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

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| RALPH S. JANVEY, IN HIS CAPACITY AS COURT-APPOINTED RECEIVER FOR THE STANFORD INTERNATIONAL BANK, LTD., ET AL, | § | |
| | § | Case No. 03:09-CV-0724-N |
| Plaintiff, | § | |
| v. | § | |
| STANFORD INTERNATIONAL BANK, LTD., STANFORD GROUP COMPANY, STANFORD CAPITAL MANAGEMENT, LLC, R. ALLEN STANFORD, JAMES M. DAVIS, LAURA PENDERGEST-HOLT | § | |
| Defendants, | § | |
| and JAMES R. ALGUIRE, ET AL., | § | |
| Relief Defendants. | | |

**RELIEF DEFENDANTS MARIE NIEVES AND DULCE PEREZ-MORA'S MOTION TO DISMISS RECEIVER'S SECOND AMENDED COMPLAINT AGAINST FORMER STANFORD EMPLOYEES AND INCORPORATED MEMORANDUM OF LAW**

COME NOW, Relief Defendants MARIE NIEVES and DULCE PEREZMORA, by and through the undersigned counsel, and pursuant to Federal Rule of Civil Procedure 12(b), respectfully file this *Motion to Dismiss Receiver's Second Amended Complaint against Former Stanford Employees and Incorporated Memorandum of Laws*, and in support thereof would state:

**Preliminary Statement**

1. This matter is before the Court on *Relief Defendants Marie Nieves and Dulce Perez-Mora's Motion to Dismiss Receiver's Second Amended Complaint against Former Stanford Employees*.

2. Plaintiff Ralph S. Janvey (hereinafter "the **Receiver**") has filed an Amended Complaint wherein he purports to name Marie Nieves and Dulce Perez-Mora (hereinafter jointly referred to as "**Nieves and Perez-Mora**") as relief defendants in this action.

3. As more particularly set forth herein, the *Receiver's Second Amended Complaint against Former Stanford Employees* must be dismissed as the **Receiver** has not only failed to establish subject matter jurisdiction over both **Nieves and Perez-Mora** in their individual capacities, but the **Receiver** has further failed to state a cause of action for which relief may be granted.

**Background**

4. On or about February 16, 2009, the Securities and Exchange Commission (hereinafter the "SEC") commenced a lawsuit against the Defendants in the underlying securities fraud action, to wit: Stanford International Bank, Ltd., Stanford Group Company, Stanford Capital Management, LLC, R. Allen Stanford, James M. Davis, and Laura Pendergest-Holt. The crux of said lawsuit is that the aforementioned Defendants marketed fraudulent certificates of deposit to investors both in the United States and worldwide. The matter has not proceeded to trial as of yet.

5. On or about April 20, 2009, the **Receiver** filed his initial Complaint, the *Receiver's Complaint Naming Stanford Financial Group Advisors as Relief Defendants* wherein **Marie Nieves**, as a former financial advisor for Stanford International Bank, was named a relief defendant.

