

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PRO SE DOCKETING STATEMENT

INSTRUCTIONS: Appellant must complete the entire docketing statement form and attach copies of the following documents: (1) the notice of appeal; (2) the order or judgment being appealed; and (3) any writing findings, conclusions or order of the trial court relating to the order of judgment being appealed. The completed docketing statement, together with the attachments, must be filed with the clerk of the court of appeals within 14 days after filing the notice of appeal. A copy of the completed docketing statement, with attachments, must be served on all opposing parties or their counsel. Proof of service must be provided. You must complete the certificate of service which is part of this form.

1. Your name, address, including registration number if applicable: Simon Yang, 1912 NW 176th Terrace, Edmond, OK 73012
2. Title and number of district court case: U.S. Commodity Futures Trading Commission and Oklahoma Department of Security v. Prestige Ventures Corp., Panamanian corporation, Federated Management Group, Inc., a Texas corporation, Kenneth Wayne Lee, an individual, and Simon Yang, an individual. Case No CIV-09-1284-R
3. Name of the district court: United States District Court for Western District of Oklahoma
4. The dates on which the district court order and your notice of appeal were filed: November 29, 2010 and December 17, 2010
5. Type of action; civil action for damages
6. State briefly the relief you requested in the district court and the reasons why you are entitled to such relief:

I am one of Defendants against all false accusations of operating a fraud with Ken Lee by Plaintiffs. I did not commit any fraud or violate any rule as charged.

I invested all my savings of over \$500,000 with Panamanian Prestige Ventures since Feb. 2003 to Nov. 2009 and withdrew about \$130,000 from the company between 2004 and 2007. I still have an investment portfolio of over \$5 million with the company. After investing \$250,000 with the company several months, I started telling my friends of this company and passed related information to them when they desired. Some of my friends chose to invest with the company after they studied the company. Voluntarily I helped my friend investors with information and understandings of the company and helped the company freely of processing data for myself reference and my friend investors. I have been charged unjustly and discriminately by Plaintiffs of violating rules for helping friends and the company while many other investors including Plaintiffs' witnesses Ming Yu, Zhongxiang Lou and Jian Yue did the same things as they confessed in their declarations. I did not and do not lie about this investment company. I just told what I knew and my understandings of this investment to all friend investors, government officials as well as the court. To my best knowledge of investments and understandings Prestige Ventures is a true investment business, which achieved exceptional gains for investors but suffered operational hardships of cash crunchy "margin calls" from brokerages from 2006 to 2009. All investors, including my wife and I, of the company suffered difficulties of withdrawing funds from 2006 to 2009. The company always expresses will and plans to return all funds to investors as soon as possible.

7. State briefly the reasons why you feel the decision of the district court should be reversed:

There are material evidences that I did not commit any of those wrong doings with evil intention. Plaintiffs built this case of a fraud with many false statements and twisted facts and limited information of the company. Firstly, the judge was not able to discern the truth from the false and twisted facts, which were presented by Plaintiffs and their witnesses. Secondly, somehow the judge chose to ignore many strong evidences favoring Defendants, like investment statements of Ken Lee's trading account with Panamanian brokerage Pam America Group (which prove materially that Ken Lee traded financial markets exceptionally successful,), dramatic increases of margin to investors / investment companies (cash crunchy) from brokerages during the financial storm

particular in 2007 and 2008, and no motive for Simon Yang or Ken Lee to fraud other investors with all or very large part of their own capitals. Plaintiffs failed to locate the investment portfolios of Panamanian Prestige Ventures in the United States but Plaintiffs did not try such a search outside the United States. There are evidences indicating that investment portfolios of Prestige Ventures are parked outside the United States and are out of the abusing power of Plaintiffs. The proposed order from Plaintiffs demonstrates openly that motive of Plaintiffs is not to serve those public investors, rather themselves unjustly (over \$25 million penalties), since all investors of the company are not allowed to receive all their capitals and gains of their investments with the company by shutting down the company forever. Furthermore, with successes of trading records Ken Lee expressed desires repeatedly to Plaintiffs and the judge that he is willing and able to return investors' funds with supervision of the court.

Where is justice with the order: it is wrong that Simon Yang withdrew funds of \$133,000 from the company while Simon Yang invested \$469,000 with the company; and it is wrong for Simon Yang to receive all his rightful investments from the company? This is an open injustice to Defendants.

8. Did you have a hearing in the district court? Yes, on November 08, 2010

Signature

Simon Yang

Date

Dec. 17, 2010

CERTIFICATE OF SERVICE

I, Simon Yang, hereby certify that on Date December 17, 2010 I served a copy of the foregoing Pro Se Docketing Statement by email to

James Hall
U.S. Commodity Futures Trading Commission
1155 21st Street, NW, Washington, DC 20581
Email: jhall@cftc.gov

Terra Bonnell
Oklahoma Department of Securities
120 N Robinson Avenue, Suite 860, Oklahoma City, OK 73102
Email: tbonnell@securities.ok.gov

Kenneth Lee
1660 Jorrington Street
Mt. Pleasant, SC 29466
Email: klee88@prestigeventures.com

Signature of Simon Yang:

A handwritten signature in black ink that reads "Simon Yang". The signature is written in a cursive style with a large, looping "S" and "Y".

