

and their families; employees' salaries; Loans, SIBL CD commissions, SIBL Quarterly Bonuses, Performance Appreciation Rights Plan ("PARS") Payments, Branch Managing Director Quarterly Compensation, and Severance Payments paid to financial advisors, managing directors, and other Stanford employees; Bonus Payments and Consulting, Marketing, Branding, and Other Fees ("CD Proceeds") paid to Wealth Management Services, Ltd. ("WMSL"), which is owned and operated by former Stanford financial advisor David Nanes; and purported CD payments in the form of interest and redemptions to unwitting investors. This fraud endured, in part, by incentivizing a sales force and its support staff with big commissions and other compensation relating to the sale of CDs.

3. When Stanford paid CD Proceeds to WMSL, he did no more than take money out of investors' pockets and put it into the hands of WMSL. For the more than 20,000 investors who have thus far received little or nothing from their investment in Stanford CDs, money recovered from wherever it resides today is likely the only money they will ever receive in restitution. CD Proceeds — comprising Bonus Payments and Consulting, Marketing, Branding, and Other Fees paid to WMSL — are little more than stolen money and do not belong to WMSL but belong, instead, to the Receivership Estate.

4. The Stanford Defendants kept their fraudulent scheme going by employing Stanford financial advisors to lure new investors and then divert the investors' funds for the Stanford Defendants' own illicit purposes. The CD Proceeds paid to WMSL came not from revenue generated by legitimate business activities, but from monies contributed by defrauded investors. WMSL received assets traceable to the Stanford Defendants' fraudulent scheme, and it necessarily holds the assets in trust for the Receivership Estate for the benefit of defrauded investors.

5. At this stage of the Receivership, the Receiver has identified substantial sums of CD Proceeds paid to WMSL and, through this Complaint, seeks the return of those funds to the Receivership Estate in order to make an equitable distribution to claimants.¹

6. Between March 9, 2006 and January 15, 2009, WMSL received multiple payments of CD Proceeds — namely, Bonus Payments and Consulting, Marketing, Branding, and Other Fees — from the Stanford Defendants ranging in amounts from approximately \$225,000 to over \$1 million. WMSL received, at a minimum, \$9,825,333.00 in total CD Proceeds over this time period.

7. The Receiver seeks an order that: (a) CD Proceeds received directly or indirectly by WMSL from fraudulent CDs were fraudulent transfers or, in the alternative, unjustly enriched WMSL; (b) CD Proceeds received directly or indirectly by WMSL from fraudulent CDs are property of the Receivership Estate held pursuant to a constructive trust for the benefit of the Receivership Estate; (c) WMSL is liable to the Receivership Estate for an amount equaling the amount of CD Proceeds it received from fraudulent CDs; (d) the Receiver may withdraw the assets contained in Pershing, JP Morgan, and SEI accounts in the name of or controlled by WMSL and add those assets, up to the amounts of fraudulent CD Proceeds it received, to the assets of the Receivership Estate; (e) WMSL must pay to the Receiver the difference, if any, between the amounts contained in its Pershing, JP Morgan, and SEI accounts, if any, and the total amount of fraudulent CD Proceeds it received; and (f) awards attorney's fees and costs to the Receiver.

PARTIES

8. The parties to this complaint are the Receiver and WMSL.

¹ The Receiver's claims in this Complaint are related to his claims against Former Stanford Employees on file in Case No. 03:09-CV-0724-N before this Court.

9. WMSL will be served pursuant to the Federal Rules of Civil Procedure, through its attorney of record, or by other means approved by order of this Court.

JURISDICTION & VENUE

10. This Court has jurisdiction over this action, and venue is proper, under Section 22(a) of the Securities Act (15 U.S.C. § 77v(a)), Section 27 of the Exchange Act (15 U.S.C. § 78aa), and under Chapter 49 of Title 28, Judiciary and Judicial Procedure (28 U.S.C. § 754).

