investigation. . .*" Absent a showing of good cause, then, the defendants may not conduct discovery regarding the Commissioner's investigation. *See Texhoma Stores, Inc. v. American Central Ins. Co.*, 424 S.W.2d 466, 472 (Tex.Civ.App.—Dallas 1968, writ ref'd n.r.e.).

There is nothing before this court showing a need for an evidentiary hearing. Quite the opposite: the settlement agreement, themselves and this court's lack of subject-matter jurisdiction show that good cause is manifestly lacking.

The Texas Supreme Court has also explicitly recognized a common-law law enforcement privilege by noting: "[w]e recognized this privilege in civil litigation for law enforcement investigation." *Hobson v. Moore*, 734 S.W.2d 340, 341 (Tex.1987). In upholding the agency's position that "section 28 protects all the Commissioner's law enforcement file," the court in *Texas Attorney General's Office v. Adams*, 793 S.W.2d 771, 775-76 (Tex. App.—Fort Worth 1990), emphasized that "it is beyond dispute that the law

enforcement agencies could not function if criminal defendants could use liberal civil discovery processes to their advantage in their criminal defense.”

The legislature recognized the extent of this privilege and the abuse to which criminal defendants may put such discovery when there is a related civil suit, when it enacted in 1989 section 28 to article 581. Section 28 provides that defendants must demonstrate good cause to obtain any internal reports or law enforcement documents of the state Securities Board . . .

*Id.* This court should not allow McDermott and Rogers, under the guise of “enforcing” their settlement agreements, to delve into facts relating to the criminal investigation, facts they would not otherwise be entitled to in the Collin County criminal proceeding.

The good cause requirement under this section 28 operates as it does in other discovery statutes. The party seeking discovery must file a motion seeking to establish “good cause”—meaning the party has substantial need for the material and that it is unable to obtain it from any other source. *See Texhoma*, 424 S.W.2d at 472–73. The defendants have not met this burden of showing good cause—nor can they, in view of the settlement agreements themselves and the state’s immunity from suit.

**D. That attorneys employed at TSSB have served as special prosecutors does not amount an agency “rule.”**

McDermott’s attorneys also argue that instances in which TSSB attorneys have served as a special prosecutor amounts to an agency “rule.” But APA section 2001.038 cannot confer jurisdiction here, because the challenged agency practice is not a “rule” under the APA.

While agency rules must be adopted pursuant to proper APA procedures, the APA definition of a “rule” explicitly excludes “a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures.” APA at § 2001.003(6); *Brinkley v. Texas Lottery Comm'n*, 986 S.W.2d 764, 769 (Tex. App.—Austin 1999, no pet.) (explaining that “agencies routinely issue letters, guidelines, and reports” that are not “rules” for purposes of the APA).

The agency practices here are, at most, intended to manage and direct the work of agency attorneys. As such, they do not constitute an “agency statement of general applicability.” See *Tex. Mut. Ins. Co.*, 275 S.W.3d at 555. In view of the exception for statements regarding the internal management or organization of a state agency, the phrase “statement of general applicability” can refer only to persons or categories of persons *outside* the agency.

Perhaps most important, these practices do not have *in themselves* the force of law—that is, the “power to bind others”—outside the agency. They affect only those employees working within the agency.

In deciding whether an agency statement constitutes a “rule” or concerns only the agency’s internal management or organization, “the core concept is that the agency statement must *in itself* have a binding effect on private parties.” *Slay v. Texas Comm’n on Env’tl. Quality*, 351 S.W.2d 532, 546 (Tex. App.—Austin 2011, pet. denied) (emphasis added); see also *Texas Dep’t of Public Safety v. Salazar*, 304 S.W.3d 896, 905 (Tex.

App.—Austin 2009, no pet.) (“Agency statements that ‘have no legal effect on private persons are not considered rules.’”) (quoting *Brinkley v. Texas Lottery Comm’n*, 986 S.W.2d 764, 770 (Tex.App.—Austin 1999, no pet.).)

In *Slay* the TCEQ brought an administrative enforcement action against landowners, based on alleged inaction regarding hazardous wastes found on their property. The enforcement action proceeded to a contested-case hearing before SOAH. Following the hearing, the ALJ issued proposed findings and conclusions that the landowners had committed several regulatory violations, and recommended penalties in a specific amount. *Slay*, 351 S.W.3d at 536-37.

When the ALJ’s proposal for decision came before the commission, the TCEQ executive director recommended penalties pursuant to the agency’s “penalty policy,” a document prepared by the enforcement division that set forth an elaborate methodology for applying the statutory criteria for imposing penalties (below, the “Penalty Policy”). *Id.* at 538. The Penalty Policy provided guidance on how the TCEQ staff was to evaluate violations for the purpose of recommending administrative penalties to the commission.

Based on the Penalty Policy, the executive director recommended penalties in the amount of \$526,625—an amount in stark contrast with the \$1500 penalty recommended by the ALJ, who had concluded that worksheets underlying the executive director’s recommendations “contain[ed] errors, unproven assumptions, and unproven bases.” *Id.* at 541. Ultimately, in its final decision, the commission modified the ALJ’s recommended

penalty to reflect that, consistent with the executive director’s recommendation, three of the violations had been continuing monthly violation events. But the Commission differed with the executive director on the number of months that should be used to calculate the monthly penalties for each such violation. As a result, the final agency decision imposed \$177,500 in penalties on the landowners. *Id.* at 542.

The landowners brought an APA section 2001.038 claim, arguing that the TCEQ Penalty Policy was a “rule” that had not been adopted in accordance with the APA’s formal rulemaking requirements. Relying on the “core concept” that “the agency statement must in itself have a binding effect on private parties,” this court rejected the landowners’ “rule” claim, explaining:

There was also evidence before the district court—including the text of the Policy itself—that TCEQ staff was required to follow the Penalty Policy’s methodology in determining penalty recommendations. And the executive director purported to do just that, as we have previously detailed. Moreover, the penalties ultimately imposed by the TCEQ commissioners were in amounts consistent with the violation base penalties the executive director had recommended, adjusted for differences in the multipliers used (i.e., “counting” five rather than ten months of continuing monthly violations and one rather than four violations of TCEQ rule 335.6(c)). But what ultimately matters is that the district court also had evidence to the effect that the TCEQ commissioners were not *bound* to follow the Penalty Policy’s methodology when exercising their legislatively conferred discretion to impose penalties.

*Id.* at 546 (emphasis in original). “The introductory section of the Penalty Policy states that the Policy’s purpose is to explain ‘how TCEQ staff are to evaluate violations for the purpose of recommending administrative penalties to the commission.’” *Id.* at 546-47 (emphasis in original).

If anything, TSSB's practice is even further removed from a legally binding agency statement than the TCEQ Penalty Policy in *Slay*. *E.g., Saldano v. State*, 70 S.W.3d 873, 876 (Tex. 2002); *see also* Tex. Rev. Civ. Stat. art. 581-3. TSSB offers additional assistance to the district attorney upon the referral of a case for criminal prosecution. Of course, that offer of assistance does not have the force of law or the power to bind anyone, including the district attorney. If the offer of assistance is accepted, TSSB attorneys are often deputized as special assistant district attorneys. But the powers and duties of criminal prosecution in the trial court resides in and derives from the district attorney (or criminal district attorney)—not from the TSSB's practice of offering assistance. Here, attorneys employed at TSSB who are acting as special prosecutors are exercising those powers and duties that the Collin County DA's office has conferred on them via deputization.

At the same time, the Collin County court exercises jurisdiction in this matter, because under section 3 of the Act the Securities Commissioner has “[laid] before the District or County Attorney of the proper county” evidence of criminality. The indictments of Rogers and McDermott have been handed down by a Collin County grand jury in the exercise of *its* powers and duties.

In an effort to establish agency policy having “a binding effect on private parties” as required by *Slay*, McDermott is blending the TSSB's internal policies regarding its attorneys with the powers of the grand jury, the district attorney and the criminal court in Collin County. But in order to decide whether an agency statement or practice constitutes

a “rule,” it is critical to focus on what, if any, legal effect *that* practice in itself has on private parties—separate and apart from the powers and duties of the Collin County district attorney, grand jury and courts.

Finally, although McDermott is seeking to enjoin TSSB’s employees from pursuing their prosecutorial roles in the Collin County court, APA section 2001.038 does not authorize injunctive relief.

WHEREFORE, PREMISES CONSIDERED, the State of Texas and TSSB request that the plea to the jurisdiction be granted and that these claims be dismissed for lack of subject-matter jurisdiction. In the alternative, and without waiving the foregoing, the State of Texas and TSSB move for summary judgment and for such other relief, legal or equitable, to which they may show themselves entitled.

Respectfully submitted,

KEN PAXTON  
Attorney General of Texas

CHARLES E. ROY  
First Assistant Attorney General

JAMES E. DAVIS  
Deputy Attorney General for Civil Litigation

ROBERT O’KEEFE  
Division Chief  
Financial Litigation, Tax, and Charitable Trusts Division



/s/ Jack Hohengarten  
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*Attorneys for Texas State Securities Board*

## CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of June, 2015, the above and foregoing plea and motion was served on the following attorneys of record via File & Serve Express and as shown below:

### VIA E-MAIL

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Services*

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*Counsel for Third party Defendant  
Michael McDermott*

/s/ Jack Hohengarten  
Jack Hohengarten



COMPROMISE AND SETTLEMENT AGREEMENT

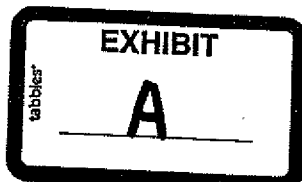
This Compromise and Settlement Agreement (the "Agreement") is entered into effective as of the \_\_\_ day of August 2012 (the "Effective Date"), between and among the following:

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

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

RECITALS

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



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

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

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

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

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

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

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

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

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

#### TERMS OF AGREEMENT

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

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

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

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

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

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

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

6. Release of Property.

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

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

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

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

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

9. Verified Financials; Supporting Documentation.

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

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

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

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



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

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

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

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

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

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

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

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

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

legal representatives, and any and all persons or entities under its control (the "Intervenor 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 Cole, Ronald James, Donald James, James Settlement Services, LLC, Mike Beste, or any licensee of Retirement Value.

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

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

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

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

19. Requirement of Court Approval of Settlement Agreement.

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

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

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

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

21. Representations and Warranties.

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

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

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

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

24. General Provisions.

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

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

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

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



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

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

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

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

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

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

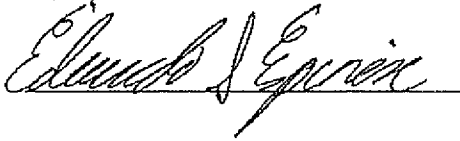
(j) **Counterparts.** This instrument may be executed in multiple original counterparts, each of which shall be deemed an original for all purposes. No single counterpart of this Agreement need be executed by all of the Parties, so long as each of the Parties shall have executed at least one counterpart.

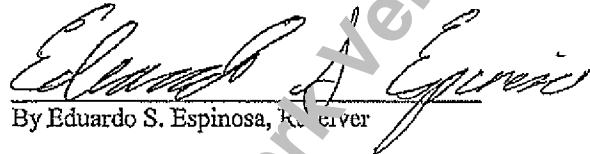
[SIGNATURE PAGES FOLLOW]

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

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

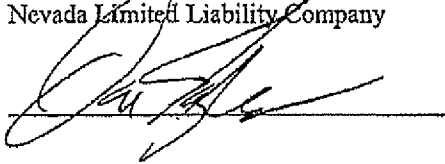
RETIREMENT VALUE, LLC



  
By Eduardo S. Espinosa, Receiver

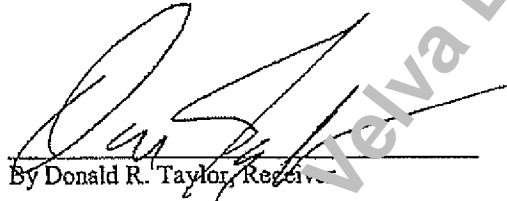
Unofficial copy Travis Co. District Clerk Welda L. Price

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



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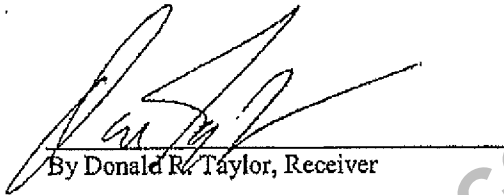
HILL COUNTRY FUNDING, LLC (TEXAS)



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By Donald R. Taylor, Receiver

HILL COUNTRY FUNDING, LLC (NEVADA)




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By Donald R. Taylor, Receiver

Unofficial copy Travis Co. District Clerk Velva L. Price

THE STATE OF TEXAS

  
\_\_\_\_\_

By

Its: *AAG*

Unofficial copy Travis Co. District Clerk Velva L. Price

QVEST III MASTER FUND, LLC

DR. GARY CAIN



By: \_\_\_\_\_

Its: \_\_\_\_\_

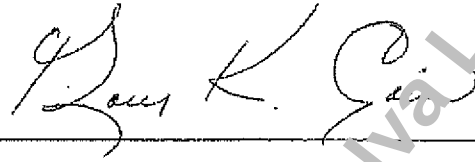
BARRY EDELSTEIN

\_\_\_\_\_

Unofficial copy Travis Co. District Clerk Velda L. Price

QVEST III MASTER FUND, LLC

DR. GARY CAIN



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

By: \_\_\_\_\_

Its:

BARRY EDELSTEIN

\_\_\_\_\_

Unofficial copy Travis Co. District Clerk Velva L. Price

QVEST III MASTER FUND, LLC

DR. GARY CAIN

By: \_\_\_\_\_

Its:

BARRY EDELSTEIN

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

Unofficial copy Travis Co. District Clerk Velda L. Price



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

MATTHEW C. ALLEN, JR. individually

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

TEDDIE ALLEN

LADDELL HARRISON

Teddie Allen

Ladell Harrison

WENDY ROGERS

JEFF R. ROGERS

Wendy Rogers

J.R. Rogers

Unofficial copy Travis Co. District Clerk Velva L. Price



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

**I.**  
**Stipulations**

The parties stipulate to the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## II.

### Permanent Injunction Order

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

### III. Turnover Order

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

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

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

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

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

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

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

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

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

**IV.**  
**Defendant Rogers' Waiver**  
**of Interest In Receivership Estate**

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

**V.**  
**Civil Fines and Civil Penalties**

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

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

**VI.**  
**General Provisions**

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

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

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

**VII.**  
**Other Orders**

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

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

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

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

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

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

SIGNED this the \_\_\_\_ day of June, 2012.

\_\_\_\_\_  
The Honorable Gisela D. Triana  
Judge Presiding

APPROVED & ENTRY REQUESTED BY:

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

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

By:

\_\_\_\_\_  
Bogdan Rentea  
State Bar No. 16781000  
COUNSEL FOR WENDY ROGERS

Unofficial copy Travis Co. District Clerk Velda L. Price



FILE COPY



Filed in The District Court  
of Travis County, Texas

FEB 21 2013 LAM

At 11:30 A.M.  
Amalia Rodriguez-Mendoza, Clerk

1530

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

126<sup>TH</sup> JUDICIAL DISTRICT

ORDER ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT  
AGAINST DEFENDANT RETIREMENT VALUE, LLC

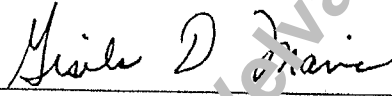
CAME ON TO BE HEARD on this 7<sup>th</sup> day of January, 2013, Plaintiff's Motion for Partial Summary Judgment against Defendant Retirement Value, LLC ("the Motion").