6. On or about July 28, 2009, the **Receiver** filed the *Receiver's Amended Complaint Naming Relief Defendants*.

7. On or about August 26, 2009, the **Receiver** filed the *Receiver's Supplemental Complaint against Stanford Financial Group Advisors* (hereinafter "*Receiver's Supplemental Complaint*") wherein **Dulce Perez-Mora**, a former financial advisor for Stanford International Bank, was added inter alia as a relief defendant in this matter.
8. On or about November 13, 2009, the **Receiver** filed the *Receiver's First Amended Complaint against Former Stanford Employees* (hereinafter "*Receiver's Amended Complaint*").
9. On or about December 18, 2009, the **Receiver** filed the *Receiver's Second Amended Complaint Against Former Stanford Employees and Incorporated Memorandum of Law.*
10. Most telling, and perhaps most importantly to the instant discussion, is that neither the SEC, nor the **Receiver** has alleged any wrongdoing on the part of **Nieves and/or Perez-Mora**, or any of the other financial advisors named in the Complaint for that matter. Clearly, the **Receiver** appears to be on a crusade against anyone ever associated with Stanford, be it by employment, last name, or even osmosis, all under the pretense of "finding money". As the Court now knows based upon Janvey v. Adams, Case No.: 09-10761; 09-10765 (5th Cir. November 13, 2009), the Fifth Circuit Court of Appeals has rejected such a willy-nilly or even scattershot approach to naming Relief Defendants, instead relying on well reasoned precedent as to what constitutes a Relief Defendant.
11. Moreover, the **Receiver** acknowledges that **Nieves and Perez-Mora**, as well as the other financial advisor Relief Defendants, received money from the Defendants in the form of commissions and compensation for services they rendered as paid employees of Stanford. *See Receiver's Second Amended Complaint* at ¶¶ 28, 38.

12. The foregoing, of course, begs the question as to why **Nieves and Perez-Mora** have even been named as Relief Defendants? Both Relief Defendants have done nothing wrong from the outset other than, perhaps, being in the wrong place at the wrong time.[1]

**The Receiver Has Failed to Establish Subject Matter Jurisdiction over Nieves and/or Perez-Mora**

13. The discussion as to whether the Court has subject matter jurisdiction begins with a review of Federal Rule of Civil Procedure 12(b)(1). An attack on subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) may be categorized in one of two (2) ways, either a facial or a factual attack. *Paterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981); *CFTC v. The Liberty Mutual Group, Inc.*, 2008 WL 60508, *2 (S.D. Fla. 2008).

14. A facial attack occurs when subject matter jurisdiction is challenged solely on the basis of the allegations within the complaint. *The Liberty Mutual Group, Inc.*, 2008 WL 60508 at *2. In reviewing a facial attack, the court takes the allegations of the complaint at face value in order to determine whether they adequately allege subject matter jurisdiction. *Id*.

15. To the contrary, when the court reviews a factual attack on subject matter jurisdiction, the court looks to material from outside the four corners of the complaint, such as affidavits, testimony, and other evidentiary materials, in order to determine whether subject matter jurisdiction exists. *Paterson*, 644 F.2d at 523; *The Liberty Mutual Group, Inc*., 2008 WL 60508 at *2.

[1] To add insult to injury, **Perez-Mora** had transferred a substantial sum of money from an IRA earned from previous employment to a Stanford International Bank CD.-never withdrawing any proceeds from same.

16. The **Receiver** bears the burden of establishing subject matter jurisdiction over the purported Relief Defendants. *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994) ("If jurisdiction is based on [a federal question], the pleader must affirmatively allege facts demonstrating the existence of jurisdiction"); *see also The Liberty Mutual Group, Inc.*, 2008 WL 60508. If a court lacks subject matter jurisdiction, the court *must* dismiss the case. *The Liberty Mutual Group, Inc.*, 2008 WL 60508 at *2.

17. In order to obtain equitable relief against a relief defendant, and thereby establish subject matter jurisdiction, one must plead sufficient facts to demonstrate that the relief defendant received ill-gotten funds and has no ownership interest or legitimate claim to those funds. *SEC v. Cavanagh*, 155 F.3d 129, 136 (2d Cir. 1998). Both of these elements must be met in order for **Nieves and Perez-Mora** to be proper relief defendants, and the burden of showing same rests with the **Receiver**. *SEC v. Colello*, 139 F.3d 674, 677 (9th Cir. 1998). If these elements are not met, **Nieves and Perez-Mora** are not proper relief defendants.

