



payments were made in November 2008 in connection with Aitken and Thacker's becoming employees of Stanford Capital Management, LLC. Aitken received \$8,662,500 and Thacker received \$2,587,500. Through this Original Complaint, the Receiver seeks the return of these funds to the Receivership Estate in order to make an equitable distribution to claimants.

4. The CD Proceeds paid to Aitken and Thacker came not from revenue generated by legitimate business activities, but from monies contributed by defrauded investors. Aitken and Thacker received assets traceable to the Stanford Defendants' fraudulent scheme, and Aitken and Thacker cannot establish a legitimate right to retain these assets. Accordingly, they necessarily hold the assets in trust for the Receivership Estate for the benefit of defrauded investors.

5. The payments to Aitken and Thacker were made with actual intent to hinder, delay, or defraud the Stanford Defendants' creditors, and neither Aitken nor Thacker can carry their burden to establish that (1) they conferred reasonably equivalent value in exchange for the payments and (2) they acted in good faith. The payments constitute fraudulent transfers, and must be returned to the Receivership Estate.

6. Aitken and Thacker were employed by the Stanford Defendants for only three months, and there is no indication that they provided any meaningful services in that brief period that would establish a legitimate right to retain over \$11 million.

7. The Receiver seeks an order that: (a) the \$8,662,500 payment to Aitken is property of the Receivership Estate held pursuant to a constructive trust for the benefit of the Receivership Estate; (b) the \$8,662,500 payment to Aitken was a fraudulent transfer under applicable law; (c) Aitken is liable to the Receivership Estate in the amount of \$8,662,500; (d) the \$2,587,500 payment to Thacker is property of the Receivership Estate held pursuant to a

constructive trust for the benefit of the Receivership Estate; (e) the \$2,587,500 payment to Thacker was a fraudulent transfer under applicable law; and (f) Thacker is liable to the Receivership Estate in the amount of \$2,587,500.

### **JURISDICTION & VENUE**

8. 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).

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

10. Further, within 10 days of his appointment, the Receiver filed the original Complaint and Order Appointing the Receiver in 26 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, including the District of Maryland, the Middle District of Florida, and the Southern District of New York.

11. This Court has personal jurisdiction over Aitken and Thacker pursuant to F.R.C.P. 4(k)(1)(C) and 15 U.S.C. §§ 754 and 1692.

### **THE DEFENDANTS**

12. Christopher Aitken is a U.S. citizen and resident of Ponte Vedra, Florida, who formerly officed in Ponte Vedra, Florida and Baltimore, Maryland.

13. Stephen Thacker is a U.S. citizen and resident of Baltimore, Maryland, who formerly officed in Baltimore, Maryland.

14. Aitken and Thacker will be served pursuant to the Federal Rules of Civil Procedure, through their attorney of record, or by other means approved by this Court's order.

## STATEMENT OF FACTS

15. 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" or "the Bank"), Stanford Group Company, and Stanford Capital Management, LLC (collectively "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***

16. As alleged by the SEC, the Stanford Defendants marketed fraudulent SIB CDs to investors exclusively through SGC Financial Advisors pursuant to a Regulation D private placement. First Amended Complaint (Doc. 48), ¶ 23.<sup>1</sup> The CDs were sold by Stanford International Bank, Ltd. *Id.*

17. In marketing, selling, and issuing CDs to investors, the Stanford Defendants repeatedly touted the CDs' safety and security and SIB's consistent, double-digit returns on its investment portfolio. *Id.* ¶ 31.

18. In its brochure, SIB 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." SIB also emphasized that its "prudent approach and methodology translate into deposit security for our customers." *Id.* ¶ 32. Further, SIB stressed the importance of investing in "marketable" securities, saying that "maintaining the highest degree of liquidity" was a "protective factor for our depositors." *Id.* ¶ 45.

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<sup>1</sup> 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. In its 2006 and 2007 Annual Reports, SIB 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.* ¶ 44. More specifically, SIB represented that its 2007 portfolio allocation was 58.6% equity, 18.6% fixed income, 7.2% precious metals and 15.6% alternative investments. *Id.*

20. Consistent with its Annual Reports and brochures, SIB 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.* ¶ 46. In training materials, the Stanford Defendants also claimed that SIB had earned consistently high returns on its investment of deposits (ranging from 11.5% in 2005 to 16.5% in 1993). *Id.* ¶ 24.

21. Contrary to the Stanford Defendants' representations regarding the liquidity of its portfolio, SIB did not invest in a "well-diversified portfolio of highly marketable securities." Instead, significant portions of the Bank's portfolio were misappropriated by the Defendants 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 cards, etc.). In fact, at year-end 2008, the largest segments of the Bank's portfolio were: (i) at least \$1.6 billion in undocumented "loans" to Defendant Allen Stanford; (ii) private equity; and (iii) grossly over-valued real estate. *Id.* ¶¶ 24, 48.

22. In an effort to conceal their fraud and ensure that investors continued to purchase the CD, the Stanford Defendants fabricated the performance of SIB's investment portfolio. *Id.* ¶ 5.