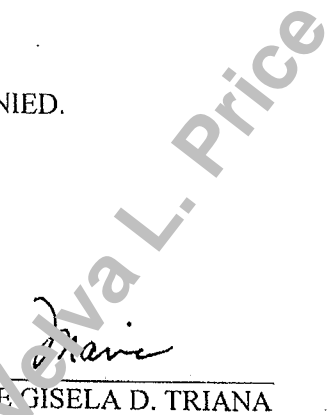
Having heard the arguments of counsel, reviewed the Motion and responses, and considered the evidence, the Court GRANTS the Motion in part, and DENIES the Motion in part.

The court GRANTS the motion in part upon concluding that Retirement Value engaged in fraud or fraudulent practices in the course of selling unregistered securities, and thereby violated section 32(A) of the Texas Securities Act (the "Act"). Further, pursuant to section 32(B) of the Act, the court orders Retirement Value to make restitution in the amount of \$77.6 million to persons who purchased the unregistered securities.

Any relief sought by the Motion that is not herein granted is DENIED.

Signed this 21 day of February, 2013.

  
\_\_\_\_\_  
THE HONORABLE GISELA D. TRIANA  
JUDGE PRESIDING

Unofficial copy Travis Co. District Clerk 





*ANNAPP*

DEFENDANT Wendy L. Rogers

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

Person ID: 1570040, 2015 1581

ADDRESS 1312 Havenwood Blvd., New Braunfels, TX 78132

CAUSE# 380-80444-2015

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

AGENCY/# State Securities Board

ARREST INFORMATION GJR

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

TRUE BILL OF INDICTMENT

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

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

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

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

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

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

Against the peace and dignity of the State.

*Andrea Kay Bond*  
FOREPERSON OF THE GRAND JURY

FILED

2015 FEB 26 PM 2: 29

ANDREA STROH THOMPSON  
DISTRICT CLERK  
COLLIN COUNTY, TEXAS

BY *B. Brack* DEPUTY

3/3/2015 SCANNED

*ALINAPP*

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

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

ADDRESS 1312 Havenwood Blvd., New Braunfels, TX 78132

CAUSE# 380-80445-2015

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

AGENCY# State Securities Board

ARREST INFORMATION GJR

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

**TRUE BILL OF INDICTMENT**

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

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

WENDY L. ROGERS, hereinafter "defendant"

On or about and between the dates of April 1, 2009, and April 15, 2010, in Collin County, Texas, and elsewhere, with the intent to establish, maintain, and participate in a combination and in the profits of a combination, said combination consisting of the defendant; Richard Hubert Gray; Ronald Llewellyn James; Donald J. James; Michael Timothy Beste; Michael Charles McDermott; Bruce Gordon Collins; and others, who collaborated in carrying on the hereinafter-described criminal activity, did then and there commit the following offenses, to wit: Theft of Property, pursuant to one scheme and continuing course of conduct, which in the aggregate, involved property of the value of \$200,000.00 or more in violation of Section 31.03 of the Texas Penal Code; and Money Laundering, pursuant to one scheme and continuing course of conduct, which in the aggregate, involved criminal proceeds in the amount of \$200,000.00 or more, in violation of Section 34.02 of the Texas Penal Code; all in violation of Section 71.02(a)(1) and (a)(10) of the Texas Penal Code;

to disturb the peace and dignity of the State.

**FILED**

2015 FEB 26 PM 2:29

ANDREA STROH THOMPSON  
DISTRICT CLERK  
COLLIN COUNTY, TEXAS  
BY B. Phelan DEPUTY

Andrea Kay Baird  
FOREPERSON OF THE GRAND JURY

3/3/2015 SCANNED

ALINAPP

DEFENDANT Wendy L. Rogers

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

## TRUE BILL OF INDICTMENT

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

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

WENDY L. ROGERS, hereinafter "defendant"

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

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

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

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

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

**PARAGRAPH ONE**

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

**PARAGRAPH TWO**

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

**PARAGRAPH THREE**

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

**PARAGRAPH FOUR**

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

**PARAGRAPH FIVE**

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

**PARAGRAPH SIX**

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

**PARAGRAPH SEVEN**

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

**PARAGRAPH EIGHT**

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

**PARAGRAPH NINE**

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

**PARAGRAPH TEN**

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

**PARAGRAPH ELEVEN**

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

**PARAGRAPH TWELVE**

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

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

**PARAGRAPH THIRTEEN**

intentionally failing to disclose that on or about September 28, 2006, in the United States District Court for the Western District of Tennessee, Memphis Division, in case number CR. NO. 03-201311, styled *United States of America vs. George Kindness and Amscot Medical Labs, Inc.*, George Kindness, the owner of Midwest Medical Review, LLC, was convicted of being aided and abetted in the introduction of a misbranded drug into interstate commerce with intent to mislead, said information being a material fact; and

**PARAGRAPH FOURTEEN**

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

**PARAGRAPH FIFTEEN**

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



PARAGRAPH SIXTEEN


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

PARAGRAPH SEVENTEEN

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

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

Against the peace and dignity of the State.

  
FOREPERSON OF THE GRAND JURY

**FILED**

2015 FEB 26 PM 2:29

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

3/3/2015 SCANNED

ALINAPP

DEFENDANT Wendy L. Rogers CHARGE Theft PC 31.03 F1  
 ADDRESS Person ID: 1510040, 2015-1583  
1312 Havenwood Blvd., New Braunfels, TX 78132 CAUSE# 380-80443-2005  
 DESCRIPTION W/F; DOB: 11/05/1975; SSN 462-65-4925; TX DL #15882907 AGENCY# State Securities Board  
 ARREST INFORMATION GJR  
 C/C Richard Hubert Gray, Michael C. McDermott, Ronald L. James, Donald L. James Witness: Letha Sparks

## TRUE BILL OF INDICTMENT

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

WENDY L. ROGERS, hereinafter "defendant"

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

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

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

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

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

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

Against the peace and dignity of the State.

  
FOREPERSON OF THE GRAND JURY

FILED

2015 FEB 26 PM 2:29

ANDREA STROH THOMPSON  
DISTRICT CLERK  
COLLIN COUNTY, TEXAS  
BY B. Bards DEPUTY



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

STATE OF TEXAS,

Plaintiff,

v.

RETIREMENT VALUE, LLC, *ET AL.*

Defendants,

§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

126<sup>TH</sup> JUDICIAL DISTRICT

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

TO THE HONORABLE JUDGE OF SAID COURT:

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

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

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

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

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

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

11. The State's plan worked.

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

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

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

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

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

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not through any complaint by any investor in Retirement Value.



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

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

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

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

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

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

Respectfully submitted,

RENTEA & ASSOCIATES

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

**COUNSEL FOR WENDY ROGERS**

**CERTIFICATE OF SERVICE**

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

Electronic Service

on this the 15<sup>th</sup> day of April, 2015.

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

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

*/s/ Bogdan Rentea* \_\_\_\_\_  
Bogdan Rentea



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

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
RETIREMENT VALUE, LLC, <i>ET AL.</i>	§	
	§	
Defendants,	§	126 <sup>TH</sup> JUDICIAL DISTRICT

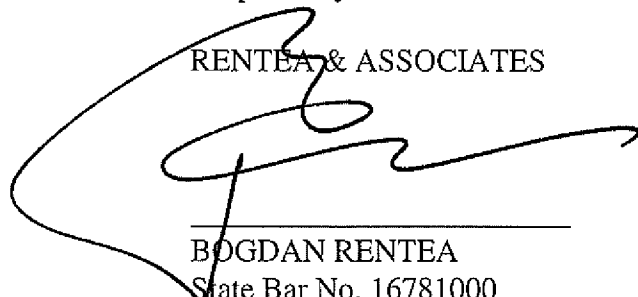
**FIRST AMENDED NOTICE OF INTENTION TO TAKE  
ORAL DEPOSITION OF LETHA SPARKS**

TO: Letha Sparks, c/o Jack Hohengarten Texas Attorney General, Financial and Tax Litigation Division, 300 W. 15<sup>th</sup> Street, Sixth Floor Austin, Texas 78711-2548.

Please take notice that, pursuant to Texas Rules of Civil Procedure 199, Defendant Wendy Rogers will take the deposition of **Letha Sparks** at the offices of McGinnis, Lochridge & Kilgore, LLP, 600 Congress Avenue, Suite 2100, Austin, Texas 78701, **May 11, 2015 at 9:00**

**a.m.** The deposition will be recorded stenographically by a court reporter authorized to administer oaths, and, when taken, may be used in evidence during any hearing in said cause.

Respectfully submitted,  
RENTEA & ASSOCIATES



BOGDAN RENTEA  
State Bar No. 16781000  
505 W. 12<sup>th</sup> Street, Suite 206  
Austin, Texas 78701  
Tel: (512) 472-6291  
Fax: (512) 472-6278

**COUNSEL FOR  
DEFENDANT WENDY  
ROGERS**

Unofficial copy Travis Co. District Clerk Velva L. Price

**CERTIFICATE OF SERVICE**

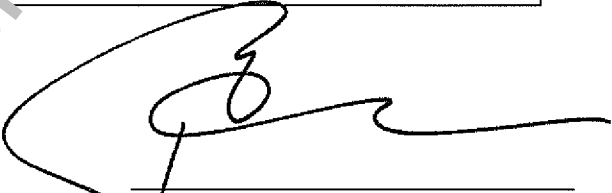
I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record herein by:

E-mail

on this the 20<sup>th</sup> day of May, 2015.

<p>Jack Hohengarten Susan Millsapps TEXAS ATTORNEY GENERAL Financial and Tax Litigation Division 300 W. 15<sup>th</sup> Street, Sixth Floor Austin, Texas 78711-2548 (512) 475-3503 (512) 477-2348 fax <a href="mailto:jack.hohengarten@texasattorneygeneral.gov">jack.hohengarten@texasattorneygeneral.gov</a> <a href="mailto:susan.millsapps@texasattorneygeneral.gov">susan.millsapps@texasattorneygeneral.gov</a> COUNSEL FOR THE STATE OF TEXAS</p>	<p>Michael Napoli COX SMITH MATTHEWS INC 1201 Elm Street, Suite 3300 Dallas, Texas 75270 (214) 698-7800 (214) 698-7899 fax <a href="mailto:mnapoli@coxsmith.com">mnapoli@coxsmith.com</a></p> <p>Mary Schaefer Dietz COX SMITH MATTHEWS INC. 111 Congress Avenue, Suite 2800 Austin, Texas 78701 (512) 703-6300 (512) 703-6399 fax <a href="mailto:mdietz@coxsmith.com">mdietz@coxsmith.com</a> COUNSEL FOR RV RECEIVER</p>
	<p>Isabelle M. Antongiorgi TAYLOR DUNHAM, LLP 301 Congress Avenue, Suite 1050 Austin, Texas 78701 (512) 473-2257 (512) 478-4409 fax <a href="mailto:iantongiorgi@taylordunham.com">iantongiorgi@taylordunham.com</a> COUNSEL FOR HCF RECEIVER</p>

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



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Bogdan Rentea





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

STATE OF TEXAS,

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IN THE DISTRICT COURT OF

Plaintiff,

v.

TRAVIS COUNTY, TEXAS

RETIREMENT VALUE, LLC, *ET AL.*

Defendants,

126<sup>TH</sup> JUDICIAL DISTRICT

**FIRST AMENDED NOTICE OF INTENTION TO TAKE  
ORAL DEPOSITION OF JOE ROTUNDA**

TO: Joe Rotunda, c/o Jack Hohengarten Texas Attorney General, Financial and Tax Litigation Division, 300 W. 15<sup>th</sup> Street, Sixth Floor Austin, Texas 78711-2548.

Please take notice that, pursuant to Texas Rules of Civil Procedure 199, Defendant Wendy Rogers will take the deposition of **Joe Rotunda** at the offices McGinnis, Lochridge & Kilgore, LLP, 600 Congress Avenue, Suite 2100, Austin, Texas 78701, **May 11, 2015 at 1:00 p.m.** The deposition will be recorded stenographically by a court reporter authorized to administer oaths, and, when taken, may be used in evidence during any hearing in said cause.

Respectfully submitted,

RENTEA & ASSOCIATES

BOGDAN RENTEA  
State Bar No. 16781000  
505 W. 12<sup>th</sup> Street, Suite 206  
Austin, Texas 78701  
Tel: (512) 472-6291  
Fax: (512) 472-6278

**COUNSEL FOR  
DEFENDANT WENDY  
ROGERS**

Unofficial copy Travis Co. District Clerk Velva L. Price

**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:

E-mail

on this the 6<sup>th</sup> day of May, 2015.

<p>Jack Hohengarten Susan Millsapps TEXAS ATTORNEY GENERAL Financial and Tax Litigation Division 300 W. 15<sup>th</sup> Street, Sixth Floor Austin, Texas 78711-2548 (512) 475-3503 (512) 477-2348 fax <a href="mailto:jack.hohengarten@texasattorneygeneral.gov">jack.hohengarten@texasattorneygeneral.gov</a> <a href="mailto:susan.millsapps@texasattorneygeneral.gov">susan.millsapps@texasattorneygeneral.gov</a> COUNSEL FOR THE STATE OF TEXAS</p>	<p>Michael Napoli COX SMITH MATTHEWS INC 1201 Elm Street, Suite 3300 Dallas, Texas 75270 (214) 698-7800 (214) 698-7899 fax <a href="mailto:mnapoli@coxsmith.com">mnapoli@coxsmith.com</a></p> <p>Mary Schaefer Dietz COX SMITH MATTHEWS INC. 111 Congress Avenue, Suite 2800 Austin, Texas 78701 (512) 703-6300 (512) 703-6399 fax <a href="mailto:mdietz@coxsmith.com">mdietz@coxsmith.com</a> COUNSEL FOR RV RECEIVER</p>
	<p>Isabelle M. Antongiorgi TAYLOR DUNHAM, LLP 301 Congress Avenue, Suite 1050 Austin, Texas 78701 (512) 473-2257 (512) 478-4409 fax <a href="mailto:iantongiorgi@taylordunham.com">iantongiorgi@taylordunham.com</a> COUNSEL FOR HCF RECEIVER</p>

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<p>Benjamin S. De Leon  Thomas P. Washburn  DE LEON &amp; WASHBURN, P.C.  901 S. MoPac Expressway, Suite 230  Austin, Texas 78746  (512) 478-5308  (512) 482-8628 fax  <a href="mailto:bdeleon@dwlawtx.com">bdeleon@dwlawtx.com</a>  <a href="mailto:pwashburn@dwlawtx.com">pwashburn@dwlawtx.com</a>  COUNSEL FOR THIRD PARTY DEFENDANT  MICHAEL McDERMOTT</p>	



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Unofficial copy Travis Co. District Clerk Veva L. Price



STATE OF TEXAS

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COUNTY OF TRAVIS

**AFFIDAVIT OF LETHA LOUISE SPARKS**

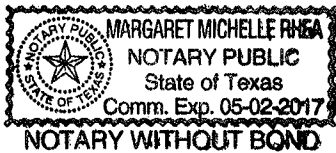
BEFORE ME, the undersigned authority, on this day personally appeared Letha Louise Sparks, a person whose identity is known to me and after being duly sworn, stated as follows:

1. My name is Letha Louise Sparks. I am over 18 years of age, of sound mind and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. I am licensed to practice public accountancy as a Certified Public Accountant. The Texas State Board of Public Accountancy conferred the license in February 1981, and it has continuously remained in effect since that date. I have also been granted the Certified in Financial Forensics credential by the American Institute of Certified Public Accountants. The certification was granted in January 2009 and has continuously remained in effect since that date.
3. I am currently employed as a Financial Examiner with the Enforcement Division of the Texas State Securities Board ("TSSB"), and I am assigned to the Austin office located at 208 East 10<sup>th</sup> Street, Fifth Floor, Austin, Texas 78701. I have been continuously employed in this capacity since May 1998.
4. As a TSSB Financial Examiner, I am authorized to conduct investigations to prevent or detect violations of The Securities Act (Tex. Rev. Civ. Stat. Ann. art 581-1 et seq. (West 2010 & Supp. 2014) ("The Securities Act"). In that regard, I investigate allegations of securities fraud, analyze financial transactions as reflected in bank records and other supporting documents, interview investors and company principals, review public securities filings and company offering documents, review investor files and materials, and perform other related duties to determine whether Texas securities laws have been violated.
5. During my employment with the TSSB, I have testified as an expert in financial matters and securities investigatory matters at state civil and criminal trials and in Federal criminal trials concerning the sources and uses of funds by securities promoters, sales agents, and/or brokers and the companies they control, and other related securities topics.
6. I have executed this affidavit in connection with my employment as a Financial Examiner of the Enforcement Division of the TSSB.

