

Six of the Stanford Investors have also filed motions to dismiss based upon personal-jurisdiction arguments. Because the Receiver has established personal jurisdiction as to all such movants, their motions should be denied. In the alternative, the Court should withhold its ruling on the six Stanford Investors' motions to dismiss for lack of personal jurisdiction until the Court rules on the pending request for entry of a Second Amended Order Appointing Receiver. Upon reappointment, the Receiver will file the appropriate § 754 filings in the districts where these few Stanford Investors reside, definitively establishing personal jurisdiction over each of them — a procedure sanctioned by this Court in at least one recent similar case.

ARGUMENTS & AUTHORITIES

I. The Court should deny as moot the Stanford Investors' motions to dismiss based upon relief-defendant arguments.

The Stanford Investors base their motions to dismiss upon the Receiver's prior relief-defendant claims. The Receiver, however, is no longer pursuing relief-defendant claims and has, instead, asserted fraudulent-transfer and unjust-enrichment claims against the Stanford Investors. As a result, the Stanford Investors' motions to dismiss based upon relief-defendant arguments are moot and should be denied.

This Court has already analyzed and denied similar motions to dismiss made by other investors in this case. *See* Order (Doc. 300) at 1-2. The Court stated, in relevant part:

The Receiver no longer asserts the relief-defendant claims discussed in the investors' motions to dismiss. The Receiver's first complaint against the investors asserted only relief-defendant claims against them. The Receiver's amended complaint deletes any reference to the relief-defendant claims and indicates his intention "to file a notice of dismissal of his relief-defendant claims against the Stanford investors." The amended complaint also asserts alternative theories of liability — fraudulent transfer and unjust enrichment — against the investors. Accordingly, [the] investors' motions are moot.

Id. (internal citations omitted); *see also* Doc. 128 at 3-4 (stating that Receiver is no longer pursuing relief-defendant claims against Stanford investors). For the reasons already articulated in the Court's prior Order, the Court should deny as moot the Stanford Investors' motions to dismiss that are based upon this relief-defendant argument.

II. The Court should deny the six Stanford Investors' motions to dismiss for lack of personal jurisdiction.

Only six of the Stanford Investors — Wayland B. Alexander (Doc. 260); John D. Cooper (Doc. 261); Daniel Joseph Daigle and Jilda Ann Daigle (Doc. 262); Diane Dunn (Doc. 263); and Phillip E. Lankford (Doc. 264) — have filed motions to dismiss for lack of personal jurisdiction in this case. The Court should deny these few Stanford Investors' personal-jurisdiction motions for the reasons explained below.

Federal securities laws provide for nationwide service on defendants; as a result, several courts in such cases have held that service on a defendant anywhere in the United States establishes personal jurisdiction over that defendant. *See, e.g., SEC v. Montle*, 65 F. App'x 749, 751 (2d Cir. 2003) (personal jurisdiction existed because defendant was served per nationwide provision of securities act); *CFTC v. IBS, Inc.*, 113 F. Supp. 2d 830, 853-54 (W.D.N.C. 2000) (personal jurisdiction was obtained where defendant was served under nationwide provision of commodity-exchange act); *SEC v. Infinity Group Co.*, 27 F. Supp. 2d 559, 562 (E.D. Pa. 1998) (court had personal jurisdiction over defendant due to nationwide-service provision of securities laws where receiver asserted fraudulent-transfer claim against defendant). Because the SEC action underlying the instant case is a securities enforcement action, and because the Receiver has properly served each of the six Stanford Investors, the Court has personal jurisdiction over each of these six Stanford Investors. The Court should, therefore, dismiss their motions to

dismiss for lack of personal jurisdiction, as the Receiver has established personal jurisdiction as to each of them.

In the alternative, the Court should withhold ruling on the six Stanford Investors' personal-jurisdiction motions until the Court rules on the pending Joint Motion of the SEC and Receiver for Entry of Second Amended Order Appointing Receiver (Doc. 958)² (the "Reappointment Motion") and the Reply in Support of the Reappointment Motion (Doc. 1029) (the "Reappointment Reply"). Upon reappointment by the Court, the Receiver will complete § 754 filings in each of the districts where the six Stanford Investors reside. Upon such filing, personal jurisdiction will be definitively established, as admitted by the six Stanford Investors themselves. *See* Docs. 260-264 at 2 ("Courts in federal equity receiverships acquire personal jurisdiction through those statutes [28 U.S.C. § 754 and § 1692] Section 754 allows the District Court to extend its territorial jurisdiction to any district where property of the receivership estate is present.").

Within 10 days of his appointment by the Court, the Receiver diligently completed § 754 filings in 29 districts, located in 16 states, the District of Columbia, the Virgin Islands, and Puerto Rico. After this 10-day period passed, the Receiver continued to investigate books and records of the Receivership Estate, and he discovered that Receivership Assets and Receivership Records exist in additional districts where § 754 filings have not yet been made. Among those districts are the districts where each of the six Stanford Investors reside. The Court's reappointment of the Receiver requested in the Reappointment Motion — as modified in the Reappointment Reply — will permit him to complete § 754 filings in the six Stanford

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.

Investors' districts. Once such filings are made, personal jurisdiction will be inarguably established as to all of them.

This Court has recently decided a case similar to the instant one. *See Warfield v. Arpe*, No. 3:05-cv-1457-R, 2007 WL 549467, at *12-13 (N.D. Tex. Feb. 22, 2007). In the *Arpe* case, the receiver filed suit against defendants prior to completing § 754 filings in their district. *Id.* at 12. After the receiver filed suit against them, the defendants filed a motion to dismiss for lack of personal jurisdiction. *Id.* At the hearing on the dismissal motion, the receiver requested that this Court reappoint him so that he could complete § 754 filings in the defendants' district. *Id.* Pursuant to this request, the Court reappointed the receiver, and the receiver completed the § 754 filing in the defendants' district. *Id.* The Court held that the receiver's reappointment and subsequent § 754 filing established personal jurisdiction over the defendants — even though it was established *after* the receiver filed his complaint. As a result, the Court denied the defendants' motion to dismiss for lack of personal jurisdiction. *Id.* at 13.

The Stanford Receiver faces a situation similar to the *Arpe* receiver.³ As a result, the Court should abate and withhold ruling on the six Stanford Investors' personal-jurisdiction motions until the Court enters the Second Amended Order Appointing Receiver. Upon reappointment, the Receiver will make all necessary § 754 filings and personal jurisdiction will be definitively established as to all of them.

CONCLUSION & PRAYER

For the foregoing reasons, the Receiver respectfully requests that the Court deny the Stanford Investors' motions to dismiss based upon relief-defendant arguments. The Receiver also requests that the Court deny the six Stanford Investors' motions to dismiss for lack of

³ It is noteworthy that the *Arpe* receiver requested reappointment *only* after facing the defendants' motion to dismiss for lack of personal jurisdiction. The Stanford Receiver, however, filed the Reappointment Motion at least a week before any of the six Stanford Investors filed their personal-jurisdiction motions.

personal jurisdiction; in the alternative, the Receiver asks the Court to withhold ruling on the personal-jurisdiction motions until ruling on the Receiver's request for reappointment. The Receiver also requests his attorney's fees and costs and any such and further relief to which he may be entitled.

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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 15, 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 have served the Court-appointed Examiner John J. Little and all counsel and/or pro se parties of record electronically or by another means authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin M. Sadler
Kevin M. Sadler