18. Applying the aforereferenced discussion to the facts of the instant matter, the allegations set forth in the **Receiver's** own pleadings, when taken as true as must be the case at this stage of the pleadings, establish that **Nieves and Perez-Mora** are not proper relief defendants. Sufficient facts were not alleged to demonstrate that **Nieves and Perez-Mora** have *no* legitimate ownership interest in the funds in question. As stated **Receiver** instead acknowledges that the funds in question are commissions earned by **Nieves and Perez-Mora**. *Receiver's Amended Complaint*, ¶¶ 28, 38. Consequently, the **Receiver** has not met his burden of establishing that **Nieves and Perez-Mora** are proper relief defendants.

19. "The lack of a legitimate claim to the funds is the *defining element* of a nominal defendant." *Colello*, 139 F.3d at 677 (emphasis added). If a third party has a legitimate claim in the funds, the third party is not a proper relief defendant, and the court has no jurisdiction over that party. *CFTC v. Sarvey*, 2008 WL 2788538, *3 (N.D. Ill. 2008) (complaint dismissed where parties were not proper relief defendants).

20. A relief defendant is a person who "holds the subject matter of the litigation in a subordinate or possessory capacity as to which there is no dispute." *Colello*, 139 F.3d at 676 quoting *Cherif*, 933 F.2d at 414. Typically, a relief defendant or a nominal defendant is "a bank or trustee, which has only a custodial claim in the property." *Id*. at 677.

21. It is not a requirement that a relief defendant possess the full bundle of ownership rights; only a legitimate claim or ownership interest is required to preclude an individual or entity from being a proper relief defendant. *SEC v. Founding Partners Capital Management*, 2009 WL 1606491 at *3 (M.D. Fla. 2009).

22. One of the hallmarks of a relief defendant having no legitimate ownership interest is that "it is of no importance to [the relief defendant] which side prevails," as the relief defendant is only to be named if he is a "trustee, agent or depository." *Sarvey*, 2008 WL 2788538 at *3.

23. Applying the aforereferenced standard to the instant case, it is clear that which side prevails in the underlying matter is of great importance to **Nieves and Perez-Mora**. **Nieves and Perez-Mora** are not traditional relief defendants as they are not merely banks or trustees of the funds in question. Nor are **Nieves and Perez-Mora** solely holding the funds for the benefit of the Defendants or anyone else in the underlying case. Rather, said funds were commissions and compensation earned by both **Nieves and Perez-Mora**,

individually[2], in consideration for services rendered, and as such, **Nieves and Perez-Mora** have a great stake in whether they are entitled to keep the money they earned. At all times material hereto, the monies earned constituted their livelihood.

24. Accordingly, as **Nieves and Perez-Mora** earned these funds for services rendered by them, a legitimate ownership interest was and has been created. *See SEC v. Ross*, 504 F.3d 1130, 1142 (9th Cir. 2007) (purported relief defendant received compensation for services rendered and thus had presumptive title to that compensation); *CFTC v. Kimberlynn Creek Ranch, Inc.*, 276 F.3d 187, 192 (4th Cir. 2002) ("receipt of funds as payment for services rendered to an employer constitutes one type of ownership interest that would preclude proceeding against the holder of the funds as a nominal defendant")[3]; *Sarvey*, 2008 WL 2788538 at *4 ("if a party performed some service or rendered some consideration in exchange for the property, that party generally has an ownership interest in the property and thus cannot be joined as a nominal defendant").

25. Perceiving the flaw in his own argument, namely that the funds in question were commissions, the **Receiver** attempts to backtrack on his admission by alleging that **Nieves and Perez-Mora** have no legitimate ownership interest in their earned commissions simply because they are "traceable to the alleged underlying fraud" and same would constitute an "unjust enrichment". The **Receiver** contends that "[a]lthough the Former Stanford Employees may have performed 'services,' the 'services' were in furtherance of the Ponzi fraud." *Receiver's Second Amended Complaint*, ¶ 38.

[2] Same is admitted by the Receiver in the *Receiver's Second Amended Complaint* ¶¶ 28, 38.

[3] Moreover, no such finding has been made in this or any other case to this end involving similar parties.