7. I have reviewed the First Amended Motion to Enforce Settlement Agreement and the Brief in Support of Her First Amended Motion to Enforce Settlement Agreement that Wendy Rogers filed in Cause No. D-1-GV-10-000454, *State of Texas v. Retirement Value, LLC, et al.*, in the 126<sup>th</sup> Judicial District Court of Travis County, Texas. Based on my review of these filings, and notwithstanding information that has already been provided to Wendy Rogers, the only responsive information I have would be based on the Enforcement Division's investigation of Retirement Value LLC, Wendy Rogers and other individuals involved in the marketing and sale of RV's investment product.

*Letha L. Sparks*  
AFFIANT

Sworn to and subscribed before me on the 7th day of May, 2015, by Letha Louise Sparks.



*Margaret Michelle Rhea*  
Notary Public in and for  
The State of Texas  
My Commission expires on May 2, 2017

Unofficial copy Travis Co. District Clerk Vervalde

## EXHIBIT A

### TO THE AFFIDAVIT OF LETHA LOUISE SPARKS

#### **Sec. 28. Investigations, Investigatory Materials, and Registration Related Materials.**

A. Investigations by Commissioner. The Commissioner shall conduct investigations as the Commissioner considers necessary to prevent or detect the violation of this Act or a Board rule or order. For this purpose, the Commissioner may require, by subpoena or summons issued by the Commissioner, the attendance and testimony of witnesses and the production of all records, whether maintained by electronic or other means, relating to any matter which the Commissioner has authority by this Act to consider or investigate, and may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence; provided, however, that all information of every kind and nature received in connection with an investigation and all internal notes, memoranda, reports, or communications made in connection with an investigation shall be treated as confidential by the Commissioner and shall not be disclosed to the public except under order of court for good cause shown. Nothing in this section shall be interpreted to prohibit or limit the publication of rulings or decisions of the Commissioner nor shall this limitation apply if disclosure is made, in the discretion of the Commissioner, as part of an administrative proceeding or a civil or criminal action to enforce this Act. In case of disobedience of any subpoena, or of the contumacy of any witness appearing before the Commissioner, the Commissioner may invoke the aid of the District Court within whose jurisdiction any witness may be found, and such court may thereupon issue an order requiring the person subpoenaed to obey the subpoena or give evidence, or produce books, accounts, records, papers, and correspondence touching the matter in question. Any failure to obey such order of the court may be punished by such court as contempt thereof.

In the course of an investigation looking to the enforcement of this Act, or in connection with the application of a person or company for registration or to qualify securities, the Commissioner or Deputy Commissioner shall have free access to all records and reports of and to any department or agency of the state government. In the event, however, that the Commissioner or Deputy Commissioner should give out any information which the law makes confidential, the affected corporation, firm or person shall have a right of action on the official bond of the Commissioner or Deputy for the corporation's, firm's, or person's injuries, in a suit brought in the name of the state at the relation of the injured party.

The Commissioner may in any investigation cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed for depositions in civil actions under the laws of Texas.

Each witness required to attend before the Commissioner shall receive a fee, for each day's attendance, in an amount set by Board rule. All disbursements made in the payment of such fees shall be made in accordance with Board rule and shall be included in, and paid in the same manner as is provided for, the payment of other expenses incident to the administration and enforcement of this Act.

The sheriff's or constable's fee for serving the subpoena shall be the same as those paid the sheriff or constable for similar services. The fees, expenses and costs incurred at or in connection with any hearing may be imposed by the Commissioner upon any party to the record, or may be divided between any and all parties to the record in such proportions as the Commissioner may determine.

Any subpoena, summons, or other process issued by the Commissioner may be served, at the Commissioner's discretion, by the Commissioner, the Commissioner's authorized agent, a sheriff, or a constable.

The Commissioner may, at the Commissioner's discretion, disclose any confidential information in the Commissioner's possession to any governmental or regulatory authority or association of governmental or regulatory authorities approved by Board rule or to any receiver appointed under Section 25-1 of this Act. The disclosure does not violate any other provision of this Act or Chapter 552, Government Code.

Unofficial copy Travis Co. District Clerk Velva L. Price





STATE OF TEXAS

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COUNTY OF TRAVIS

**AFFIDAVIT OF JOSEPH ROTUNDA**

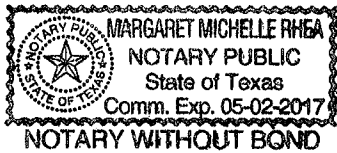
BEFORE ME, the undersigned authority, on this day personally appeared Joseph Rotunda, a person whose identity is known to me, and after being duly sworn, stated as follows:

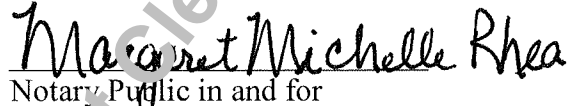
1. My name is Joseph Rotunda. I am over 18 years of age, of sound mind and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. I am received my Doctor of Jurisprudence from the University of Kansas in May 2000 and became licensed to practice law in the State of Texas in May 2001. I have been continuously licensed to practice law in Texas since May 2001.
3. I am currently employed as the Director of the Enforcement Division of the Texas State Securities Board ("TSSB"), and I am assigned to the Austin office located at 208 East 10<sup>th</sup> Street, Fifth Floor, Austin, Texas 78701. I have been continuously employed in this capacity since March 2007.
4. As Director of the Enforcement Division, I am responsible for the operation and management of the Enforcement Division of the TSSB. I am responsible for directing, reviewing and/or approving many investigations of suspected violations of the Securities Act, referrals for prosecution, referrals for civil receiverships and injunctive and equitable relief, the litigation of administrative actions before the State Office of Administrative Hearings, applications for the issuance of administrative subpoenas that require witnesses to appear and testify or produce documents and records, as well as other law enforcement and regulatory actions brought by or at the request of the TSSB.
5. I have executed this affidavit in connection with my employment as the Director of the Enforcement Division of the TSSB.
6. I am familiar with Section 28.A of The Securities Act, Tex. Rev. Civ. Stat. Ann. arts. 581-1 to 581-43 (West 2010 & Supp. 2014). It generally provides that all information received in connection with an investigation must be treated as confidential information to the public except under order of court for good cause shown. A true and correct copy of Section 28.A of The Securities Act is attached hereto and fully incorporated herein.
7. I have reviewed the First Amended Motion to Enforce Settlement Agreement and the Brief in Support of Her First Amended Motion to Enforce Settlement Agreement that

Wendy Rogers filed in Cause No. D-1-GV-10-000454, *State of Texas v. Retirement Value, LLC, et al.*, in the 126<sup>th</sup> Judicial District Court of Travis County, Texas. Based on my review of these filings, and notwithstanding information that has already been provided to Wendy Rogers, the only responsive information I have would fall under the confidentiality provision of Section 28.A of The Securities Act and the attorney-client privilege.

  
AFFIANT JOSEPH ROTUNDA

Sworn to and subscribed before me on the 7<sup>th</sup> day of May, 2015, by Joseph Rotunda.



  
Notary Public in and for

The State of Texas

My Commission expires on May 2, 2017

Unofficial copy Travis Co. District Clerk Velda L. Price

## EXHIBIT A

### TO THE AFFIDAVIT OF JOSEPH ROTUNDA

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In the course of an investigation looking to the enforcement of this Act, or in connection with the application of a person or company for registration or to qualify securities, the Commissioner or Deputy Commissioner shall have free access to all records and reports of and to any department or agency of the state government. In the event, however, that the Commissioner or Deputy Commissioner should give out any information which the law makes confidential, the affected corporation, firm or person shall have a right of action on the official bond of the Commissioner or Deputy for the corporation's, firm's, or person's injuries, in a suit brought in the name of the state at the relation of the injured party.

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Any subpoena, summons, or other process issued by the Commissioner may be served, at the Commissioner's discretion, by the Commissioner, the Commissioner's authorized agent, a sheriff, or a constable.

The Commissioner may, at the Commissioner's discretion, disclose any confidential information in the Commissioner's possession to any governmental or regulatory authority or association of governmental or regulatory authorities approved by Board rule or to any receiver appointed under Section 25-1 of this Act. The disclosure does not violate any other provision of this Act or Chapter 552, Government Code.

Unofficial copy Travis Co. District Clerk Volva Pico



**COMPROMISE, SETTLEMENT AND RELEASE AGREEMENT**

This Compromise, Settlement, and Release Agreement (the "Agreement" or the "Settlement Agreement") is entered into effective as of the 6th day of May 2012 (the "Settlement Date"), between and among the following:

1. Michael McDermott ("McDermott");
2. Eduardo S. Espinosa, in his capacity as Court Appointed Receiver for Retirement Value, LLC (the "RV Receiver" or the "Receiver") and Retirement Value, LLC, a Texas limited liability company ("Retirement Value" or "RV");
3. The State of Texas (the "State");
4. The Texas State Securities Board ("TSSB") and John Morgan, in his official capacity as Commissioner of the TSSB ("Commissioner Morgan"); and
5. Gary Cain and Perry Edelstein (collectively, the "Intervenors"), who will seek a putative settlement class on behalf of all participants in the RV Re-Sale Life Insurance Policy Program ("RSLIPP") (hereinafter referred to as the "Putative Settlement Class").

McDermott, the RV Receiver, Retirement Value, the State, the TSSB, Commissioner Morgan, and the Putative Settlement Class will be collectively referred to as the "Parties," and may be individually referred to as a "Party."

**I.  
RECITALS**

1. On May 5, 2010, the State, at the request of then-Deputy Securities Commissioner of Texas, John Morgan, filed an Original Verified Petition and



Application for *Ex Parte* Temporary Restraining Order, Temporary and Permanent Injunction, Restitution, the Disgorgement of Economic Benefits, Receivership, and Other Equitable Relief, 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 126<sup>th</sup> Judicial District Court of Travis County, Texas (the "Pending Case" or the "Lawsuit").

2. On May 5, 2010, the Court issued the First Amended Temporary Restraining Order and Order Appointing Receiver in the Lawsuit, 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.

3. On August 12, 2011, the RV Receiver filed his Third Amended Cross-Claim and Third-Party Claim, joining McDermott as an additional Third-Party Defendant in the Lawsuit. The RV Receiver has asserted claims against McDermott in the Pending Case for, among other things, indemnity, illegally selling unregistered securities, aiding and abetting the illegal sale of unregistered securities by others, and conspiring with and aiding and abetting the officers of Retirement Value in breaching their fiduciary duties to Retirement Value.

4. On February 14, 2012, the Court granted the Receiver's Third Motion for Substitute Service, authorizing service of process on McDermott through various means. On March 12, 2011, McDermott filed his Special Appearance, Plea to the Jurisdiction, Plea in Abatement, Special Exceptions, and after and subject thereto, Original Answer. On March 16, 2012, McDermott formally waived his Special Appearance via his Motion

for Clarification of the Court's Order of December 7, 2011 (the "Securities Order"), thereby making a general appearance in the Lawsuit.

5. On March 28, 2012 the trial court signed an *Order on McDermott's Motion for Clarification of the Court's Order of December 7, 2011*, finding that the Securities Order was binding on Mr. McDermott and any other parties who had not yet appeared at the time the Securities Order was signed.<sup>1</sup> On April 3, 2012, McDermott filed his Motion to Intervene in Case No. 03-11-00867-CV: *Wendy Rogers v. The State of Texas, Eduardo Espinosa, Receiver of Retirement Value LLC, and Donald R. Taylor, Receiver of Hill Country Funding, LLC, a Texas Limited Liability Company, and Hill Country Funding, a Nevada Limited Liability Company*; In the Third Court of Appeals (the "Rogers Appeal"). The Third Court of Appeals has not yet ruled on McDermott's Motion to Intervene in the Rogers Appeal.

6. On April 11, 2012, McDermott filed his Original Counterclaim against Retirement Value, and his Original Third-Party Petition against the TSSB and Commissioner Morgan in the Lawsuit, seeking a declaratory judgment and transfer of the Pending Case to the Third Court of Appeals in the alternative

7. On April 17, 2012, McDermott filed his Notice of Appeal in Case No. 03-12-00240-CV: *Michael McDermott v. The State of Texas, Eduardo Espinosa, Temporary Receiver of Retirement Value, LLC, and Donald R. Taylor, Temporary Receiver of Hill Country Funding, LLC*; In the Third Court of Appeals (the "McDermott Appeal").

8. McDermott disputes the allegations made against him and admits no wrongdoing.

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<sup>1</sup> On April 25, 2012, the trial court signed an *Amended Order on McDermott's Motion for Clarification of the Court's Order of December 7, 2011*, finding that the Securities Order was only binding on McDermott.

9. The Parties desire to avoid further litigation, preparation and expense; to terminate all past, present and potential controversies between the Parties related to RV, and to compromise and settle all the Parties' differences of any type related to RV, including but not limited to those asserted in the Pending Case.

10. By September 10, 2012, Intervenors will assert claims on behalf of the Putative Settlement Class, requesting Court approval for a settlement class to seek a class-wide settlement as set forth in this Agreement.

11. RV, the RV Receiver, the Intervenors, the Putative Settlement Class, the State, the TSSB, and Commissioner Morgan (the "Releasing Parties") have agreed to resolve all claims that they have or may have against McDermott arising out of RV, which were or could have been asserted in the Lawsuit, without admission by any party of the merits of the claims, demands, charges, and/or contentions of the others. Likewise, McDermott has agreed to resolve all claims that he has or may have against the Releasing Parties related to RV, which were or could have been asserted in the Lawsuit, without admission by any party of the merits of the claims, demands, charges, and/or contentions of the others.