23. SIB's financial statements, including its investment income, were fictional. *Id.* ¶ 37. In calculating SIB's investment income, Defendants Stanford and James Davis provided to SIB's internal accountants a pre-determined return on investment for the Bank's portfolio. *Id.* Using this pre-determined number, SIB's accountants reverse-engineered the Bank's financial statements to reflect investment income that SIB did not actually earn. *Id.*

24. For a time, the Stanford Defendants were able to keep the fraud going by using funds from current sales of SIB CDs to make 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.

25. Most of the above facts discovered from Stanford records have since been confirmed by Stanford's Chief Financial Officer, James Davis, who has pleaded guilty to his role in running the Stanford Ponzi scheme.

## ***II. The Stanford Defendants Transferred CD Proceeds from the Fraudulent Ponzi Scheme to Aitken and Thacker***

26. CD Proceeds from the fraudulent Ponzi scheme described above were transferred by the Stanford Defendants to Aitken and Thacker. The payments came from funds supplied by investors who bought the fraudulent CDs.

27. On November 14, 2008, Aitken and Thacker both entered employment agreements (the "Employment Agreements") with Stanford Capital Management, LLC ("SCM"). They joined a division of SCM called Stanford Institutional Consulting, each with the title of "Executive Managing Director and Senior Investment Consultant". The Employment Agreements specified a 7 year "Primary Term" of employment for Aitken and Thacker.

28. Aitken and Thacker each received notice of termination of their employment on March 6, 2009.

29. In connection with joining SCM, Aitken and Thacker agreed to sell their “Personal Goodwill”<sup>2</sup> to their new employer. On February 1, 2009, Aitken and Thacker both entered an “Amended and Restated Personal Goodwill Purchase Agreement” (the “Purchase Agreement”) with SCM and Stanford Financial Group Company, with SCM as buyer of the Personal Goodwill.<sup>3</sup>

30. Under the Purchase Agreement, the total purchase price for Aitken and Thacker’s “Personal Goodwill” was \$22,500,000. One half of the purchase price was payable immediately, with the other half payable in June of 2010, if certain earn-out requirements were met. Only the first half, or \$11,250,000, was paid to Aitken and Thacker. Aitken received 77% of this payment, or \$8,662,500; Thacker received 23%, or \$2,587,500.

31. The \$11,250,000 was transferred to Aitken and Thacker by wire from a Bank of Houston account in the name of Stanford Financial Group Company.<sup>4</sup> The ultimate source of these funds was Stanford International Bank, Ltd. Thus, the transfers to Aitken and Thacker were funded with CD Proceeds.

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<sup>2</sup> “Personal Goodwill” is defined as “the personal relationships that Aitken and Thacker have developed and maintained with clients as well as [Aitken and Thacker’s] unique abilities, knowledge, relationships and other characteristics”.

<sup>3</sup> On November 14, 2008, Aitken and Thacker both entered a “Personal Goodwill Purchase Agreement” with Aitken and Thacker as sellers, and Stanford Financial Group Company as buyer. But the Stanford parties “determined that the correct entity was not reflected as the Buyer, and that SCM should be the Buyer, ab initio.” Accordingly, the parties “agreed to amend and restate [the November Agreement] in its entirety to reflect Stanford Capital Management, LLC as the Buyer,” as set forth in the February 2009 Agreement. Hereinafter, all references to the “Purchase Agreement” are to the February 2009 Agreement.

<sup>4</sup> When SCM replaced Stanford Financial Group Company as the “Buyer,” SCM agreed that it would owe the purchase price back to Stanford Financial Group Company, who initially paid the purchase price to Aitken and Thacker.

32. The receiving bank for the wire transfer to Aitken was Bank of America, 631 A1A North, Ponte Vedra Beach, Florida.

33. The receiving bank for the wire transfer to Thacker was Citibank NA, 111 Wall Street, New York, New York.

34. The date of these wire transfers was November 17, 2008. Only 91 days later, on February 16, 2009, Ralph S. Janvey was appointed Receiver over the Stanford entities, including SCM and Stanford Financial Group Company.

### **REQUESTED RELIEF**

35. 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.

36. 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).

37. 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 Assets from Aitken and Thacker as Relief Defendants***

38. As alleged above, the payments received by Aitken and Thacker are assets of the Receivership Estate, and Aitken and Thacker are named as relief defendants to effect full relief in the marshaling of assets that are the fruit of the underlying fraud. *See SEC v. Colello*, 139 F.3d 674, 676-77 (9th Cir. 1998).