11. Further, as the Court that appointed the Receiver, this Court has jurisdiction over any claim brought by the Receiver to execute his Receivership duties.

12. Further, within 10 days of his appointment, the Receiver filed the original Complaint and Order Appointing the Receiver in 29 United States district courts pursuant to 28 U.S.C. § 754, giving this Court *in rem* and *in personam* jurisdiction in each district where the Complaint and Order have been filed.

STATEMENT OF FACTS

13. On February 16, 2009, the Securities and Exchange Commission commenced a lawsuit in this Court against R. Allen Stanford, two associates, James M. Davis and Laura Pendergest-Holt, and three of Mr. Stanford's companies, Stanford International Bank, Ltd. ("SIB," "SIBL," or "the Bank"), SGC, and Stanford Capital Management, LLC (collectively, the "Stanford Defendants"). On the same date, the Court entered an Order appointing a Receiver, Ralph S. Janvey, over all property, assets, and records of the Stanford Defendants, and all entities they own or control.

I. Stanford Defendants Operated a Fraudulent Ponzi Scheme

14. As alleged by the SEC, the Stanford Defendants marketed fraudulent SIBL CDs to investors exclusively through SGC financial advisors pursuant to a Regulation D private

placement. SEC's Second Amended Complaint (Doc. 952), ¶ 27.² The CDs were sold by Stanford International Bank, Ltd. *Id.*

15. The Stanford Defendants orchestrated and operated a wide-ranging Ponzi scheme. Defendant James M. Davis has admitted that the Stanford fraud was a Ponzi scheme from the beginning. Doc. 771 (Davis Plea Agreement) at ¶ 17(n) (Stanford, Davis, and other conspirators created a "massive Ponzi scheme"); Doc. 807 (Davis Tr. of Rearrangement) at 16:16-17, 21:6-8, 21:15-17 (admitting the Stanford Ponzi fraud was a "massive Ponzi scheme ab initio").

16. In marketing, selling, and issuing CDs to investors, the Stanford Defendants repeatedly touted the CDs' safety and security and SIBL's consistent, double-digit returns on its investment portfolio. SEC's Second Amended Complaint (Doc. 952), ¶¶ 32-33.

17. In its brochure, SIBL told investors, under the heading "Depositor Security," that its investment philosophy is "anchored in time-proven conservative criteria, promoting stability in [the Bank's] certificate of deposit." SIBL also emphasized that its "prudent approach and methodology translate into deposit security for our customers." *Id.* ¶ 34. Further, SIBL stressed the importance of investing in "marketable" securities, saying that "maintaining the highest degree of liquidity" was a "protective factor for our depositors." *Id.*

18. In its 2006 and 2007 Annual Reports, SIBL told investors that the Bank's assets were invested in a "well-balanced global portfolio of marketable financial instruments, namely U.S. and international securities and fiduciary placements." *Id.* ¶ 35. More specifically, SIBL represented that its year-end 2007 portfolio allocation was 58.6% equity, 18.6% fixed income, 7.2% precious metals and 15.6% alternative investments. *Id.*

² Unless otherwise stated, citations to Court records herein are from the case styled *SEC v. Stanford Int'l Bank, Ltd., et al.*, Civil Action No. 3-09-CV-0298-N.

19. Consistent with its Annual Reports and brochures, SIBL trained SGC financial advisors, in February 2008, that “liquidity/marketability of SIB’s invested assets” was the “most important factor to provide security to SIB clients.” *Id.* ¶ 36. In training materials, the Stanford Defendants also claimed that SIBL had earned consistently high returns on its investment of deposits (ranging from 11.5% in 2005 to 16.5% in 1993). *Id.* ¶ 49.