26. Despite the conclusory rhetoric employed by the **Receiver** in stating that **Nieves and Perez-Mora** have no ownership interest in the commissions that they earned because the services that they rendered were allegedly in furtherance of a fraud, such a proposition is wholly unfounded and meritless in light of the applicable case law.

27. One court has already rejected this very argument in *Ross*. In a case eerily similar to the instant case, the court determined that the purported relief defendant was not actually a proper relief defendant, as he had an ownership interest in his earned commissions. *Ross*, 504 F.3d at 1141-42. There the receiver alleged that the commissions the relief defendant earned were ill-gotten gains to which he had no independent legitimate claim. *Id*. at 1141. The court agreed that it is *possible* that the term "relief defendant" could be extended to include a person in possession of funds for which they have no rightful claim, such as money that has been fraudulently transferred by the defendant in the underlying securities fraud action. *Id*. Albeit, *Ross* found that the purported relief defendant held presumptive title to the commissions that he earned where the receiver did not establish the relief defendant held any funds for the defendant or that he received fraudulent transfers, and there was no evidence that he was a mere puppet. *Id*. at 1142.

28. The receiver in *Ross* tried to argue that the commissions were ill-gotten gains, and therefore, the relief defendant had no legitimate ownership interest. Albeit, where none of the aforereferenced factors were present, the court found that such an argument

> …borders on sophistry. It is one thing to argue that a custodian or trustee has no legitimate claim to receivership assets improperly or fraudulently conveyed to her; it is quite another to assert that [the relief defendant] has no legitimate claim to commissions earned for services rendered because [the relief defendant] himself has violated the securities laws.

*Id*. at 1142.

29. Similarly, there is *no* allegation in the instant case that **Nieves and Perez-Mora** are custodians, recipients of fraudulent transfers, or "mere puppets" of any funds. The **Receiver** posits his entire case against the instant Relief Defendants on the lone claim that the commissions are "tainted" by the purported underlying fraud. Albeit, the commissions were clearly earned by **Nieves and Perez-Mora** for services rendered. *Receiver's Amended Complaint*, ¶ 28, 38. **Nieves and Perez-Mora**, as well as all of the other financial advisors[4], have *presumptive title*, and thus, an unequivocal ownership interest in the commissions that they earned.

30. In a further effort to buttress his claim as to a lack of ownership interest in the funds by **Nieves and Perez-Mora**, the **Receiver** relies on *Kimberlynn Creek*. Albeit, the recent Fifth Circuit Opinion lays waste to the Receiver's interpretation of said case. [The **Receiver** attempts to narrow the holding in *Kimberlynn Creek* by claiming that same stands for the proposition that "[a] recipient of proceeds of fraud had no ownership in the funds." *Receiver's Amended Complaint* ¶ 29. Ironically, the court in *Kimberlynn Creek* actually found that the receipt of funds as payment for services rendered *is* an ownership interest that would preclude proceeding against the holder as a relief defendant. *Kimberlynn Creek*, 267 F.3d at 192. Under the facts specific to that case, the Court did not find that the relief defendants were properly named based on the alleged underlying fraud, but instead because there was no support for those relief defendants having an ownership interest in the funds in question. *Id*. The Court's concern was that "individuals and wrongdoers would be able to avoid disgorgement (and keep the funds

[4] There may be specific facts or arguments to the contrary for other financial advisors, which are unknown, nor applicable, to the instant Relief Defendants.

for themselves) simply by stating a claim of ownership, however specious." *Id.* The *Kimberlynn Creek* Court was merely trying to prevent unfounded claims of ownership that cannot be supported by evidence as a means of avoiding disgorgement; it was not stating that a recipient of funds from an underlying fraud automatically has no ownership interest as the Receiver would contend.

31. Applying *Kimberlynn Creek* to the instant case, it is clear that there is no concern over "hollow" or "specious" claims, as the **Receiver** himself alleges that the funds in question were commissions paid to **Nieves and Perez-Mora**. *See Receiver's Amended Complaint*, ¶¶ 28, 38.