39. Case law amply supports the power of a receiver to seek disgorgement of tainted funds from relief defendants who receive proceeds from a Ponzi scheme.<sup>5</sup> Aitken and Thacker

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<sup>5</sup> *SEC v. George*, 426 F.3d 786, 798-99 (6th Cir. 2005); *SEC v. JT Wallenbrock & Assocs.*, 440 F.3d 1109, 1116 (9th Cir. 2006); *SEC v. Infinity Group Co.*, 212 F.3d 180, 193 (3d Cir. 2000); *Quilling v. 3D Marketing, LLC*, No. 3-06-CV-0293-L, 2007 WL 1058217, at \*4 (N.D. Tex. Feb. 8, 2007); *SEC v. Alanar, Inc.*, No. 1:05-cv-1102, 2008 WL 1994854, at \*5-6 (S.D. Ind. May 6, 2008); *SEC v. Cross Fin. Servs., Inc.*, 908 F. Supp. 718, 730 (C.D. Cal. 1995); *CFTC v. Bolze*, No. 3:09-CV-88, 2009 WL 1313249, at \*2 (M.D. Tenn. April 1, 2009); *SEC v. AmeriFirst Funding, Inc.*, Civil Action No. 3:07-CV-1188-D, 2008 WL 1959843, at \*2 (N.D. Tex. May 5, 2008); *CFTC v. Foreign Fund*, 549 F. Supp. 2d

cannot establish a legitimate ownership interest in the tainted funds. Accordingly, they necessarily hold the assets in trust for the Receivership Estate for the benefit of defrauded investors. *See SEC v. George*, 426 F.3d 786, 799-800 (6th Cir. 2005) (Assets held by a third party can be considered property of the receivership estate if (1) the assets are traceable to the fraudulent activity and (2) the non-party has no legitimate claim to retain the assets.); *CFTC v. Kimberlynn Creek Ranch, Inc.*, 276 F.3d 187, 191-92 (4th Cir. 2002) (recipient of proceeds of fraud had no ownership interest in the funds).

40. 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 Aitken and Thacker.

41. Pursuant to the equity powers of this Court, the Receiver therefore seeks an order that (a) the \$8,662,500 payment to Aitken is property of the Receivership Estate held pursuant to a constructive trust for the benefit of the Receivership Estate; (b) Aitken is liable to the Receivership Estate in the amount of \$8,662,500; (c) the \$2,587,500 payment to Thacker is property of the Receivership Estate held pursuant to a constructive trust for the benefit of the Receivership Estate; and (d) Thacker is liable to the Receivership Estate in the amount of \$2,587,500.

***II. In the alternative, the Receiver is Entitled to Disgorgement of Assets Fraudulently Transferred to Aitken and Thacker***

42. The Receiver is entitled to disgorgement of the CD Proceeds paid to Aitken and Thacker because such payments constitute fraudulent transfers under applicable law. The

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1005, 1008 (M.D. Tenn. 2008); *CFTC v. Foreign Fund*, No. 3:04-0898, 2007 WL 1850007, at \*5 (M.D. Tenn. June 25, 2007); *SEC v. Dowdell*, No. Civ. A. 3:01-CV-00116, 2002 WL 31357059, at \*4-5 (W.D. Va. Oct. 11, 2002); *SEC v. Chem. Trust*, No. 00-8015-CIV, 2000 WL 33231600, at \*11-12 (S.D. Fla. Dec. 19, 2000); *SEC v. Better Life Club of Am., Inc.*, 995 F. Supp. 167, 184 (D.D.C. 1998); *SEC v. Infinity Group Co.*, 993 F. Supp. 324, 331 (E.D. Pa. 1998), *aff'd*, 212 F.3d 180 (3d Cir. 2000).

Stanford Defendants transferred the CD Proceeds to Aitken and Thacker 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 Aitken and Thacker.

43. 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 v. Byron*, 436 F.3d 551, 558 (5th Cir. 2006). The uncontroverted facts establish that the Stanford Defendants were running a Ponzi scheme, and paid Aitken and Thacker with CD Proceeds taken from unwitting CD investors. The Receiver is, therefore, entitled to disgorgement of the fraudulently transferred CD Proceeds that Aitken and Thacker received.

44. 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 Aitken and Thacker.

45. The Stanford Defendants, who orchestrated the Ponzi scheme, transferred the CD Proceeds to Aitken and Thacker with actual intent to hinder, delay, or defraud their creditors. The Receiver therefore seeks an order that (a) the \$8,662,500 payment to Aitken was a fraudulent transfer under applicable law; (b) Aitken is liable to the Receivership Estate in the amount of \$8,662,500; (c) the \$2,587,500 payment to Thacker was a fraudulent transfer under applicable law; and (d) Thacker is liable to the Receivership Estate in the amount of \$2,587,500.

#### **PRAYER**

46. The Receiver respectfully requests the following:

- (a) An Order providing that the \$8,662,500 payment to Aitken is property of the Receivership Estate held pursuant to a constructive trust for the benefit of the Receivership Estate;
- (b) An Order providing that the \$8,662,500 payment to Aitken was a fraudulent transfer under applicable law;
- (c) An Order providing that Aitken is liable to the Receivership Estate in the amount of \$8,662,500;
- (d) An Order providing that the \$2,587,500 payment to Thacker is property of the Receivership Estate held pursuant to a constructive trust for the benefit of the Receivership Estate;
- (e) An Order providing that the \$2,587,500 payment to Thacker was a fraudulent transfer under applicable law;
- (f) An order providing that Thacker is liable to the Receivership Estate in the amount of \$2,587,500;
- (g) Such other and further relief as the Court deems proper under the circumstances.

Dated: October 14, 2009

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 October 14, 2009, 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 Aitken and Thacker individually or through their 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