## II. 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. Monetary Consideration. McDermott agrees to pay the Receiver \$750,000.00 (seven hundred and fifty thousand dollars, hereinafter referred to as the "Settlement Amount") as follows: (i) an initial payment of \$400,000.00 (four hundred



thousand dollars) into escrow within 60 days from the date when this Agreement has been fully executed by all Parties, with the remainder paid at the rate of \$50,000.00 (fifty thousand dollars) per month on or before the final day of each month thereafter, until the Settlement Amount is paid in full. The escrow agent shall be De Leon & Wachburn, P.C. The Settlement Amount will leave escrow and transfer to the Receiver once the settlement is formally approved by the Court. This settlement is expressly conditioned on and subject to court approval, and the conditions set out in Sections 7 and 8 hereof. If the Court does not approve the settlement and the refusal cannot be cured and/or the conditions set out in Sections 7 and 8 hereof are not met, the Settlement Amount will revert back to McDermott and this Agreement will be void. Assuming the settlement is fully approved by the Court as called for in this Agreement, the Settlement Amount paid to the Receiver shall only be used to pay premiums of policies held in the Receivership and the attorney's fees of counsel who prosecuted the claims against McDermott and represented the Putative Settlement Class.

2. Discounted Opportunity to Settle for Other Third-Party Defendant Licensees. Based upon McDermott's good-faith negotiations to date, the Receiver agrees to give all other Third-Party Defendant Licensees, who have been sued in this Lawsuit and have not yet settled, an opportunity to pay 85% of their total commission amounts back to the Receiver in settlement of the Receiver's claims against them. The discounted offer will remain open to the Third-Party Defendant Licensees for a period of two (2) weeks from and after such date when this Agreement has been fully executed by all Parties, at which time it shall be withdrawn and rendered of no further force and effect. Ben De Leon, attorney of record for McDermott, shall have the right to review any

written notice the Receiver intends to send to all Third-Party Defendant Licensees in this regard.

3. Cooperation with Investigation by Receiver and State. McDermott will cooperate with the RV Receiver and the State in connection with their investigation of the affairs of Retirement Value, including the prosecution of any claims the Receiver or the State may bring. With regard to all cooperation requests sought by the RV Receiver and the State from McDermott, such requests shall be directed through Ben De Leon, attorney of record for McDermott, via phone and/or email in connection with their investigation of the affairs of Retirement Value, including the prosecution of any claims the Receiver or the State may bring.

4. Mutual Releases.

A. Release by the Releasing Parties. In return for the Monetary Consideration to be paid as stated herein, the agreement to cooperate, the mutual releases and other good and valuable consideration, Retirement Value, the RV Receiver, the Putative Settlement Class, the State, the TSSB, and Commissioner Morgan (the "Releasing Parties"), jointly for themselves and their respective heirs, executors, administrators, legal representatives, successors and assigns hereby agree to mutually, irrevocably, unconditionally and completely, RELEASE, ACQUIT AND FOREVER DISCHARGE McDermott and his assigns, insurers, heirs, executors, legal representatives and legal counsel, of and from any and all claims, demands, actions, liabilities, damages, losses, costs, expenses, attorneys' fees and causes of action of any nature, both past and present, known and unknown, accrued and unaccrued, foreseen and unforeseen,

asserted and not asserted, discovered or not discovered whether at law, in equity or otherwise, either direct or consequential, which they or any of them, have ever had or may now have against McDermott arising out of Retirement Value, which were or could have been asserted by them in the Lawsuit. The Releasing Parties further fully, completely, and unconditionally release and forever discharge McDermott from any claim that this Agreement was induced by any fraudulent or negligent act or omission, and/or result from any actual or constructive fraud, negligent misrepresentation, conspiracy, breach of fiduciary duty, breach of confidential relationship, or the breach of any other duty under law or in equity.

B. Release by McDermott. In return for the mutual releases and other good and valuable consideration McDermott, jointly for himself and his respective heirs, executors, administrators, legal representatives, successors and assigns hereby agrees to mutually, irrevocably, unconditionally and completely, RELEASE, ACQUIT AND FOREVER DISCHARGE the Releasing Parties and their parents, subsidiaries, predecessors, successors, assigns, insurers, heirs, executors, legal representatives and legal counsel, of and from any and all claims, demands, actions, liabilities, damages, losses, costs, expenses, attorneys' fees and causes of action of any nature, both past and present, known and unknown, accrued and unaccrued, foreseen and unforeseen, asserted and not asserted, discovered or not discovered whether at law, in equity or otherwise, either direct or consequential, which he has ever had or may now have against the Releasing Parties or any of them arising out Retirement Value, which were or could have been asserted by him in the Lawsuit. McDermott further fully, completely, and

unconditionally releases and forever discharges the Releasing Parties from any claim that this Agreement was induced by any fraudulent or negligent act or omission, and/or result from any actual or constructive fraud, negligent misrepresentation, conspiracy, breach of fiduciary duty, breach of confidential relationship, or the breach of any other duty under law or in equity.

C. The Parties expressly waive the provisions of any law that might otherwise render their releases contained herein unenforceable with respect to unknown claims, including § 1542 of the California Civil Code, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

D. The Parties expressly understand and agree that the exchange of releases does not apply to actions brought by any of them to enforce the terms of this Agreement, and the Parties shall reserve and each has reserved all of their rights against the other to enforce the terms of this Agreement.

5. Indemnity. The Receiver will indemnify and hold harmless McDermott from any claims brought by, through, or under the Receiver; provided, however that the indemnity will be limited to the net money received by the receivership estate, after fees and expenses, from this settlement pursuant to paragraph 1. The indemnity clause shall not be construed in any manner that would result in a net loss to the receivership estate.

6. Non-Disparagement. RV, the RV Receiver, the Intervenor, the Putative Settlement Class and McDermott agree that they will not, at any time, disparage one another to any third parties in violation of the common law or any other statute.

7. Requirement of Court Approval of this Agreement.

A. The Parties understand and agree that the terms of this Agreement are conditioned upon final approval by the Court. 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 Parties 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.

8. Certification of the Settlement Class.

A. This Settlement is expressly conditioned upon: (i) the Court's certification of a Settlement Class as defined herein; (ii) there being no Class Members who, at the time of the Settlement Hearing, continue to seek to opt out of the Settlement, unless McDermott waives this provision; and (iii) the

Court's Final Approval of the Settlement (collectively, the "Settlement Conditions"). To the extent the Settlement Conditions are not met, McDermott does not waive, but rather expressly reserves, all rights to challenge any and all claims and allegations asserted in the Lawsuit upon all procedural and substantive grounds, including, without limitation, the ability to challenge class action treatment on any grounds and to assert any and all other potential defenses or privileges. The Parties agree that McDermott retains and reserves these rights, and they agree not to take a position to the contrary. The Receiver agrees to pay attorney's fees and expenses associated with a Settlement Class, up to a maximum of \$50,000.00 in fees and \$10,000.00 in expenses, to Class Counsel. If certification of the Settlement Class is ultimately reversed on appeal, the Settlement Amount would revert to McDermott and this Agreement shall be null and void, and all claims brought in the Lawsuit may again be pursued notwithstanding any intervening running of limitations.

B. Definitions: In addition to terms identified previously, the terms below and used hereinafter shall have the following meanings:

(1) "Class Counsel" means the law firm of Weisbart, Springer, & Hayes, LLP, subject to approval as Putative Settlement Class Counsel by the Court.

(2) "Counsel for McDermott" means the law firm of De Leon & Washburn, P.C.

(3) The "Court" means the Civil District Court of Travis County, 200th Judicial District.

(4) "Effective Date" means the date upon which all of the following have occurred: (1) the Settlement Conditions have been met; (2) the Court has entered an order certifying the Settlement Class; (3) Final Approval has been issued; and (4) the appeal period (i.e., 30 days) has run without an appeal of any Court order associated with the Settlement or, in the event of an appeal, the Parties have received actual notice that the Settlement has received final approval after completion of the appellate process and the final resolution of any appeals.

(5) "Final Approval" means the order or orders entered by the Court granting approval of the Settlement Agreement, dismissing with prejudice the claims the Parties have against each other (with continuing jurisdiction limited to enforcing the Settlement Agreement), and barring and enjoining all Parties from asserting any of the released claims.

(6) "Notice" means the Notice of a Proposed Class Action Settlement, which is to be mailed directly to all participants in the RSLIPP following Preliminary Approval of this Agreement. Ben De Leon, attorney of record for McDermott, shall have the right to review the Notice before it is mailed directly to all participants in the RSLIPP following Preliminary Approval of this Agreement.

(7) "Preliminary Approval" means the order or orders entered by the Court preliminarily approving the terms of this Settlement Agreement, certifying the Settlement Class, and approving the form of Notice to be sent to Class Members.

(8) "Settlement Class," "Class," or "Class Members." Solely for purposes of settlement and judicial approval of this Settlement Agreement, the Parties stipulate to the certification of the following Settlement Class:

Any and all Persons who, for purposes of participating in Retirement Value's Re-Sale Life Insurance Program or any similar program specifically marketed by Retirement Value, either (i) invested, lent money, or otherwise caused funds to be paid with regard to such program, or (ii) signed a Retirement Value Policy Participation Agreement. The Settlement Class includes the 1252 Persons listed on Exhibit A attached hereto, which are the names of the known investors in Retirement Value identified to date by the Receiver and the State.

The Settlement Class must be certified pursuant to Tex. R. Civ. P.42(b)(2).

(9) "Settlement Hearing" means the hearing at which the Court will consider final approval of this Settlement Agreement and related matters.

C. Administrative Expenses: All administrative expenses, up to a maximum of \$50,000.00 in attorneys' fees and \$10,000.00 in expenses, including the cost of Notice to the Settlement Class, are to be paid by Class Counsel and reimbursed to Class Counsel by Receiver out of the Settlement Amount; unless the Court and the Receiver approves Class Counsel's request to pay such costs out of other Receivership assets, so the entirety of the Settlement Amount may be used to pay insurance premiums in the Retirement Value portfolio.

D. Preliminary Approval: Within twenty-one (21) days after the execution of this Settlement Agreement, the Parties shall submit the Agreement to the Court and apply for:



(1) Preliminary Approval; and

(2) an order that, pending Final Approval, preliminarily enjoins the Releasing Parties, including each member of the Settlement Class, from commencing, prosecuting or maintaining in any court other than this Court any claim, action or other proceeding that challenges or seeks review of or relief from any order, judgment, act, decision or ruling of this Court in connection with this Settlement Agreement.

(3) Notice, Objections, and Settlement Hearing.

9. Class Counsel will undertake the administrative responsibility of providing Notice to the Class Members in connection with this Settlement Agreement. Class Counsel shall bear all costs of sending the Notice.

10. If envelopes from the mailing of the Notice are returned with forwarding addresses, the Class Counsel will re-mail the Notice to the new address within three (3) business days.

11. Class Counsel shall provide the Court, at least five (5) calendar days prior to the Settlement Hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notice to proposed Class Members.

12. In the event that a Notice is returned to Class Counsel by the United States Postal Service because the address of the recipient is no longer valid, i.e., the envelope is marked "Return to Sender," Class Counsel shall perform a standard skip trace in an effort to attempt to ascertain the current address of the particular proposed Class Member in question and, if such an address is ascertained, Class Counsel will re-send the

Notice within three (3) business days of receiving the newly ascertained address; if no updated address is obtained for that proposed Class Member, the Notice shall be sent again to the proposed Class Member's last known address. In either event, the Notice shall be deemed received once it is mailed for the second time. With respect to envelopes marked "Return to Sender," Class Counsel shall also call any identified last known telephone numbers (and telephone numbers updated through public and proprietary databases) of proposed Class Members to obtain their current addresses.

13. The Class Counsel shall provide a list of those Class Members who have not been located and the Class Counsel may engage third-party vendors, who shall also keep Class Members' social security numbers confidential, to locate Class Members. Class Counsel will maintain a log of its and any third-party vendors' activities undertaken pursuant to this section. Class Counsel shall provide all new and corrected contact information regarding the Class Members to the Receiver.

14. Class Member objections to this Settlement Agreement must be submitted in writing and must include a detailed description of the basis of each objection. Objections must be filed with the Court, with copies served on counsel for all Parties to this Settlement Agreement, within thirty-five (35) days after the Notice was mailed to Class Members. No one may appear at the Settlement Hearing for the purpose of objecting to this Settlement Agreement without first having filed and served his or her objection(s) in writing within thirty-five (35) days after the Notice was mailed to Class Members.

15. Upon Preliminary Approval, the Parties will ask the Court to set a briefing schedule and a Settlement Hearing. The Parties shall file all papers in support of

Final Approval of the Settlement Agreement no later than twenty (21) days following the close of the objection period, and the Settlement Hearing will be held no earlier than thirty (30) days following the close of the objection period.

16. No Admission of Liability. Mr. McDermott's settlement payment is not an admission of liability in the Lawsuit, such liability being expressly denied.

17. Attorneys' Fees. The Parties will bear their own costs and attorneys' fees.

18. Dismissal of Pending Appeals. Upon fulfillment of all the terms and conditions in this Agreement, McDermott will dismiss the Rogers Appeal and the McDermott Appeal. Pending fulfillment of all the terms and conditions in this Agreement, McDermott will move to abate the Rogers Appeal and the McDermott Appeal; representing that the parties have reached a settlement agreement and that, as soon as the Court formally approves the agreement, McDermott will file a motion to dismiss the Rogers Appeal and the McDermott Appeal.

19. Pending Hearings. McDermott's counsel has withdrawn McDermott's Response to the Wells Fargo Defendants' Motion to Stay and Motion to Sever Claims. McDermott's counsel has also withdrawn and passed McDermott's Motion to Compel Arbitration and Special Exceptions, which was set for hearing May 29, 2012.

20. Non-Suit. Upon Court approval of this settlement, McDermott will non-suit his counterclaims against RV and his third-party petition against the TSSB and Commissioner Morgan with prejudice. The Receiver will dismiss his claims in the Lawsuit against McDermott with prejudice upon receipt of the final installment payment pursuant to paragraph 1, above.

21. 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. All Parties shall act in good faith and use best efforts to obtain Court approval of the Settlement and the Settlement Class, and to otherwise meet the Settlement Conditions.

22. 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 further 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.

23. 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 Civil District 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, 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. Contractual Terms. The Parties understand and agree that the terms of this 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.

H. Severability; Invalid Provisions Omitted. After the Agreement is approved by the Court, in the event that any provision, clause or part of this Agreement is subsequently 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 Agreement. Any provision declared invalid, void, voidable, illegal and/or unenforceable shall be severable from the remainder of this Agreement.

I. 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.

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

[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]

Unofficial copy Travis Co. District Clerk Velda L. Price

\_\_\_\_\_  
MICHAEL MCDERMOTT

Date: \_\_\_\_\_

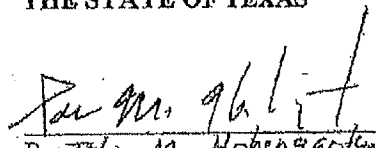
RETIREMENT VALUE, LLC



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

Date: 5/22/12

THE STATE OF TEXAS



By: John M. Hohengarten  
Its: AAG

Date: 8-17-2012

THE TEXAS STATE SECURITIES BOARD

\_\_\_\_\_  
By:  
Its:

Date: \_\_\_\_\_

A CLASS CONSISTING OF ALL PARTICIPANTS IN THE RE-SALE LIFE INSURANCE POLICY  
PROGRAM CREATED BY RETIREMENT VALUE, LLC.