32. In the same vein, the Court's holding in *Sarvey* further supports **Nieves and Perez-Mora's** position. In *Sarvey*, the Court held that an alleged underlying fraud does not automatically mean that the purported relief defendant has no ownership interest in the property in question. The relief defendant in that case admitted to receiving allegedly fraudulently-obtained funds from the defendant in the underlying matter, but the Court found that the CFTC did not establish that the relief defendant has no ownership interest in those funds. *Sarvey*, 2008 WL 2788538 at *4. The Court reasoned that the relief defendant held the funds "in a capacity much different than that of a mere custodian, recipient of a gift or fraudulent transferee" as the relief defendant provided a service, which establishes that he in fact has some legitimate claim to the funds. *Id.* The Court further noted that it is "irrelevant whether [the relief defendant] acted in 'good faith' in receiving the funds. Plaintiffs may not name parties as nominal defendants while also implying that they violated the law." *Id.* at *5. Consequently, the complaint was dismissed as to the relief defendant. *Id.*

33. In the instant case, **Nieves and Perez-Mora** are neither depositories, nor recipients of a gift, and the **Receiver** does not even attempt to allege as such. **Nieves and Perez-Mora** rightfully claim ownership in the property in question, which is evidenced by the fact that they earned said property in exchange for services rendered.

34. The **Receiver's** final, if not last-ditch effort to drag the relief defendant Financial Advisors into this matter is that **Nieves and Perez-Mora** are proper relief defendants by virtue of the fact that the Financial Advisors' services were in furtherance of the purported fraud, and, therefore, they lack a legitimate ownership interest. The **Receiver** even go so far as to say that retaining said funds is "unconsciousable". The **Receiver** points to *SEC v. AmeriFirst Funding, Inc.* to show that the "relief defendant had no legitimate claim to proceeds of securities fraud despite having provided consulting services to defendant." Accordingly, the **Receiver** states that there is no "legitimate" ownership interest therein.

35. Once again the **Receiver's** argument is misplaced. In *AmeriFirst*, the Court found the relief defendant did not have a legitimate claim to the funds because the head of the corporate relief defendant was actually a named defendant in the underlying securities fraud action. *SEC v. AmeriFirst Funding Inc*., 2008 WL 1959843, at *5 (N.D. Tex. 2008). The Court did note, however, that had the relief defendant been unaware that its consulting services were furthering securities fraud, it *might* have had a legitimate claim to its consulting fees. *Id*. The latter scenario proposed by the court is more similarly situated with the facts of the instant case as applied to **Nieves and Perez-Mora**.

36. Based on the foregoing, **Nieves and Perez-Mora** are not proper relief defendants as they have a legitimate ownership interest in the funds, and, more importantly, the **Receiver**

has failed to meet his burden, let alone even plead such to establish otherwise. The **Receiver** does not allege that **Nieves and Perez-Mora** are merely acting as custodians in holding property or that their ownership of the funds in question is a scam. Likewise, **Nieves and Perez-Mora** have not been accused of any wrongdoing.[5] Consequently, the **Receiver** cannot avail himself of either argument to persuade this Court to exercise subject matter jurisdiction over **Nieves and Perez-Mora**. The **Receiver** attempts to allege that simply because there was a purported underlying fraud, **Nieves and Perez-Mora** do not have a legitimate ownership in the money that they earned in consideration for services rendered. Albeit, *Ross*, *Kimberlynn Creek*, and *Sarvey* all establish that the **Receiver** is incorrect in purporting same.

37. Accordingly, as **Nieves and Perez-Mora** are not proper relief defendants, and as no separate cause of action against **Nieves and/or Perez-Mora** is alleged, the Court lacks subject matter jurisdiction over them, and the Court must dismiss the *Receiver's Second Amended Complaint*.