20. Contrary to the Stanford Defendants’ representations regarding the liquidity of its portfolio, SIBL did not invest in a “well-diversified portfolio of highly marketable securities.” Instead, significant portions of the Bank’s portfolio were misappropriated by Defendant Allen Stanford and were either placed in speculative investments (many of them illiquid, such as private equity deals), diverted to other Stanford Entities “on behalf of shareholder” - *i.e.*, for the benefit of Allen Stanford, or used to finance Allen Stanford’s lavish lifestyle (*e.g.*, jet planes, a yacht, other pleasure craft, luxury cars, homes, travel, company credit card, etc.). In fact, at year-end 2008, the largest segments of the Bank’s portfolio were at least \$1.6 billion in undocumented “loans” to Defendant Allen Stanford; private equity; and over-valued real estate. *See id.* ¶¶ 39-40.

21. In an effort to conceal their fraud and ensure that investors continued to purchase the CD, the Stanford Defendants fabricated the performance of SIBL’s investment portfolio. *Id.* ¶ 4.

22. SIBL’s financial statements, including its investment income, were fictional. *Id.* ¶¶ 4, 53. In calculating SIBL’s investment income, Defendants Stanford and James Davis provided to SIBL’s internal accountants a pre-determined return on investment for the Bank’s portfolio. *Id.* Using this pre-determined number, SIBL’s accountants reverse-engineered the Bank’s financial statements to reflect investment income that SIBL did not actually earn. *Id.*

23. For a time, the Stanford Defendants were able to keep the fraud going by using funds from current sales of SIBL CDs to make purported interest and redemption payments on pre-existing CDs. *See id.* ¶ 1. However, in late 2008 and early 2009, CD redemptions increased to the point that new CD sales were inadequate to cover redemptions and normal operating expenses. As the depletion of liquid assets accelerated, this fraudulent Ponzi scheme collapsed.

II. The Stanford Defendants Transferred CD Proceeds from the Fraudulent Ponzi Scheme to WMSL

24. The Stanford Defendants used an elaborate and sophisticated incentive program to keep former Stanford employees — including former Stanford financial advisor David Nanes, the owner and operator of WMSL — highly motivated to sell SIBL CDs to brokerage customers. *See id.* ¶¶ 28-29. The program included Loans, high SIBL CD Commission rates, SIBL Quarterly Bonuses, PARS Payments, Branch Managing Director Quarterly Compensation, and Severance Payments to former Stanford employees and Bonus Payments and Consulting, Marketing, Branding, and Other Fees paid to WMSL — all closely tied to maintaining the Stanford Defendants' portfolio of CDs. In 2007, SIB paid SGC and its affiliates more than \$291 million in management fees for CD sales, up from \$211 million in 2006. *Id.* ¶ 30. As a result of SGC's aggressive sales tactics, a significant percentage of SGC customers bought CDs from SIBL. *Id.* ¶ 26.

25. CD Proceeds from the fraudulent Ponzi scheme described above were transferred by the Stanford Defendants to WMSL solely for the purpose of concealing and perpetuating the fraudulent scheme. Such CD Proceeds were paid to WMSL from funds supplied by investors who bought the fraudulent CDs. WMSL either performed no services in exchange for the CD Proceeds or performed only services that were in furtherance of the Ponzi scheme in exchange for the CD Proceeds. *See Warfield v. Byron*, 436 F.3d 551, 558-60 (5th Cir. 2006) (transfers

made from Ponzi scheme are made with intent to defraud; broker who worked for Ponzi scheme did not provide reasonably equivalent value in return for fraudulent transfers); *In re Randy*, 189 B.R. 425, 438-39 (Bankr. N.D. Ill. 1995) (as illegal services premised on illegal contracts, broker services provided in furtherance of a Ponzi scheme do not provide reasonably equivalent value). The CD Proceeds WMSL received are, therefore, properly considered assets of the Receivership Estate and must be returned to the Receivership Estate to compensate victims of the Stanford fraud according to principles of law and equity.