\_\_\_\_\_  
MR. GARY CAIN, CLASS REPRESENTATIVE

Date: \_\_\_\_\_

\_\_\_\_\_  
BARRY EDELSTEIN, CLASS REPRESENTATIVE

Date: \_\_\_\_\_



  
\_\_\_\_\_  
MICHAEL MCDERMOTT

Date: AUG 24 2012

**RETIREMENT VALUE, LLC**

\_\_\_\_\_  
**EDUARDO S. ESPINOSA**, in his capacity as  
The court-appointed Receiver for Retirement  
Value, LLC

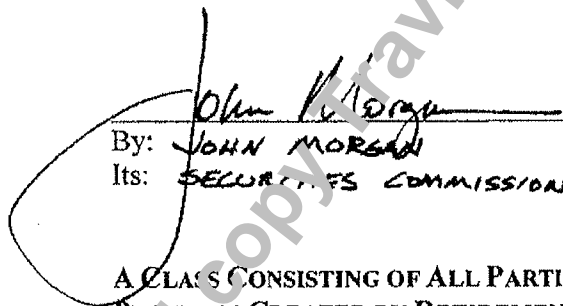
Date: \_\_\_\_\_

**THE STATE OF TEXAS**

\_\_\_\_\_  
By:  
Its:

Date: \_\_\_\_\_

**THE TEXAS STATE SECURITIES BOARD**

  
\_\_\_\_\_  
By: **JOHN MORGAN**  
Its: **SECURITIES COMMISSIONER**

Date: 8-20-2012

**A CLASS CONSISTING OF ALL PARTICIPANTS IN THE RE-SALE LIFE INSURANCE POLICY PROGRAM CREATED BY RETIREMENT VALUE, LLC.**

\_\_\_\_\_  
**DR. GARY CAIN, CLASS REPRESENTATIVE**

Date: \_\_\_\_\_

\_\_\_\_\_  
**BARRY EDELSTEIN, CLASS REPRESENTATIVE**

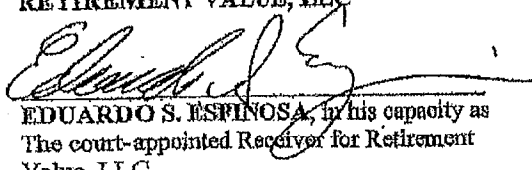
Date: \_\_\_\_\_

Unofficial Copy Travis Co. District Clerk Velda L. Price

\_\_\_\_\_  
MICHAEL MCDERMOTT

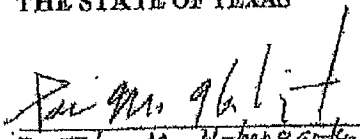
Date: \_\_\_\_\_

RETIREMENT VALUE, LLC

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

Date: 8/22/12

THE STATE OF TEXAS

  
By: John M. Hohengarten  
Its: AAG

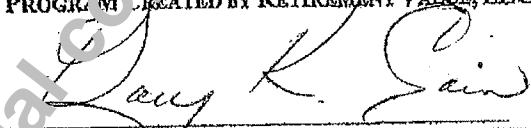
Date: 8-17-2012

THE TEXAS STATE SECURITIES BOARD

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

A CLASS CONSISTING OF ALL PARTICIPANTS IN THE RE-SALE LIFE INSURANCE POLICY  
PROGRAM CREATED BY RETIREMENT VALUE, LLC.

  
DR. GARY CAIN, CLASS REPRESENTATIVE

Date: 8/23/2012

\_\_\_\_\_  
BARRY EDELSTEIN, CLASS REPRESENTATIVE


Date: \_\_\_\_\_

Unofficial Copy Travis Co. District Clerk Velda L. Price

\_\_\_\_\_  
MICHAEL MCDERMOTT

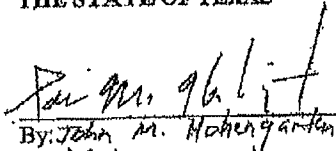
Date: \_\_\_\_\_

RETIREMENT VALUE, LLC

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

Date: 8/22/12

THE STATE OF TEXAS

  
By: John M. Mahoney  
Its: AG

Date: 9-17-2012

THE TEXAS STATE SECURITY BOARD

Date: \_\_\_\_\_

By:  
Its:

A CLASS CONSISTING OF ALL PARTICIPANTS IN THE RE-SALE LIFE INSURANCE POLICY  
PROGRAM CREATED BY RETIREMENT VALUE, LLC.

\_\_\_\_\_  
MR. GARY CAIN, CLASS REPRESENTATIVE

Date: \_\_\_\_\_

  
BARRY EDELSTEIN, CLASS REPRESENTATIVE

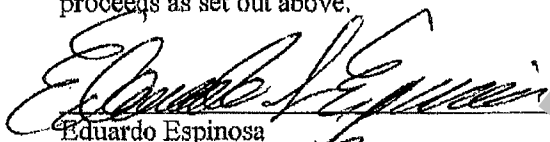
Date: 24 Aug 12

**SETTLEMENT STATEMENT**

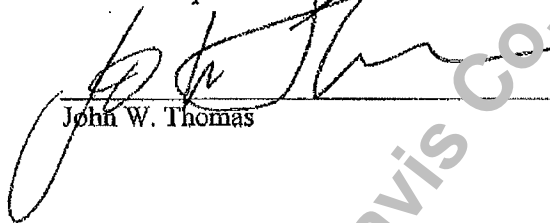
Pursuant to the Fee Agreement between Eduardo S. Espinosa in his capacity as Receiver of Retirement Value, LLC and George & Brothers, LLP, the settlement proceeds received from Licensee **Michael McDermott** shall be disbursed as follows:

<b>TOTAL SETTLEMENT:</b>	<b>\$750,000.00</b>
<b>LESS:</b>	
<b>ATTORNEYS' FEES (37.5%)</b>	<b>\$281,250.00</b>
<b>NET PROCEEDS TO CLIENTS:</b>	<b>\$468,750.00</b>

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

\_\_\_\_\_  
Date

Unofficial copy Travis Co. District Clerk Verla L. Price





Signed this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
THE HONORABLE GISELA D. TRIANA,  
JUDGE PRESIDING

Unofficial copy Travis Co. District Clerk Velda Price



★ WAPP

DEFENDANT Michael Charles McDermott

CHARGE Securities Fraud >\$100K  
Article 581 Sec. 29C Texas  
Securities Act

1510043; 2015-1586

ADDRESS \_\_\_\_\_

CAUSE# 380-8051-2015

DESCRIPTION \_\_\_\_\_

AGENCY# State Securities Board

ARREST INFORMATION GJR

C/C Richard Hubert Gray, Wendy L. Rogers, Ronald L. James, Donald L. James Witness: Lotha Sparks

TRUE BILL OF INDICTMENT

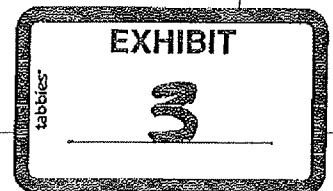
IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS: The Grand Jury of Collin  
County, State of Texas, duly organized at the January Term, A.D. 2015 of the 417th

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

MICHAEL CHARLES MCDERMOTT hereinafter "defendant"

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

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



Carla J. Workman	September 16, 2009	\$25,000.00
James Jones	September 22, 2009	\$30,000.00
Isabel R. Chacon	September 25, 2009	\$49,875.00
A. Samuel & Ruth Pavlak	October 13, 2009	\$30,000.00
Steven J. Bettison	October 15, 2009	\$50,000.00
Elaine S. Traylor	October 16, 2009	\$12,500.00
Deborah Jones	October 20, 2009	\$60,000.00
Thomas L. Borok	October 22, 2009	\$25,000.00
Jason C. Traylor	October 23, 2009	\$15,000.00
Deborah Jones	October 27, 2009	\$79,862.12
Thomas L. Borok	October 28, 2009	\$10,000.00
Nelda Hammett	October 28, 2009	\$50,000.00
Michael T. Krueger	November 3, 2009	\$25,000.00
Thomas L. Borok	November 6, 2009	\$25,000.00
Dirk Wildt	November 6, 2009	\$31,715.48
Kip & Maura Souza	November 10, 2009	\$12,000.00
Kathy Creel	November 12, 2009	\$100,000.00
Ira Allen	November 16, 2009	\$239,627.50
Burford Darrell & Barbara Gotcher	November 17, 2009	\$20,859.21
Dirk Wildt	November 17, 2009	\$15,117.98
Burford Darrell Gotcher	November 30, 2009	\$73,615.98
Walker B. 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	\$23,183.13
Adi Danous	February 16, 2010	\$25,000.00
Thomas L. Borok	February 19, 2010	\$5,000.00
Nancy M. Malia	February 25, 2010	\$90,078.15
Dirk Wildt	February 26, 2010	\$21,781.50
Thomas L. Borok	March 3, 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. Kuffel	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**

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 THREE**

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, LLC, 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 FOUR**

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 FIVE**

intentionally failing to disclose that on or about September 28, 2006, in the United States District Court for the Western District of Tennessee, Western Division, in case number CR. NO. 03-20433-B, 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 SIX

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

PARAGRAPH SEVEN

intentionally failing to disclose that on or about June 25, 2009, a Notice of Hearing in Docket No. 454-09-4867.C was issued by the Texas Department of Insurance to Richard H. Gray, among others, alleging fraudulent acts 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

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 Baird*  
FOREPERSON OF THE GRAND JURY

FILED

2015 FEB 26 PM 2: 26

ANDREA STROH THOMPSON  
DISTRICT CLERK  
COLLIN COUNTY, TEXAS  
BY *B. Phelan* DEPUTY

3/3/2015 SCANNED

★ LINAPP

DEFENDANT Michael Charles McDermott 1510043 CHARGE Theft PC 31.03 F1  
 ADDRESS 2015-1587 CAUSE# 380-80435-2015  
 DESCRIPTION [REDACTED] AGENCY/# State Securities Board  
 ARREST INFORMATION GJR  
 C/C Richard Hubert Gray, Wendy L. Rogers, Ronald L. James, Donald L. James Witnesses Letha Sparks

## TRUE BILL OF INDICTMENT

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

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

MICHAEL CHARLES MCDERMOTT, hereinafter "defendant"

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

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

James Jones	September 22, 2009	\$30,000.00
Isabel R. Chacon	September 25, 2009	\$49,875.00
A. Samuel & Ruth Pavlak	October 13, 2009	\$30,000.00
Steven J. Bettison	October 15, 2009	\$50,000.00
Elaine S. Traylor	October 16, 2009	\$12,500.00
Deborah Jones	October 20, 2009	\$60,000.00
Thomas L. Borok	October 22, 2009	\$25,000.00
Jason C. Traylor	October 23, 2009	\$15,000.00
Deborah Jones	October 27, 2009	\$79,862.12
Thomas L. Borok	October 28, 2009	\$10,000.00
Nelda Hammett	October 28, 2009	\$50,000.00
Michael T. Krueger	November 3, 2009	\$25,000.00
Thomas L. Borok	November 6, 2009	\$25,000.00
Dirk Wildt	November 6, 2009	\$31,715.48
Kip & Maura Souza	November 10, 2009	\$12,000.00
Kathy Creel	November 12, 2009	\$100,000.00
Ira Allen	November 16, 2009	\$239,627.50
Burford Darrell & Barbara Gotcher	November 17, 2009	\$20,859.21
Dirk Wildt	November 17, 2009	\$15,117.98
Burford Darrell Gotcher	November 30, 2009	\$73,615.98
Walter B. Hayes	December 3, 2009	\$70,000.00
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	\$79,325.12
Thomas L. Borok	January 29, 2010	\$10,000.00
Thomas L. Borok	February 1, 2010	\$5,000.00
Dean S. & Lyn C. Robinson	February 3, 2010	\$125,000.00
Janice Wildberger	February 3, 2010	\$25,000.00
Trista C. Collins	February 11, 2010	\$23,183.13
Adi Danous	February 16, 2010	\$25,000.00
Thomas L. Borok	February 19, 2010	\$5,000.00
Nancy M. Malia	February 25, 2010	\$90,078.15
Dirk Wildt	February 25, 2010	\$21,781.50
Thomas L. Borok	March 1, 2010	\$10,000.00
Thomas L. Borok	March 1, 2010	\$5,000.00
Thomas L. Borok	March 11, 2010	\$15,000.00
Chris Slay	March 12, 2010	\$55,000.00
Stephen Miller	March 16, 2010	\$39,875.00
Billy F. Powell	March 17, 2010	\$30,000.00
Bruce B. Kufferath	March 17, 2010	\$300,000.00
John J. Johnson	March 29, 2010	\$30,000.00

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

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

Against the peace and dignity of the State.

*Andrea Kay Baird*  
 FOREPERSON OF THE GRAND JURY

FILED

2015 FEB 26 PM 2: 26

ANDREA STRON THOMPSON  
 DISTRICT CLERK  
 COLLIN COUNTY, TEXAS  
 BY *B. Plank* DEPUTY

3/3/2015 SCANNED

*ALWAPP*

DEFENDANT Michael Charles McDermott  
1510043 ; 2015-1585

CHARGE Money Laundering >\$20K  
Sec. 34.02 Texas Penal Code

ADDRESS \_\_\_\_\_ CAUSE# 380-80419-2015

DESCRIPTION [REDACTED] AGENCY## State Securities Board

ARREST INFORMATION GJR

C/C Richard Hubert Gray, Wendy L. Rogers, Ronald L. James, Donald L. James Witness: Letha Sparks

TRUE BILL OF INDICTMENT

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

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

MICHAEL CHARLES MCDERMOTT, hereinafter "defendant"

On or about and between the dates of April 9, 2009, and May 29, 2010, in Collin County, Texas, did then and there

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

Against the peace and dignity of the State.

*Sandra Kay Burch*  
 FOREPERSON OF THE GRAND JURY

FILED

2015 FEB 26 PM 2: 26

ANDREA STROH THOMPSON  
 DISTRICT CLERK  
 COLLIN COUNTY, TEXAS  
 BY B. Phelan DEPUTY



3/3/2015 SCANNED

DEFENDANT Michael Charles McDermott

1510043; 2015-1584

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

*ALINAPP*

ADDRESS \_\_\_\_\_

CAUSE# 380-80441-2015

DESCRIPTION \_\_\_\_\_

AGENCY## State Securities Board

ARREST INFORMATION GJR

C/C Richard Hubert Gray, Wendy L Rogers, Ronald L. James, Donald L. James

Witness: Letha Sparks

**TRUE BILL OF INDICTMENT**

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

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

MICHAEL CHARLES MCDERMOTT, hereinafter "defendant"

On or about and between the dates of April 9, 2009, and March 29, 2010, in Collin County, Texas, and elsewhere, with the intent to establish, maintain, and participate in a combination and in the profits of a combination, said combination consisting of the defendant; Richard Hubert Gray; Wendy Lynn Rogers; Ronald Llewellyn James; Donald L. James; Michael Timothy Beste; Bruce Gordon Collins; and others, who collaborated in carrying on the hereinafter-described criminal activity, did then and there commit the following offenses, to wit: Theft of Property, pursuant to one scheme and continuing course of conduct, which in the aggregate, involved property of the value of \$200,000.00 or more in violation of Section 31.03 of the Texas Penal Code; and Money Laundering, pursuant to one scheme and continuing course of conduct, which in the aggregate, involved criminal proceeds in the amount of \$200,000.00 or more, in violation of Section 34.02 of the Texas Penal Code; all in violation of Section 71.02(a)(1) and (a)(10) of the Texas Penal Code;

Against the peace and dignity of the State.