**The Receiver Has Failed to State a Claim for which Relief May be Granted Against Relief Defendant Nieves and/or Perez-Mora**

38. A dismissal of a claim under Rule 12(b)(6) is proper when it appears that a plaintiff can prove no set of facts in support of its claim that would entitle it to relief, as well as if the complaint lacks an allegation regarding a required element necessary to obtain relief.

[5] The **Receiver** states that "[f]or purposes of this relief-defendant claim, it is not necessary that the Receiver plead or prove any wrongdoing." Albeit, the relief defendant concept by its very nature presupposes that there is no wrongdoing on the part of the relief defendant. As the Fifth Circuit held in a discussion of the nature of a relief defendant in an appeal raised by the Investor Relief Defendants in this very matter, "[a] relief defendant is not accused of any wrongdoing." *Janvey v. Adams*, Case No.: 09-10761; 09-10765 (5th Cir. November 13, 2009). *See also Kimberlynn Creek*, 276 F.3D AT 192 ("no cause of action is asserted against a normal defendant").

*Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000); *The Liberty Mutual Group*, 2008 WL 60508 at *3.

39. In order to state a claim for which relief may be granted, a plaintiff must plead specific facts, not mere conclusory allegations. "A formulaic recitation of the elements of a cause of action will not do," rather the factual allegations must be sufficient to raise a non-speculative right to relief. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-557.

40. In the instant case, the **Receiver** has failed to plead specific, nonconclusory facts sufficient to permit recovery against **Nieves and Perez-Mora** as relief defendants.

41. As previously discussed, in order for **Nieves and Perez-Mora** to be named as proper relief defendants for which a cause of action has been stated, the **Receiver** must have pled facts sufficient to establish that **Nieves and Perez-Mora** received ill-gotten funds and that they have no ownership interest or legitimate claim to those funds. *Cavanagh*, 155 F.3d at 136.

42. Albeit, the **Receiver** fails to satisfy, nor could he ever satisfy, the "no legitimate claim" prong which is a prerequisite to being named a relief defendant.

43. The *Receiver's Second Amended Complaint* affirmatively states facts showing that **Nieves and Perez-Mora** indeed *have* a legitimate ownership interest in or a legitimate claim to the funds which the **Receiver** now seeks to disgorge. *See Receiver's Second Amended Complaint*, ¶28 ("[t]he Stanford Defendants used an elaborate and sophisticated incentive program to keep the Former Stanford Employees highly motivated to sell SIBL CDs to brokerage4 customers. The program included…high SIBL CD *Commission rates*) (emphasis added); ¶38 (alleging that the Former Stanford Employees received CD Proceeds in the form of commissions). Thus, the funds the **Receiver** seeks to disgorge

from **Nieves and Perez-Mora** constitute commissions and other compensation in which **Nieves and Perez-Mora** had and/or still have a legitimate ownership interest in same, as the funds were earned for services that they rendered.

44. To circumvent the shortcomings in his own argument, the **Receiver** states in a conclusory fashion that the proceeds were transferred by the Defendants "solely for the purpose of concealing and perpetuating the fraudulent scheme" in an attempt to explain why the Relief Defendants should not have an ownership interest in their earned commissions. The **Receiver** goes on to state that "[a]lthough the Former Stanford Employees may have performed 'services,' the 'services' were in furtherance of the Ponzi fraud." *Receiver's Second Amended Complaint*, ¶ 38.

45. These statements are without merit. The conclusory allegation that the underlying Defendants transferred the proceeds to **Nieves and Perez-Mora** "solely for the purpose of concealing and perpetuating the fraudulent scheme" contradicts that which the **Receiver** states in the remaining part of the *Amended Complaint* wherein the **Receiver** acknowledges that the payments in question were commissions. *Receiver's Amended Complaint*, ¶¶ 28, 38. By the **Receiver's** own admission **Nieves and Perez-Mora** received commissions, which is defined as "[a] fee paid to an agent or employee for a particular transaction." *Black's Law Dictionary* 112 (2nd pocket ed. 2001). Under the circumstances, **Nieves and Perez-Mora** provided services and they expected to be paid for same. Moreover, the **Receiver's** statements are somewhat nonsensical as the allegation that the Defendants transferred the proceeds to **Nieves and Perez-Mora** solely to conceal their fraudulent scheme is at odds with the **Receiver's** allegation that the funds **Nieves and Perez-Mora** earned were in fact commissions.