REQUESTED RELIEF

26. This Court appointed Ralph S. Janvey as Receiver for the “assets, monies, securities, properties, real and personal, tangible and intangible, of whatever kind and description, wherever located, and the legally recognized privileges (with regard to the entities), of the Defendants and all entities they own or control,” including those of the Stanford Group Company brokerage firm. Order Appointing Receiver (Doc. 10) at ¶¶ 1-2; Amended Order Appointing Receiver (Doc. 157) at ¶¶ 1-2. The Receiver seeks the relief described below in this capacity.

27. Paragraph 4 of the Order Appointing Receiver, entered by the Court on February 16, 2009, authorizes the Receiver “to immediately take and have complete and exclusive control, possession, and custody of the Receivership Estate and to any assets traceable to assets owned by the Receivership Estate.” Order Appointing Receiver (Doc. 10) at ¶ 4; Amended Order Appointing Receiver (Doc. 157) at ¶ 4. Paragraph 5(c) of the Order specifically authorizes the Receiver to “[i]nstitute such actions or proceedings [in this Court] to impose a constructive trust, obtain possession, and/or recover judgment with respect to persons or entities who received

assets or records traceable to the Receivership Estate.” Order Appointing Receiver (Doc. 10) at ¶ 5(c); Amended Order Appointing Receiver (Doc. 157) at ¶ 5(c).

28. One of the Receiver’s key duties is to maximize distributions to defrauded investors and other claimants. *See* Amended Order Appointing Receiver (Doc. 157) at ¶ 5(g), (j) (ordering the Receiver to “[p]reserve the Receivership Estate and minimize expenses in furtherance of maximum and timely disbursement thereof to claimants”); *Scholes v. Lehmann*, 56 F.3d 750, 755 (7th Cir. 1995) (receiver’s “only object is to maximize the value of the [estate assets] for the benefit of their investors and any creditors”); *SEC v. TLC Invs. & Trade Co.*, 147 F. Supp. 2d 1031, 1042 (C.D. Cal. 2001); *SEC v. Kings Real Estate Inv. Trust*, 222 F.R.D. 660, 669 (D. Kan. 2004). But before the Receiver can attempt to make victims whole, he must locate and take exclusive control and possession of assets of the Estate or assets traceable to the Estate. Doc. 157 ¶ 5(b).

I. The Receiver is Entitled to Disgorgement of CD Proceeds Fraudulently Transferred to WMSL

29. The Receiver is entitled to disgorgement of all CD Proceeds paid to WMSL because such payments constitute fraudulent transfers under applicable law. The Stanford Defendants transferred the CD Proceeds to WMSL with actual intent to hinder, delay, or defraud their creditors; as a result, the Receiver is entitled to the disgorgement of those CD Proceeds from WMSL.

30. The Receiver may avoid transfers made with the actual intent to hinder, delay, or defraud creditors. “[T]ransfers made from a Ponzi scheme are presumptively made with intent to defraud, because a Ponzi scheme is, as a matter of law, insolvent from inception.” *Quilling v. Schonsky*, No. 07-10093, 2007 WL 2710703, at *2 (5th Cir. Sept. 18, 2007); *see also Warfield*, 436 F.3d at 558. The uncontroverted facts establish that the Stanford Defendants were running a

Ponzi scheme and, to keep the scheme going, paid WMSL with CD Proceeds taken from unwitting SIBL CD investors. The Receiver is, therefore, entitled to disgorgement of the fraudulently transferred CD Proceeds that WMSL received.

31. Consequently, the burden is on WMSL to establish an affirmative defense, if any, of both objective good faith and provision of reasonably equivalent value. *See, e.g., Scholes*, 56 F.3d at 756-57 (“If the plaintiff proves fraudulent intent, the burden is on the defendant to show that the fraud was harmless because the debtor’s assets were not depleted even slightly.”). The Receiver is, therefore, entitled to recover the full amount of CD Proceeds that WMSL received, unless WMSL proves *both* objective good faith *and* reasonably equivalent value.