**FILED**

2015 FEB 26 PM 2:26

ANDREA STROH THOMPSON  
DISTRICT CLERK  
COLLIN COUNTY, TEXAS  
BY B. Blunk DEPUTY

Andrea Stroh Thompson  
FOREPERSON OF THE GRAND JURY



Filed in The District Court  
of Travis County, Texas

LM FEB 25 2013

At 3:42 P.M.  
Amalia Rodriguez Mendoza, Clerk

CAUSE NO. D-1-GN-13-000193

DR. GARY CAIN and BARRY  
EDELSTEIN,

Plaintiffs,

v.

MICHAEL McDERMOTT,

Defendant,

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§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

126<sup>th</sup> JUDICIAL DISTRICT

**FINAL ORDER AND JUDGMENT APPROVING CLASS SETTLEMENT AND CLASS  
COUNSEL FEES AND EXPENSES**

A hearing was held on February 21, 2013, during which time the Court heard Plaintiffs/Class Representatives Dr. Gary Cain and Barry Edelstein (collectively, "Class Representatives") Motion for Final Approval of Class Action Settlement. Immediately prior to entry of this Order, on February 21, 2013, the Court signed an Agreed Order Severing Class Representatives' Claims against Defendant, Michael McDermott ("McDermott" or "Mr. McDermott") from Cause No. D-1-GV-10-000454; *The State of Texas v. Retirement Value, LLC, et al.*; In the 126<sup>th</sup> Judicial District of Travis County, Texas. The Court had previously entered an Order of Preliminary Approval appointing Class Counsel, approving notice to the Class, establishing deadlines for objections, setting a date for a final fairness hearing, certifying the Class and preliminarily approving the Settlement Agreement. Having considered the written submissions of the parties and the lack of objections submitted by any Class Member, and having held a final fairness hearing and having considered the evidence and argument offered at the final fairness hearing, it is hereby ORDERED that the class is finally certified and the settlement is finally approved as follows:

**I. CLASS CERTIFICATION**

A class may be certified if all four prerequisites of Rule 42(a) of the Texas Rules of Civil Procedure are met and one or more of the provisions of Rule 42(b) is satisfied. Tex. R. Civ. P.

42. Here, the proposed Class is defined as:

Any and all Persons who, for purposes of participating in Retirement Value's Re-Sale Life Insurance Program or any similar program specifically marketed by Retirement Value, either (i) invested, lent money, or otherwise caused funds to be paid with regard to such program or (ii) signed a Retirement Value Policy Participation Agreement.

**A. Rule 42(a) Criteria**

Rule 42(a) provides:

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

**1. Numerosity - 42(a)(1)**

This class encompasses 1,007 Class Members, too many for joinder of all to be practicable. See *Mullen v. Treasure Chest Casino LLC*, 186 F.3d 620, 624 (5th Cir. 1999) (finding that a class of 100 and 150 satisfies the numerosity requirement).<sup>1</sup> Numerosity is satisfied.

**2. Commonality - 42(a)(2)**

The commonality requirement of rule 42(a)(2) mandates there be at least one factual or legal issue which is common to all or substantially all of the class members. Tex. R. Civ. P.

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<sup>1</sup> Because Texas Rule of Civil Procedure 42, governing class actions, was patterned after the federal equivalent, Federal Rule of Civil Procedure 23, Texas courts rely on both Texas precedent and persuasive federal decisions and authorities in interpreting class action requirements. *Citizens Ins. Co. of Am. v. Daccach*, 217 S.W.3d 430, 449 (Tex. 2007) (citing *Ford Motor Co. v. Sheldon*, 22 S.W.3d 444, 452 (Tex. 2000)); *Hall v. Pedernales Elec. Coop., Inc.*, 278 S.W.3d 536, 545 (Tex. App.—Austin 2009, no pet).

42(a)(2); *Citizens Ins. Co. of Am. v. Daccach*, 217 S.W.3d 430, 438 (Tex. 2007). Commonality is not a demanding test and is met when the resolution of at least one issue will affect all or substantially all of the putative class members. *Mullen*, 186 F.3d at 625. Class Members' claims are based on a general policy by Defendant and it is upon that policy that the litigation is focused. *San Antonio Hispanic Police Officers' Org., Inc. v. City of San Antonio*, 188 F.R.D. 433, 442 (W.D. Tex. 1999) (holding that "[a]s long as class members are allegedly affected by a defendant's general policy, and the general policy is the cause or focus of the litigation, the commonality prerequisite is satisfied"). Commonality is satisfied.

### 3. Typicality – 42(a)(3)

Rule 42(a)(3)'s typicality requirement is satisfied "if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory." *Southwestern Bell Tel. Co. v. Mktg. on Hold Inc.*, 308 S.W.3d 909, 920 (Tex. 2010). Class Representatives' claims arise from the same practice and course of conduct as do the claims of other members and their claims are based on the same legal theory. Typicality is satisfied.

### 4. Adequacy of Representation – 42(a)(4)

Rule 42(a)(4) requires the class representatives and their counsel to "fairly and adequately protect the interests of the class." Tex. R. Civ. P. 42(a)(4). To meet this requirement, plaintiffs must show "[1] the zeal and competence of the representative[s]' counsel and [2] the willingness and ability of the representative[s] to take an active role in and control the litigation and to protect the interests of absentees." *Stirman v. Exxon Corp.*, 280 F.3d 554, 563 (5th Cir. 2002). These requirements are met here. Class Counsel in this case is skilled, competent, and experienced and has significant experience in class actions in general. The evidence reflects that

Class Representatives have taken an active role in the litigation, consulted extensively with Class Counsel, personally participated in the settlement negotiations, and have reviewed and approved of all settlement documents. Class Counsel and Class Representatives are adequate.

**B. Rule 42(b)(3).**

In addition to complying with the prerequisites of Rule 42(a), a representative class action must also satisfy at least one subsection of Rule 42(b). Class Representatives here seek certification under rule 42(b)(3), which requires the Court to find that common questions of law and fact predominate over any questions affecting only individual members and a class action is superior to each individual class member bringing a separate claim.

Class Representatives allege in their Motion for Final Approval of Class Action Settlement that the substantive issues that control the outcome of litigation are (1) whether Retirement Value was registered to sell and did sell an unregistered security; and (2) whether McDermott was reckless with the law or facts when he, directly or indirectly, materially aided an unregistered RV in the sale of an unregistered security. These issues will predominate in the trial on the merits of the case and the 42(b)(3) requirements are met here.

**II. NOTICE WAS APPROPRIATE**

In accordance with the procedures approved in the Preliminary Approval Order, the Class was provided with the Class Notice regarding the proposed Settlement Agreement and the deadlines and procedures for objecting. The Court finds that the Class Notice and measures taken by Class Counsel in mailing the Class Notices were adequate to inform Class Members of the proposed settlement and that such actions provided sufficient notice for Class Members' due process rights to be adequately protected.

### III. SETTLEMENT APPROVAL

Having determined the class is properly certified and that notice was appropriate, the Court must next address the proposed Settlement Agreement. To approve the settlement, the Court must find the proposed settlement is "fair, reasonable and adequate." Tex. R. Civ. P. 42(e)(1)(C); *General Motors Corp. v. Bloyed*, 916 S.W.2d 949, 958 (Tex. 1996). The Texas Supreme Court has held that courts should apply the following six-factor test in determining the appropriateness of the proposed settlement: (1) evidence, if any, that the settlement was a product of fraud or collusion; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the litigation and available discovery; (4) the factual and legal obstacles to the plaintiffs' success on the merits; (5) the range of possible recovery and certainty of damages; and (6) the opinions of class counsel, class representatives, and absent class members. *Id.* at 955 (citing *Ball v. Farm & Home Sav. Ass'n*, 747 S.W.2d 420, 423-424 (Tex. App.—Fort Worth 1988, writ denied).

#### A. **Factor 1 - There is no evidence of fraud or collusion behind the Settlement.**

There is a presumption that no fraud or collusion occurred between counsel, in the absence of any evidence to the contrary. 4 Newberg on Class Actions § 11:51 (4th ed. 2002). Here, there are no allegations or indications of fraud or collusion. Indeed, the parties engaged in a lengthy, arms' length settlement process overseen by an experienced mediator. Based on the undisputed record, the Court determines the proposed settlement was the product of arms' length negotiations, free of fraud or collusion. This factor weighs in favor of approving the settlement.

#### B. **Factor 2 - The complexity, expense and likely duration of the litigation.**

This Court recognizes that it is important to be mindful of the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere

possibility of relief in the future, after protracted and expensive litigation. Specifically, as counsel for the parties have concluded, the probability of further protracted litigation, including appeals, would be a near certainty in the absence of a settlement. Additional litigation would likely include: (1) contested class certification proceedings; (2) an appeal under Texas Rule of Procedure 42(f); (3) dispositive motions; (4) extensive pretrial filings; (5) a lengthy trial; (6) post-trial proceedings in this Court; and (7) further appeals. Having considered the complexity, expense, and likely duration of the litigation, the Court concludes this factor weighs in favor of approving the proposed settlement.

**C. Factor 3 – The stage of the proceedings and the amount of discovery repeated.**

The evidence reflects that the parties shared substantial documents and data. In light of this discovery and statistical analysis, Class Counsel determined the proposed settlement is fair, adequate and reasonable. The Court determines the stage of the proceedings and the amount of discovery completed have provided the information necessary to permit the parties and the Court to make an informed judgment on the merits of the settlement. This factor therefore weighs in favor of accepting the proposed settlement.

**D. Factors 4 and 5 – Factual and legal obstacles and the range of possible recovery and certainty of damages.**

Litigating the case to trial also presents substantial risks to the Class Representatives and Class Members. Although Class Representatives and Class Counsel believe Class Members' claims are strong, it is clear that Defendant would put on a vigorous defense, and it would ultimately be up to the fact-finder to determine whether Defendant acted negligently. Class Representatives would have to obtain certification outside the settlement process. This would have been challenging.

In addition, the ability of the Class Members to obtain any recovery will be hotly contested and it is not certain that all class claims would prevail on the merits. This settlement also obtains monetary relief that is to be used to pay insurance premiums on policies that would otherwise lapse. In other words, this settlement accomplishes more and provides more funds to the RV Portfolio than could be provided after a successful trial. This factor therefore weighs in favor of accepting the proposed settlement.

The Court also acknowledges that Mr. McDermott has been making payments toward completion of this settlement, and will, following formal settlement approval, tender such payment to Eduardo S. Espinosa, in his capacity as court-appointed Receiver for Retirement Value, LLC, c/o Cox Smith Matthews, Inc. The Court acknowledges Mr. McDermott's initial payment, as is currently held by his counsel, will be in an amount not less than \$258,319.17. The Court also acknowledges that the parties to the settlement have entered into a Modified Payment Plan, which only changes the payment terms of the settlement, not the amount and provides protections to the investors in the event complete payment does not occur. The Court finds that the Modified Payment Plan is necessary to effectuate the settlement, and necessary and in the best interests of the Receivership and Investors.

**E. Factor 6 – Opinions of Class Counsel, Class Representatives and absent Class Members.**

Class Counsel has engaged in numerous class action lawsuits and possesses a substantial amount of experience and expertise, and has concluded that the settlement is fair, reasonable, and adequate. The Class Representatives also strongly support the settlement. In addition to the opinions of Class Counsel and Class Representatives, the Court has considered the opinions of absent class members. In this case, *no* class members objected. The complete lack of opposition from absent class members weighs heavily in favor of approving the settlement.



The Court finds the opinions of Class Counsel, the Class Representatives, and the absent Class Members weigh in favor of approval. The Court finds the Settlement Agreement to be fair, reasonable and adequate.

#### IV. AWARD OF CLASS COUNSEL FEES AND EXPENSES

In a certified class action, the Court may award reasonable attorneys' fees and non-taxable costs that are authorized by law or the parties' agreement. Tex. R. Civ. P. 42(h). The Settlement Agreement provides that Class Counsel is to be paid \$50,000.00 in attorneys' fees and expenses not to exceed \$10,000.00. Class Counsel has paid all administrative expenses and its own fees to date. The request by Class Counsel for attorneys' fees and expenses was set forth in the notice and was met with no opposition from absent Class Members. Class Counsel, at this stage of the settlement only seek a proportional amount of the fee and expenses, namely 34.44% ( $\$258,319.17/\$750,000.00 \times \$50,000.00 = \$17,221.27$ ).

##### A. Attorneys' Fees.

Rule 42(i) of the Texas Rules of Civil Procedures provides that "[i]n awarding attorney fees, the court must first determine a lodestar figure by multiplying the number of hours reasonably worked times a reasonable hourly rate. The attorney fees award must be in the range of 25% to 400% of the lodestar figure." The lodestar figure is to be adjusted up or down based on a variety of factors, such as the benefits obtained for the class, the complexity of the issues involved, the expertise of counsel, the preclusion of other legal work due to acceptance of the class action suit, and the hourly rate customarily charged in the region for similar legal work. *General Motors*, 916 S.W.2d at 960 (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)). The Court's award is generally not to exceed 400% of the lodestar figure. *Id.*

**1. Class Counsel's Hourly Rates**

In determining the reasonableness of hourly rates, courts consider the experience, reputation and ability of the attorney, and the skill required by the case. *Shipes*, 987 F.2d at 320. Here, Class Counsel is an experienced and skilled practitioner in class actions. Considering the complex nature of this case and Class Counsel's experience, reputation and skill, the Court finds Class Counsel's rates are reasonable.

**2. The Hours expended by Class Counsel.**

The Court has also reviewed the evidence submitted concerning the number of hours expended. The Court is required to determine not only that the hours claimed by Class Counsel are reasonable, but also that the hours were reasonably expended. *Louisiana Power & Light Co. v. Kellstrom*, 50 F.3d 319, 325 (5<sup>th</sup> Cir. 1995). Having reviewed the evidence submitted, the Court concludes that the hours spent by Class Counsel were reasonably expended.

**3. Adjustment of the lodestar using the *General Motors* factors.**

The second step in establishing attorneys' fees is to consider whether the lodestar should be adjusted due to the circumstances of the case. *General Motors*, 916 S.W.2d at 960. The lodestar factors support adjusting the fees upward in this case.

Class Counsel incurred a substantial amount of time in investigating and prosecuting this case to resolution. Class Counsel's efforts were all reasonable and necessary, particularly that class actions are extremely complex and challenging. The time and labor factor weighs in favor of adjusting the lodestar.

Class Counsel has indicated that his involvement in this case has substantially diminished, and perhaps in some cases foreclosed, the acceptance of other employment or business opportunities. This preclusion of other employment weighs in favor of adjusting the lodestar.

Counsel has indicated that he handled this case on a contingency fee. Given the complex legal and factual issues confronting Class Counsel, Class Counsel undertook a considerable risk with no guarantee any fees or expenses would be recovered.

The results obtained by the Settlement were quite significant and greatly to the benefit of the Class Members. These results were largely due to Class Counsel's experience, reputation and ability.

In sum, having reviewed the request in light of all the *General Motors* factors, the Court finds that the factors are either neutral or support an upward adjustment of the multiplier. The fees sought are fair and reasonable and justified by the *General Motors* factors.

