IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RALPH S. JANVEY, IN HIS CAPACITY AS COURT-APPOINTED RECEIVER FOR THE STANFORD INTERNATIONAL BANK, LTD., ET AL.	§	
Plaintiff,	§	Case No. 3:09-CV-0724-N
JAMES R. ALGUIRE, ET AL.	§	
Relief Defendants.	§	

DEFENDANT JASON GREEN'S RESPONSE AND BRIEF IN OPPOSITION TO RECEIVER'S APPLICATION (DOCUMENT NO. 392)

Defendant Jason Green ("Green" or "Defendant") responds to the Receiver's Application for Temporary Restraining Order, Preliminary Injunction, and in the Alternative, Writ of Attachment, Concerning Accounts of Former Stanford Employees ("TRO") and respectfully shows the following, among other things:

1. The Receiver has not sustained his burden. The Receiver's briefing continues to assert broad, sweeping, conclusory, *en masse* allegations which cannot serve as the basis for the individualized relief he seeks. For instance, the Receiver contends that none of the so-called "Accountholders," which includes Mr. Green, can show that any of the alleged transfers occurred in good faith for reasonable equivalent value. *See* Doc. 392 at pages 13-27. Indeed, the Receiver argues the Accountholders "either knew *or should have known* of the fraudulent nature of the transfers they received and the SIBL CD products they sold, promoted, and invested in." *Id.* at 14-15. In support of this contention, however, the Receiver does not

establish how Mr. Green supposedly "knew or should have known" of the fraud. Instead, the Receiver principally relies on the SEC OIG's Report for the proposition that all Accountholders knew or must have known the fraud. *See generally* id. at 16.

2. There are a number of evidentiary problems with the Receiver's approach. First, the OIG Report did not conclude that the Accountholders knew or should have known of the alleged fraud. Second, the OIG Report is chocked full of objectionable hearsay testimony, conclusions, and suppositions, regardless of whether the *fact or existence* of the Report could be admissible under Fed. R. Civ. Evid. 803(8), which is denied. Third, the OIG Report recognized that the SEC enforcement division, whose lawyers, accountants, and investigators are *trained to and charged by law to ferret out fraud*, determined over the course of years there was insufficient ground to pursue SGC—but yet the Receiver concluded the Accountholders (who were retail stockbrokers) should have somehow recognized the alleged existence of fraud. Not only is the OIG Report *not* admissible evidence, even if it were it does not support the arguements the Receiver seeks to draw from it.

3. Furthermore, there is no evidence in the record before the Court that Mr. Green knew of or was otherwise aware of, for instance, the SEC letter to Jay Comeaux, Doug McDaniel's communication to Jim Davis, et. al., (*id.* pages 17-18), the 2004-2005 "SEC Inquiry" (*id* at pages 21-23), or the 2006 "NASD Inquiry" (*id* at pages 23-24). Rattling on page-after-page about non-public regulatory inquiries does not make a case for absence of good faith or a case against Mr. Green.

4. The one time Mr. Green even rates mention in the Application is in relation to an alleged inquiry from another financial advisor—Mr. Ulloa's March 2008 email to Mr. Green. That one email in no way supports the relief against Mr. Green the Receiver seeks. The Receiver has not shown how that single email raised any suspicions of untoward conduct, much less any

suggestion of *fraud*. The Receiver, to his credit, tacitly even acknowledges that Mr. Green did not answer the inquiry and instead forwarded the email to Ms. Pendergest for a response. Furthermore, the Receiver has not shown that the fund he seeks to freeze were supposedly paid before or after the receipt of that innocuous communication. In short, how that email communication is indicative of a knowledge of a fraud that would support a "substantial likelihood" the Receive will "prevail on the merits" is neither apparent from nor addressed in the Receiver's Application.

5. The other mention of Mr. Green occurs at page of 7 of the Application. In 2005, Mr. Green apparently sent an email communication to Allen Stanford about the potential recruitment of financial advisor prospect and Mr. Stanford's apparently stated financial goal for SIB asset-gathering. Even with the Receiver taking this email out-of-context, it still doesn't support the argument for which he cites it. Assuming that SGC recruited "...financial advisors with pre-existing client bases disposed to purchase SIBL CDs," is not indicative of any fraud. *All* broker-dealers recruit "financial advisors with pre-existing client bases disposed to purchase [the broker-dealer's product].

6. The Receiver's argument the SIBL CD returns were just too profitable to be legal (*id.* at pages 19-21) merits swatting down as well. That contention—that the "SIBL CD program was just too good to be true"—is a classic fraud-by-hindsight bromide were there ever one. It means nothing. It does not suggest that at time Mr. Green or the others allegedly received the tainted funds they knew or should have known of any supposed fraud. Indeed, were that argument the least bit true, then the investors on whose behalf the Receiver tries to plead his case would not be so innocent. *See id.* at 2 (..."the assets subject to this application represent thousands of victims' best hopes to receive some compensation for their losses caused by the Stanford fraud.").

7. The Application also suffers from the Receiver's continuing failure to meet the requirements of Fed. R. Civ. P. 9 (b). The Receive knows full well that he must plead the who, what, when, where, and how of the Accountholders' supposed fraud. *Williams v. WMX Technologies, Inc.*, 112 F.3d 175, 178 (5th Cir. 1997), *cert. denied*, 522 U.S. 966 (1997). The Fifth Circuit has emphasized that Rule 9(b) should be applied stringently, and that all complaints failing to meet its requirements should be dismissed for failure to state a claim. As the *Williams* court noted, "we apply [9(b)] with force, without apology." *Id.* at 178. Yet the Receiver offers no such individualized evidentiary allegations in his Application.

8. On information and belief, evidence adduced at the deposition of FTI Consulting representative Karyl Van Tassel reflects that the estimates FTI offered in support of the Receiver's Application were in inflated. In that regard, the evidence should not be considered, and certainly does not serve to support a substantial likelihood on the merits. The Receiver furthermore has not in his Application shown an irreparable injury, which he must also do to sustain his burden. The Receiver in reality seeks a pre-judgment attachment; he has now made any individual showing of entitlement to an attachment against Mr. Green under any states' substantive law (Mr. Green was and is Louisiana resident). Finally, the gateway inquiry of arbitration is still pending before the Court. The Court respectfully should rule first on that initial inquiry before proceeding to merits related relief. In these regards, Mr. Green adopts and incorporates the evidence, argument, and authorities on these points and summary points 1-4 in the briefing and appendix filed by the other Accountholder / Former Employee Defendants as Documents 413 and 414, respectively.

CONCLUSION

Receiver is not entitled to the relief he seeks. Therefore, Mr. Green requests that the Court deny the relief requested by Receiver.

Respectfully submitted,

WINSTEAD PC

By: /s/ John P. Kincade
John P. Kincade, Esq. SB# 11429600

5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270-2199
(214) 745-5400
(214) 745-5390 (Fax)

ATTORNEYS FOR DEFENDANT JASON GREEN

CERTIFICATE OF SERVICE

I certify that on the 10th day of May 2010, I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or *pro* se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2)

/s/ John P. Kincade
One of Counsel

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