46. In addition to the foregoing, and as previously established with the *Ross* line of cases, if a service is rendered, there is a presumptive title to the commission(s) earned. The mere fact that there is an alleged underlying fraud is not enough to bring someone within the definition of a relief defendant. *See Ross*, 504 F.3d at 1142 (purported relief defendant received compensation for services rendered and thus had presumptive title to that compensation where there was no evidence that he was a custodian or a mere puppet); *Kimberlynn Creek Ranch, Inc.*, 276 F.3d at 192 ("receipt of funds as payment for services rendered to an employer constitutes one type of ownership interest that would preclude proceeding against the holder of the funds as a nominal defendant"); *Sarvey*, 2008 WL 2788538 at *4 ("if a party performed some service or rendered some consideration in exchange for the property, that party generally has an ownership interest in the property and thus cannot be joined as a nominal defendant").

47. The case law demonstrates that it is impossible for the **Receiver** to plead that **Nieves and Perez-Mora** are proper relief defendants. The legitimate claim requirement cannot be met because **Nieves and Perez-Mora** earned the funds in question as consideration for services rendered, and **Nieves and Perez-Mora** were not custodians or mere puppets of the funds. Maintaining a legitimate claim to the funds in question is a defining element of a relief defendant, and as such, the **Receiver** has failed to adequately plead that **Nieves and Perez-Mora** are proper relief defendants. *Colello*, 139 F.3d at 677.

48. Based on the foregoing, the *Receiver's Second Amended Complaint* fails to adequately plead facts sufficient to demonstrate that **Nieves and Perez-Mora** are proper relief defendants, despite trying to reinsert said argument on several occasion. In particular, as the **Receiver** fails to adequately plead that **Nieves and Perez-Mora** lack legitimate

claims to the funds, nor could the **Receiver** *ever* validly make such a claim, the *Receiver's Second Amended Complaint* seeking a disgorgement remedy on a nominal defendant theory must be dismissed for failure to state a cause of action for which relief may be granted.

49. Finally, it should not be left without stating that in the latest incarnation of the Receiver's attack on all who tread in the Stanford path, the Receiver is asking for attorney's fees and costs against the hopeless former Stanford employees. The word "chutzpah" comes to mind, although there are far more appropriate, yes less tactful words for said claim. If there is anything that symbolizes the Receiver's own misbegotten efforts in this matter, it is this last attempt to beat down the already victimized relief Defendants, Neesad Peres-Mora, with the last line of requested relief.

**WHEREFORE**, Relief Defendants **Marie Nieves** and **Dulce Perez-Mora** respectfully request this Court for its Order:

a. Dismissing the *Receiver's Second Amended Complaint Naming Relief Defendants* against them in its entirety for lack of subject matter jurisdiction over Nieves and Perezmora; or in the alternative

b. Dismissing the *Receiver's Second Amended Complaint Naming Relief Defendants* against them in its entirety for failure to state a cause of action for which relief may be granted; as well as

c. Any and all other relief deemed just and proper by this Honorable Court.

Respectfully submitted,
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**DULCE PEREZ-MORA**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the 15th day of January, 2010, in accordance with Federal Rule of Civil Procedure 5(b)(2)(E) and 5(b)(3) via the notice of electronic filing that is automatically generated by ECF, or in some other authorized manner for those counsel or parties, if any, who are not authorized to receive electronic Notices of Electronic Filing, to include without limitation the below listed counsel.

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