32. The good-faith element of this affirmative defense requires that WMSL prove objective — not subjective — good faith. *Warfield*, 436 F.3d at 559-560 (good faith is determined under an “objectively knew or should have known” standard); *In re IFS Fin. Corp.*, Bankr. No. 02-39553, 2009 WL 2986928, at *15 (Bankr. S.D. Tex. Sept. 9, 2009) (objective standard is applied to determine good faith); *Quilling v. Stark*, No. 3-05-CV-1976-BD, 2007 WL 415351, at *3 (N.D. Tex. Feb. 7, 2007) (good faith “must be analyzed under an objective, rather than a subjective, standard. The relevant inquiry is what the transferee objectively knew or should have known instead of examining the transferee’s actual knowledge from a subjective standpoint.”) (internal citations and quotation marks omitted).

33. There is no evidence that WMSL provided any services in exchange for the fraudulent transfers it received. Even if it had, the Fifth Circuit has held that providing services in furtherance of a Ponzi scheme does not confer reasonably equivalent value and that a receiver can recover the funds received for recruiting investors into the scheme. *Warfield*, 436 F.3d at 555, 560. The *Warfield* court eloquently observed that “[i]t takes cheek to contend that in

exchange for payments he received, the . . . Ponzi scheme benefited from [the broker's] efforts to extend the fraud by securing new investments.” *Id.* at 560 (citing *Randy*, 189 B.R. at 438-39, for the proposition that “as illegal services premised on illegal contracts, broker services provided in furtherance of a Ponzi scheme do not provide reasonably equivalent value”). WMSL cannot now claim that, in return for furthering the Ponzi scheme and helping it endure, it should be entitled to keep the Bonus Payments and Consulting, Marketing, Branding, and Other Fees taken from the defrauded victims who invested in SIBL CDs. Because WMSL cannot meet its burden to establish that it provided reasonably equivalent value for the CD Proceeds, the Receiver is entitled to the disgorgement of those funds.

34. Moreover, under applicable fraudulent transfer law, the Receiver is entitled to attorney's fees and costs for his claims against WMSL. *See, e.g.*, TEX. BUS. & COM. CODE ANN. § 24.013 (Vernon 2009) (“[T]he court may award costs and reasonable attorney's fees as are equitable and just.”). As a result, the Receiver requests reasonable attorney's fees and costs for prosecuting his fraudulent-transfer claims against WMSL.

35. In order to carry out the duties delegated to him by this Court, the Receiver seeks complete and exclusive control, possession, and custody of the CD Proceeds received by WMSL.

36. The Stanford Defendants, who orchestrated the Ponzi scheme, transferred the CD Proceeds to WMSL with actual intent to hinder, delay, or defraud their creditors. The Receiver is, therefore, entitled to disgorgement of all CD Proceeds fraudulently transferred to WMSL. Pursuant to the equity powers of this Court, the Receiver therefore seeks an order (a) establishing that the CD Proceeds received directly or indirectly by WMSL from fraudulent CDs were fraudulent transfers; (b) ordering that CD Proceeds received directly or indirectly by WMSL from fraudulent CDs are property of the Receivership Estate held pursuant to a constructive trust

for the benefit of the Receivership Estate; (c) ordering that WMSL is liable to the Receivership Estate for an amount equaling the amount of CD Proceeds it received; (d) allowing the Receiver to withdraw the assets contained in Pershing, JP Morgan, and SEI accounts in the name of or controlled by WMSL and add those assets, up to the amounts of CD Proceeds it received, to the assets of the Receivership Estate; (e) ordering WMSL to pay to the Receiver the difference, if any, between the amounts contained in its Pershing, JP Morgan, and SEI accounts and the total amount of CD Proceeds it received; and (f) awarding attorney's fees and costs to the Receiver.