**B. Expenses.**

The appropriate analysis to apply in determining which expenses are compensable in a class action case is whether such costs are of the variety typically billed by attorneys to clients. *Abrams v. Lightolier*, 50 F.3d 1204, 1225 (3d Cir. 1995) (determining expenses are recoverable if it is customary to bill clients for those expenses). In this case, Class Counsel has incurred expenses through the date of filing the final approval motion and award of fees and expenses motion of slightly in excess of \$3,288.00. These expenses include costs for filing and service fees, photocopies, mailing notices and travel. The expenses also include compensable costs for computerized factual and legal research (i.e., Pacer and Lexis). The Court finds the requested costs to be reasonable and, therefore, the Court finds Class Counsel should be reimbursed for these litigation related expenses.

Overall, the requested attorneys' fees and expenses are reasonable under the lodestar method of calculations. Accordingly, the Court awards \$17,221.27 in attorneys' fees and \$3,288.00 in expenses to Class Counsel to be paid by the Receiver pursuant to the Settlement Agreement.

V. CONCLUSION

Based on the foregoing analysis, the settlement, as evidenced by the parties' agreement, is hereby determined to be fair, reasonable and adequate. THE COURT FURTHER FINDS AND ORDERS AS FOLLOWS:

1. On December 12, 2012, the Court entered an Order Preliminarily Approving Settlement in this cause based upon a Settlement Agreement entered into by the Parties.

2. The Court hereby adopts all of the findings contained in its Order Preliminarily Approving Settlement. In addition, this Final Order and Judgment Approving Class Action Settlement incorporates by reference the definitions contained in the Settlement Agreement, and all capitalized terms used in this Final Order and Judgment Approving Class Action Settlement will have the same meanings as set forth in the Settlement Agreement, unless otherwise defined in this Final Order and Judgment Approving Class Action Settlement.

3. This matter satisfies the prerequisites for certification of a settlement class under Rule 42(a) and (b)(3) of the Texas Rules of Civil Procedure.

4. The Court finds that the Class satisfies Rule 42(b)(3) of the Texas Rules of Civil Procedure in that common questions of law and fact predominate over any questions affecting only individual members and a class action is superior to each individual class member bringing a separate claim, thereby making appropriate final relief with respect to the class as a whole.

5. The interests of the Class Members in this Settlement are cohesive and homogeneous, Class Representatives seek class-wide relief for common questions of law and fact. The relief offered in the Settlement is not dependent on adjudication of facts particular to any subset of the class nor does it require a remedy that differs materially among Class members.

As a result, all Class Members may properly be bound by the release and final judgment to be entered pursuant to the Settlement.

6. Notice to the Settlement Class has been provided in accordance and compliance with this Court's Order Preliminarily Approving Settlement, and notice has been given in an adequate and sufficient manner; constitutes the best notice practicable under the circumstances; and satisfies the requirements of due process. Full opportunity has been afforded to members of the Class to participate in this Fairness Hearing. Accordingly, the Court determines that all members of the Class are bound by this Order and Final Judgment Approving Class Action Settlement.

7. Plaintiffs' Motion for Final Approval of Class Action Settlement and Entry of Final Judgment is GRANTED.

8. Pursuant to Rules 42(a) and (b)(3) of the Texas Rules of Civil Procedure, the following Settlement Class is certified:

"Any and all Persons who, for purposes of participating in Retirement Value's Re-Sale Life Insurance Program or any similar program specifically marketed by Retirement Value, either (i) invested, lent money, or otherwise caused funds to be paid with regard to such program or (ii) signed a Retirement Value Policy Participation Agreement."

9. The Settlement Agreement submitted by Class Representatives is finally approved as fair, reasonable and adequate and in the best interests of the Class, and the parties are directed to consummate and to implement the Settlement Agreement in accordance with its terms. The provision of equitable relief shall take place in accordance with the Settlement Agreement.

10. Dr. Gary Cain and Barry Edelstein are hereby certified as the Class Representatives of the Class defined above.

11. Geoffrey D. Weisbart, Esq. of WEISBART SPRINGER HAYES LLP, 212 Lavaca Street, Suite 200, Austin, Texas 78701 is appointed Class Counsel for the Settlement Class and shall act on behalf of the Class Representatives and all members of the Settlement Class.

12. Class Representatives' Motion for Award of Class Counsel Fees and Expenses is GRANTED.

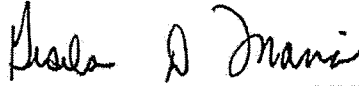
13. Class Counsel has applied for an award of attorneys' fees and expenses to be paid pursuant to the terms of the Settlement Agreement. This Court awards Class Counsel attorneys' fees of \$17,221.27 and expenses of \$3,288.00 to be paid by the Receiver pursuant to the Settlement Agreement. Said fees and expenses are determined by the Court to be fair, reasonable and appropriate. Further, the Receiver is authorized to make such payment to Class Counsel, and further is authorized to pay Class Counsel a pro-rata portion of its fee upon receipt of any further settlement proceeds paid by Mr. McDermott.

14. Any person wishing to appeal this Final Order and Judgment Approving Class Action Settlement shall post a bond with this Court to cover the costs of appeal as a condition of prosecuting the appeal. The amount of the appeal bond will be set if, as, and when a notice of appeal is filed.

15. The Class Representatives, the Class Members, and Defendant having so agreed, good cause appearing, and there being no just reason for delay, it is ordered that this Final Order and Judgment Approving Class Action Settlement, is hereby entered as a final and appealable order.

16. This Action is dismissed with prejudice. Without affecting the finality of this Order, this Court retains exclusive jurisdiction over the consummation, performance, administration, effectuation and enforcement of the Settlement Agreement, and this Order.

SIGNED this 21 day of February, 2013.



HONORABLE GISELA D. TRIANA

Unofficial copy Travis Co. District Clerk Velda L. Price



**DEPUTATION**

COUNTY OF COLLIN } I, Greg Willis, the elected Criminal District Attorney in Collin County, Texas, having full confidence in Dale R. Barron, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said Dale R. Barron, my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to [REDACTED]; Richard Hubert Gray; Wendy Lynn Rogers; Ronald Llewellyn James; Donald L. James; [REDACTED]; Michael Charles McDermott; [REDACTED] and any other person or entity shown to be legally and factually connected with such investigations and/or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

WITNESS my hand, this 5th day of February 2015.

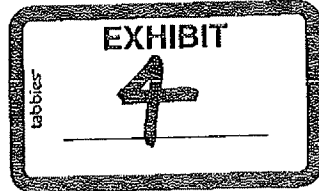
*Greg Willis*  
\_\_\_\_\_  
GREG WILLIS  
Criminal District Attorney, Collin County, Texas

**THE STATE OF TEXAS**

COUNTY OF COLLIN } BEFORE ME, Della Bryant in and for Collin County, Texas, on this day personally appeared Greg Willis known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas, this 5 day of February 2015.

*Della Bryant*  
\_\_\_\_\_  
Notary Public





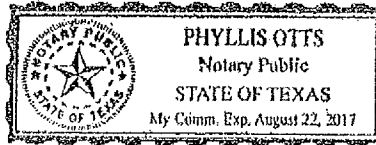
**OATH OF OFFICE**

I, Dale R. Barron do solemnly swear (or affirm) that I will faithfully execute the duties of the office of Assistant Criminal District Attorney, special prosecutor, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, So help me God. I understand that my authority is limited to the terms of the foregoing deputation.

Signed Dale R. Barron  
DALE R. BARRON

Sworn to and subscribed before me, this 9<sup>th</sup> day of February A.D. 2015.

Phyllis Otts  
\_\_\_\_\_  
Notary Public



Unofficial copy Travis County Clerk's Office

**DEPUTATION**

COUNTY OF **COLLIN** } I, **Greg Willis**, the elected Criminal District Attorney in Collin County, Texas, having full confidence in **Dale R. Barron**, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said **Dale R. Barron** my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to [REDACTED]

[REDACTED]

[REDACTED]; Susan Gay Pruitt and [REDACTED]; Garry B. Smith and Robert J. Nelson; [REDACTED]; Derek A. Nelson and Capital Mountain Holding Corp.; Christopher Anthony Zaal; Mark Christopher Parnas; [REDACTED]; and any other person or entity shown to be legally and actually connected with such investigations and/or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

WITNES my hand, this 8<sup>th</sup> day of January, 2015.

*Greg Willis*

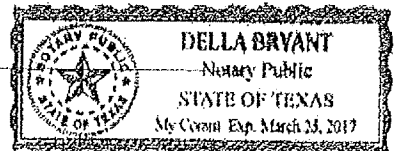
**GREG WILLIS**  
Criminal/District Attorney, Collin County, Texas

**THE STATE OF TEXAS**

COUNTY OF **COLLIN** } BEFORE ME, Della Bryant in and for Collin County, Texas, on this day personally appeared **Greg Willis** known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas, this 8 day of January, 2015.

*Della Bryant*  
Notary Public



Unofficial copy Transcribe.com District Clerk Kevan Price

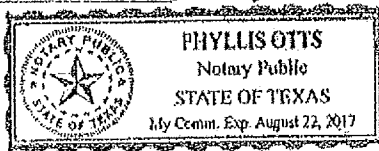
OATH OF OFFICE

I, **Dale R. Barron** do solemnly swear (or affirm) that I will faithfully execute the duties of the office of **Assistant Criminal District Attorney, special prosecutor**, for **Collin County, Texas**, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, So help me God. I understand that my authority is limited to the terms of the foregoing deputation.

Signed Dale R. Barron  
**DALE R. BARRON**

Sworn to and subscribed before me this 9<sup>th</sup> day of January A.D. 2015.

Phyllis Otts  
Notary Public



Unofficial copy Travis Co. District Clerk Valma L. Price

**DEPUTATION**

COUNTY OF COLLIN } I, Greg Willis, the elected Criminal District Attorney in Collin County, Texas, having full confidence in Dale R. Barron, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said Dale R. Barron as true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to Susan Gay Pruitt and [REDACTED]; and any other person or entity shown to be legally and factually connected with such investigations or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

WITNESS my hand, this 10 day of October, 2014.

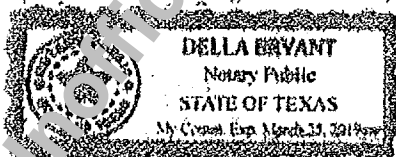
*Greg Willis*  
\_\_\_\_\_  
GREG WILLIS  
Criminal District Attorney, Collin County, Texas

**THE STATE OF TEXAS**

COUNTY OF COLLIN } BEFORE ME, Della Bryant in and for Collin County, Texas, on this day personally appeared Greg Willis known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas,

This 10 day of October, 2014.



*Della Bryant*  
\_\_\_\_\_  
, Notary Public

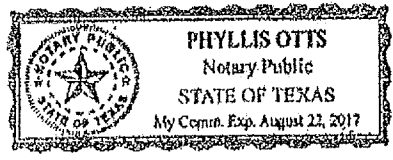
OATH OF OFFICE

I, **Dale R. Barron** do solemnly swear (or affirm) that I will faithfully execute the duties of the office of **Assistant Criminal District Attorney, special prosecutor** for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, So help me God. I understand that my authority is limited to the terms of the foregoing deputation.

Signed *Dale R. Barron*  
**DALE R. BARRON**

Sworn to and subscribed before me, this 14<sup>th</sup> day of October A.D. 2014.

*Phyllis Otts*  
\_\_\_\_\_, Notary Public

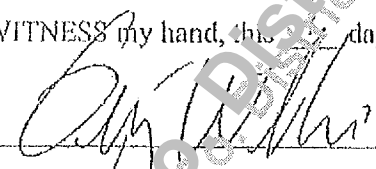


Unofficial copy Travis Co. District Clerk Vekal Price

DEPUTATION

COUNTY OF COLLIN } I, Greg Willis, the elected Criminal District Attorney in Collin County, Texas, having full confidence in Dale R. Barron, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said Dale R. Barron my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to [REDACTED] and any other person or entity shown to be legally and factually connected with such investigations or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

WITNESS my hand, this 1st day of October, 2013.

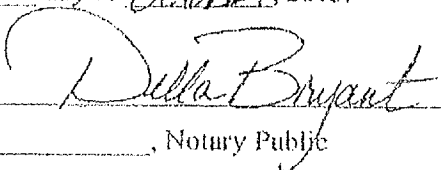
  
\_\_\_\_\_  
GREG WILLIS  
Criminal District Attorney, Collin County, Texas

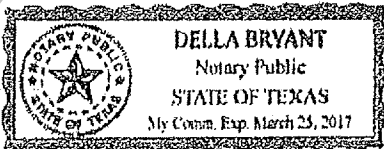
THE STATE OF TEXAS

COUNTY OF COLLIN } BEFORE ME, Della Bryant in and for Collin County, Texas, on this day personally appeared Greg Willis known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas.

This 1 day of October, 2013.

  
\_\_\_\_\_  
, Notary Public



Unofficial copy Travis County District Clerk Melba L. Price

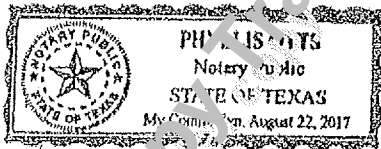
OATH OF OFFICE

I, Dale R. Barron do solemnly swear (or affirm) that I will faithfully execute the duties of the office of Assistant Criminal District Attorney, special prosecutor, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, So help me God. I understand that my authority is limited to the terms of the foregoing deputation.

Signed

Dale R. Barron  
DALE R. BARRON

Sworn to and subscribed before me, this 1<sup>st</sup> day of October A.D. 2013.



Phyllis O'Leary  
Notary Public

Unofficial copy. Travis County District Clerk Verna L. Price

**DEPUTATION**

COUNTY OF COLLIN } I, Greg Willis, the elected Criminal District Attorney in Collin County, Texas, having full confidence in Dale R. Barron an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said Dale R. Barron my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to Christopher A. Zaal; [REDACTED] and any other person or entity shown to be legally and factually connected with such investigations or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

WITNESS my hand, this 3 day of October, 2012.

*Greg Willis*

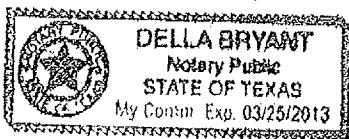
GREG WILLIS  
Criminal District Attorney, Collin County, Texas

**THE STATE OF TEXAS**

COUNTY OF COLLIN ) BEFORE ME, Della Bryant in and for Collin County, Texas, on this day personally appeared Greg Willis known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas,  
This 3 day of October, 2012.

*Della Bryant*  
\_\_\_\_\_  
, Notary Public



Unofficial copy. Traveler's District Clerk Legal Price

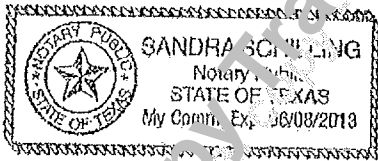


OATH OF OFFICE

I, Dale R. Barron do solemnly swear (or affirm) that I will faithfully execute the duties of the office of Assistant Criminal District Attorney, special prosecutor for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay or contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, So help me God. I understand that my authority is limited to the terms of the foregoing deputation.

Signed *Dale R. Barron*  
DALE R. BARRON

Sworn to and subscribed before me, this 3rd day of October A.D. 2012.



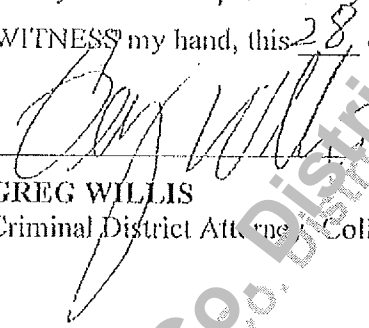
*Sandra Schilling*  
Collin County, Notary Public

Unofficial copy. Travis County District Clerk, Keral Price

**DEPUTATION**

COUNTY OF COLLIN } I, Greg Willis, the elected Criminal District Attorney in Collin County, Texas, having full confidence in Dale R. Barron, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said Dale R. Barron my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to Kelly G. Rogers; and any other person or entity shown to be legally and factually connected with such investigations or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

WITNESS my hand, this 28 day of September, 2011.

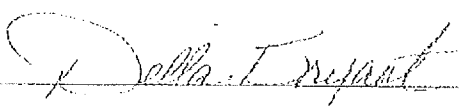
  
\_\_\_\_\_  
GREG WILLIS  
Criminal District Attorney, Collin County, Texas

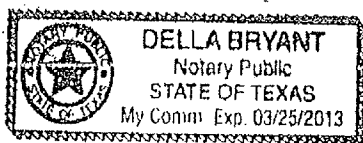
**THE STATE OF TEXAS**

COUNTY OF COLLIN } BEFORE ME, Della Bryant in and for Collin County, Texas, on this day personally appeared Greg Willis known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas,

This 28 day of September, 2011.

  
\_\_\_\_\_  
, Notary Public



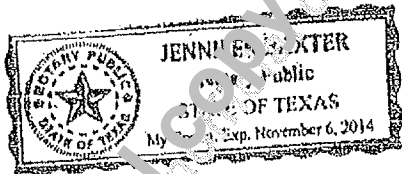
Unofficial Copy Travis Co. District Clerk Vicki Price

OATH OF OFFICE

I, Dale R. Barron do solemnly swear (or affirm) that I will faithfully execute the duties of the office of Assistant Criminal District Attorney, special prosecutor, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promise to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, So help me God, I understand that my authority is limited to the terms of the foregoing deputation.

Signed Dale R Barron  
DALE R. BARRON

Sworn to and subscribed before me, this 29th day of September, 2011.



Jennifer Baxter  
Notary Public

Unofficial Copy - Travis Co. District Clerk Melba L. Price

**DEPUTATION**

COUNTY OF COLLIN } I, Greg Willis, the elected Criminal District Attorney in Collin County, Texas, having full confidence in Dale R. Barron, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said Dale R. Barron my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to [REDACTED]

[REDACTED]

[REDACTED]; Mark Christopher Parman and [REDACTED]

[REDACTED]; Kenneth Paul Lawrence,

[REDACTED]; and any other person or entity shown to be legally and

factually connected with such investigations or prosecutions, hereby ratifying and

confirming any and all such acts and things lawfully done in the premises by virtue

thereof.

WITNESS my hand, this 10 day of Sept, 2011.

*Greg Willis*

GREG WILLIS  
Criminal District Attorney, Collin County, Texas

**THE STATE OF TEXAS**

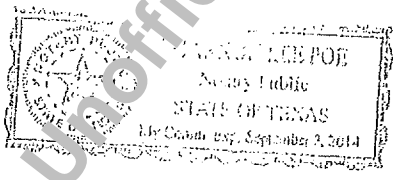
COUNTY OF COLLIN } BEFORE ME, Shannon Lee Poe in and for Collin County, Texas, on this day personally appeared Greg Willis known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas.

This 10<sup>th</sup> day of September 2011.

*Shannon Lee Poe*

\_\_\_\_\_, Notary Public



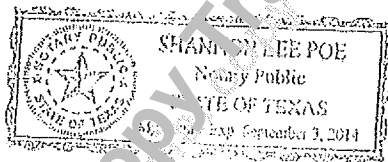
Unofficial Copy Travis County District Clerk Val Al Price

OATH OF OFFICE

I, Dale R. Barron do solemnly swear (or affirm) that I will faithfully execute the duties of the office of Assistant Criminal District Attorney, special prosecutor, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof. So help me God. I understand that my authority is limited to the terms of the foregoing deputation.

Signed Dale R. Barron  
DALE R. BARRON

Sworn to and subscribed before me, this 16<sup>th</sup> day of September, D. 2011.



Shannon Lee Poe  
Notary Public

Unofficial copy Travis Co. District Clerk K. Vela L. Price

DEPUTATION

COUNTY OF COLLIN } I, Greg Willis, the elected Criminal District Attorney in Collin County, Texas, having full confidence in Dale R. Barron, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said Dale R. Barron my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to [REDACTED]; and any other person or entity shown to be legally and factually connected with such investigations or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

WITNESS my hand, this 18 day of May, 2011.

Greg Willis  
\_\_\_\_\_  
GREG WILLIS  
Criminal District Attorney, Collin County, Texas

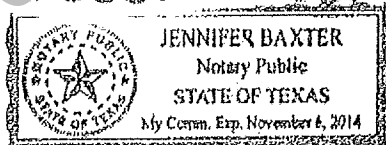
**THE STATE OF TEXAS**

COUNTY OF COLLIN } BEFORE ME, JENNIFER BAXTER in and for Collin County, Texas, on this day personally appeared Greg Willis known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas,

This 18th day of May, 2011.

Jennifer Baxter  
\_\_\_\_\_  
, Notary Public

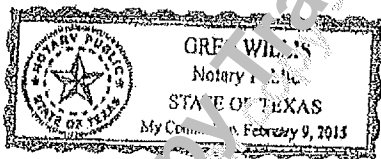


OATH OF OFFICE

I, Dale R. Barron do solemnly swear (or affirm) that I will faithfully execute the duties of the office of Assistant Criminal District Attorney, special prosecutor for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay (or contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, So help me God. I understand that my authority is limited to the terms of the foregoing deputation.

Signed Dale R. Barron  
DALE R. BARRON

Sworn to and subscribed before me this 18 day of May A.D. 2011.



Greg Wilkins  
Notary Public

Unofficial copy. Davis County District Clerk, Verla L. Price

**DEPUTATION**

COUNTY OF COLLIN } I, Greg Willis, the elected Criminal District Attorney in Collin County, Texas, having full confidence in Dale R. Barron, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said Dale R. Barron my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant to the investigation and any prosecution of any case of or pertaining to Karen B. [redacted] and John Kim; William June Fletcher, Jr.; Garry B. Smith, Robert J. Nelson, [redacted]; [redacted]; Ricky Ray Knowles, John David Riddle, Casey Day Vanloon, Ronnie Gene Nichols, Jr., Kenneth Paul Lawrence, [redacted]; [redacted]; [redacted]; Derek A. Nelson and Capital Mountain Holding Corp.; Robert Mangiafico, Thomas Earl Grimshaw and [redacted]; William Paul Hudson and [redacted]; and any other person or entity shown to be legally and factually connected with such investigations or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

WITNESS my hand, this 7th day of January, 2011.

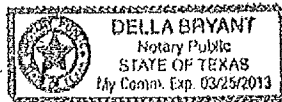
*Greg Willis*  
\_\_\_\_\_  
GREG WILLIS  
Criminal District Attorney, Collin County, Texas

**THE STATE OF TEXAS**

COUNTY OF COLLIN } BEFORE ME, Della Bryant in and for Collin County, Texas, on this day personally appeared Greg Willis known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas,  
This 7 day of January, 2011.

*Della Bryant*  
\_\_\_\_\_  
Notary Public



Unofficial Copy Travis County District Clerk's Office L. Price

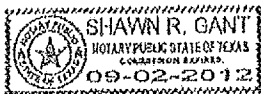


OATH OF OFFICE

I, Dale R. Barron do solemnly swear (or affirm) that I will faithfully execute the duties of the office of Assistant Criminal District Attorney, special prosecutor, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof. So help me God. I understand that my authority is limited to the terms of the foregoing deputation.

Signed *Dale R. Barron*  
DALE R. BARRON

Sworn to and subscribed before me, this 10<sup>th</sup> day of JANUARY, A.D. 2011.



*Shawn R. Gant*  
\_\_\_\_\_, Notary Public

Unofficial copy Travis Co. District Clerk Melva L. Price

DEPUTATION

COUNTY OF COLLIN } I, John R. Roach, the elected District Attorney in Collin County, Texas, having full confidence in Dale R. Barron, an attorney duly licensed by the State of Texas and an attorney employed by the Texas Securities Board, do hereby nominate and appoint the said Dale R. Barron my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant regarding the investigation and any prosecution of any case of or pertaining to [REDACTED]; and any other person or entity shown to be legally and factually connected with such investigations or prosecutions, hereby ratifying and confirming any and all such acts and things lawfully done on the premises by virtue thereof.

WITNESS my hand, this 24<sup>th</sup> day of March, 2010.

*[Handwritten Signature]*

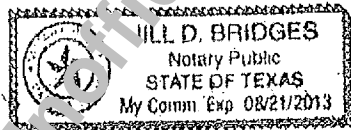
JOHN R. ROACH  
Criminal District Attorney, Collin County, Texas

THE STATE OF TEXAS

COUNTY OF COLLIN } BEFORE ME, Will Bridges in and for Collin County, Texas, on this day personally appeared John R. Roach known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas,

This 24<sup>th</sup> day of March, 2010.



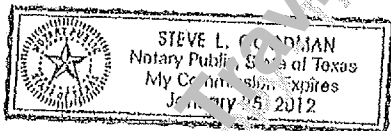
*[Handwritten Signature]*  
\_\_\_\_\_  
State of TX, Notary Public

OATH OF OFFICE

I, Dale R. Barron do solemnly swear (or affirm) that I will faithfully execute the duties of the office of Assistant Criminal District Attorney, special prosecutor, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, So help me God. I understand that my authority is limited to the terms of the foregoing deputation.

Signed: Dale R. Barron  
DALE R. BARRON

Sworn to and subscribed before me, this 23<sup>rd</sup> day of March A.D. 2010.



[Signature]  
\_\_\_\_\_, Notary Public

Unofficial copy  
Collin County District Clerk  
Kevyn L. Price

**DEPUTATION**

COUNTY OF COLLIN } I, John R. Roach, the elected District Attorney in  
Collin County, Texas, having full confidence in Dale R. Barron, an attorney duly  
licensed by the State of Texas and an attorney employed by the Texas Securities Board,  
do hereby nominate and appoint the said Dale R. Barron my true and lawful deputy and  
as a special prosecutor, in my name, place and stead, to do and perform any and all acts  
and things pertaining to my office that I may perform pursuant regarding the  
investigation and any prosecution of any case of or pertaining to [REDACTED]

Thomas Lester Irby, II, [REDACTED]

[REDACTED]

[REDACTED], and any other person or entity shown to be legally  
and factually connected with such investigations or prosecutions, hereby ratifying and  
confirming any and all such acts and things lawfully done in the premises by virtue  
thereof.

WITNESS my hand, this 26<sup>th</sup> day of October, 2009.

*[Handwritten Signature]*

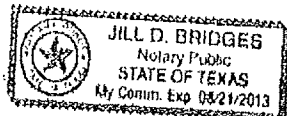
**JOHN R. ROACH**  
Criminal District Attorney, Collin County, Texas

**THE STATE OF TEXAS**

COUNTY OF COLLIN } BEFORE ME, Jill D. Bridges in and for Collin  
County, Texas, on this day personally appeared John R. Roach known to me to be the  
person whose name is subscribed to the foregoing deputation, and acknowledged to me  
that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas,  
This 26<sup>th</sup> day of October, 2009.

*[Handwritten Signature]*  
\_\_\_\_\_  
Collin County, Notary Public



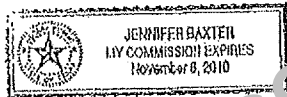
Unofficial Copy Training Co. District Clerk Velaya L. Price

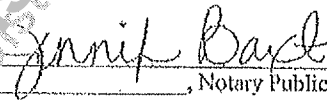
OATH OF OFFICE

I, Dale R. Barron do solemnly swear (or affirm) that I will faithfully execute the duties of the office of Assistant Criminal District Attorney, special prosecutor, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing reputation, will to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, or promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof. So help me God, I understand that my authority is limited to the terms of the foregoing reputation.

Signed   
DALE R. BARRON

Sworn to and subscribed before me, this 26th day of October, A.D. 2009.



  
Jennifer Baxton, Notary Public

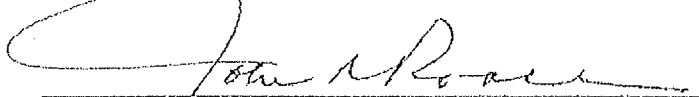
Unofficial copy Travis Co. District Clerk Verna L. Price

DEPUTATION

THE STATE OF TEXAS     }  
COUNTY OF COLLIN       }

I, John R. Roach, the elected Criminal District Attorney in Collin County, Texas, having full confidence in Dale R. Barron, an attorney duly licensed by the State of Texas and an attorney employed by the Texas State Securities Board, do hereby nominate and appoint the said Dale R. Barron my true and lawful deputy and as a special prosecutor, in my name, place and stead, to do and perform any and all acts and things pertaining to my office that I may perform pursuant to the investigation and any prosecution of any case of or pertaining to Charles Scott Goist, [REDACTED], [REDACTED], or any other person or entity shown to be legally and factually connected with such investigation or prosecution; Steven J. Denton, [REDACTED], [REDACTED], or any other person or entity shown to be legally and factually connected with such investigation or prosecution; Ricky Knowles, [REDACTED], [REDACTED], or any other person or entity shown to be legally and factually connected with such investigation or prosecution; and Garry B. Smith, [REDACTED], [REDACTED], or any other person or entity shown to be legally and factually connected with such investigation or prosecution; hereby ratifying and confirming any and all such acts and things lawfully done in the premises by virtue thereof.

WITNESS my hand, this 17<sup>th</sup> day of June, 2009.



JOHN R. ROACH  
Criminal District Attorney, Collin County, Texas

Unofficial copy Travis County District Clerk Melva L. Price

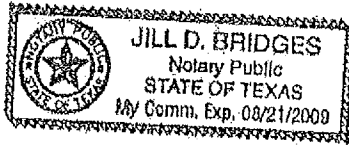
THE STATE OF TEXAS     }  
COUNTY OF COLLIN       }

BEFORE ME, Jill Bridges in and for Collin County, Texas, on this day personally appeared John R. Roach, known to me to be the person whose name is subscribed to the foregoing deputation, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

Given under my hand and seal of office at McKinney, Texas

This 7<sup>th</sup> day of June, 2009.

Jill D. Bridges  
\_\_\_\_\_, Notary Public



Unofficial copy Travis Co. District Clerk Verna L. Price

OATH OF OFFICE

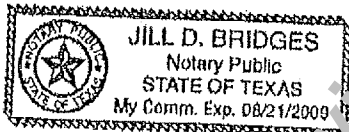
I, Dale R. Barron do solemnly swear (or affirm) that I will faithfully execute the duties of the office of Assistant Criminal District Attorney, special prosecutor, for Collin County, Texas, and as such special prosecutor, pursuant to the foregoing deputation, will to the best of my ability, preserve, protect, and defend the Constitution and the laws of the United States and this State; and I furthermore solemnly swear (or affirm), that I have not directly nor indirectly paid, offered, or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or the confirmation thereof, So help me God. I understand that my authority is limited to the terms of the foregoing deputation.

Signed

*Dale R. Barron*

DALE R. BARRON

Sworn and subscribed before me, this 17 day of June, 2009.



*Jill D. Bridges*

Notary Public

Unofficial copy Travis County District Clerk's Office. Price