II. In the Alternative, the Receiver is Entitled to Disgorgement of CD Proceeds from WMSL under the Doctrine of Unjust Enrichment

37. In the alternative, the Receiver is entitled to disgorgement of the CD Proceeds paid to WMSL pursuant to the doctrine of unjust enrichment under applicable law. WMSL holds CD Proceeds that in equity and good conscience belong to the Receivership for ultimate distribution to the defrauded investors. WMSL has been unjustly enriched by the CD Proceeds, and it would be unconscionable for it to retain the CD Proceeds.

38. In order to carry out the duties delegated to him by this Court, the Receiver seeks complete and exclusive control, possession, and custody of all CD Proceeds received by WMSL.

39. WMSL has been unjustly enriched by its receipt of the CD Proceeds. Pursuant to the equity powers of this Court, the Receiver therefore seeks an order (a) establishing that WMSL was unjustly enriched by CD Proceeds received directly or indirectly from fraudulent CDs; (b) ordering that CD Proceeds received directly or indirectly by WMSL from fraudulent CDs are property of the Receivership Estate held pursuant to a constructive trust for the benefit of the Receivership Estate; (c) ordering that WMSL is liable to the Receivership Estate for an amount equaling the amount of CD Proceeds it received; (d) allowing the Receiver to withdraw the assets contained in Pershing, JP Morgan, and SEI accounts in the name of or controlled by

WMSL and add those assets, up to the amounts of CD Proceeds it received, to the assets of the Receivership Estate; (e) ordering WMSL to pay to the Receiver the difference, if any, between the amounts contained in its Pershing, JP Morgan, and SEI accounts and the total amount of CD Proceeds it received; and (f) awarding attorney's fees and costs to the Receiver.

PRAYER

40. The Receiver respectfully requests the following:
 - (a) An Order providing that CD Proceeds received directly or indirectly by WMSL from fraudulent CDs were fraudulent transfers under applicable law or, in the alternative, that WMSL was unjustly enriched by CD Proceeds received directly or indirectly from fraudulent CDs;
 - (b) An Order providing that CD Proceeds received directly or indirectly by WMSL from fraudulent CDs are property of the Receivership Estate;
 - (c) An Order providing that CD Proceeds received directly or indirectly by WMSL from fraudulent CDs are subject to a constructive trust for the benefit of the Receivership Estate;
 - (d) An Order establishing the amount of CD Proceeds WMSL received;
 - (e) An Order providing that WMSL is liable to the Receivership Estate for an amount equaling the amount of CD Proceeds it received from fraudulent CDs;
 - (f) An Order allowing the Receiver to withdraw the assets contained in the Pershing, JP Morgan, and SEI accounts in the name of or controlled by WMSL and add those assets, up to the amounts of CD Proceeds it received, to the assets of the Receivership Estate;

- (g) An Order requiring WMSL to pay to the Receiver the difference between the amounts contained in its Pershing, JP Morgan, and SEI accounts and the total amount of CD Proceeds it received;
- (h) An award of costs, attorney's fees, and prejudgment interest; and
- (i) Such other and further relief as the Court deems proper under the circumstances.

Dated: March 8, 2010

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

Kevin M. Sadler
Texas Bar No. 17512450
kevin.sadler@bakerbotts.com
Robert I. Howell
Texas Bar No. 10107300
robert.howell@bakerbotts.com
David T. Arlington
Texas Bar No. 00790238
david.arlington@bakerbotts.com
1500 San Jacinto Center
98 San Jacinto Blvd.
Austin, Texas 78701-4039
(512) 322-2500
(512) 322-2501 (Facsimile)

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

ATTORNEYS FOR RECEIVER RALPH S. JANVEY

CERTIFICATE OF SERVICE

On March 8, 2010, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the Court. I hereby certify that I will serve Wealth Management Services, Ltd. individually or through its counsel of record, electronically, or by other means authorized by the Court or the Federal Rules of Civil Procedure.

/s/ Kevin M. Sadler
Kevin M. Sadler