Dated signed: December 17, 2010

Simon Yang

From: "Simon Yang" <simonyang@cox.net>
To: "Terra Bonnell" <tbonnell@securities.ok.gov>; "Holl, James" <jholl@CFTC.gov>; "Ken Lee" <klee88@prestigeventures.com>
Cc: "Simon Yang" <simonyang@cox.net>
Sent: Friday, December 17, 2010 12:00 PM
Attach: Appeal document.doc; Insights of PVC Business.doc
Subject: Appeal documents

Please see Appeal documents of Simon Yang

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

U.S. Commodity Futures Trading Commission and Oklahoma Department of Securities, Plaintiffs,
vs

Prestige Ventures Corp., Federated Management Group, Inc., Kenneth Wayne Lee and Simon
Yang, Defendants

Case No. CIV-09-1284-R

Insights of PVC Business (updated)

In order for the Court to have the whole picture of Prestige business with this lawsuit, Simon Yang ask the honorable judge to review all original documents, including all saved emails of Ken Lee. Simon Yang and others, of Panamanian Prestige Ventures and Panamanian Federated Management Group from Simon Yang, Ken Lee and others.

Simon Yang has passed all the original PVC documents including all saved emails of Ken Lee, Simon Yang and others to Plaintiffs for investigation in hope that Plaintiffs would find the truth then drop this lawsuit.

However, for some reasons Plaintiffs chose to ignore many documents not favoring their claims. and those documents were not presented to the Court.

As Simon Yang claimed in the Court on Dec. 2, 2009, I did not and do not involve in any Ponzi scheme or fraud, and I has nothing to hide and will tell the whole truth, and I am innocent of all charges.”

Simon Yang is the only person, who tells the **all the truth** and his understandings on Prestige in all files of this case (Yang's Answer to Complaint, Yang's Deposition, PVC / FMG documents, and PVC emails), among Defendants and Plaintiffs and investor witnesses of Plaintiffs.

Simon Yang gave privately and unconditionally about US \$70,000 (about Chinese Yuan 450,000 to 500,000) to several Chinese Christian churches in P. R. China in 2005 and 2006. Simon Yang did not release such an offering of a follower of Christ Jesus to public, but told Plaintiffs all his personal financial information during their investigation of Prestige business. However Plaintiffs chose to ignore such act of Simon Yang and continued their false accusations of Simon Yang's operating Ponzi scheme with Ken Lee.

To the best knowledge of Simon Yang, there is no evidence that Ken Lee operated Ponzi scheme on Simon Yang or other investors from 2003 to 2009.

Simon Yang was surprised with the criminal records of Ken Lee from the initial complaint of Plaintiffs and became concerned about the characters of Ken Lee. Several days later after reading the complaint, Simon Yang copied that paragraph of criminal records and sent to Ken Lee by email and asked for his comments. Ken Lee responded, "they were totally twisted and I do not want to talk about them."

Later Simon Yang asked Plaintiffs to pass files of Ken Lee's criminal cases but Plaintiffs refused to give Simon Yang. (Simon Yang asked twice for depositions of Ken Lee from Plaintiffs, but they refused to give Simon Yang too. Why did they do so?) Simon Yang asked help from his personal counselor Jesus Christ and slowly became understood of those cases: Ken Lee operated offshore FMG investment business and few investors had some troubles with FMG resulting in lawsuits. Plaintiffs of those cases could not locate the investment portfolio of offshore FMG. Ken Lee chose to keep such important information away from the lawsuits for protection of the rest investors, and subsequently Ken Lee pleaded guilty with a prison term. Someone helped Ken Lee operating FMG investment programs during his prison term.

It is very strange that the few investors of FMG would not bother Ken Lee for returning their funds of over \$3,000,000 with court judgments after Ken Lee was free in 2001 and later bought houses with joint titles of Ken Lee and his wife in Dallas Texas and South Carolina. Is it reasonable and likely that Ken Lee returned their funds of FMG investments privately somehow then they kept quiet with those court judgments?

Those lawsuits against Ken Lee and his investment business just confirmed that Ken Lee has been in investment business since at least 1987 as Ken Lee told Simon Yang.

Many twisted statements and false statements are used in files of Plaintiffs accusing Defendants of operating Ponzi scheme, since Simon Yang experienced the whole event and know the whole truth. It has been very hard on Simon Yang personally finding such statements from his friends and few employees of the government watchdog agencies.

Under the name of protecting public investors and their investments, Plaintiffs actually hurt all investors, including Simon Yang and Ken Lee, of Prestige with this lawsuit of twisting facts; consequently Prestige could not operate its business normally to return all funds to investors as soon as possible.

The true benefit of this civil lawsuit is over \$25 millions for Plaintiffs who seek penalties on Defendants, while there are around \$2.5 million remained capitals of investors excluding funds of Defendants Ken Lee and Simon Yang. If Plaintiffs believe that Ken Lee operated a Ponzi scheme on investors with just several thousand dollars on the balance sheet, and Ken Lee did not know to make profits from investments and trading and used most funds of investors for his family, then it would be logical that Plaintiffs seek criminal case against Ken Lee. It is likely that Plaintiffs review all information from investor witness and banks and brokerages as well as Ken Lee's prior cases with offshore FMG, they know that criminal case is weak but an opportunity to make easy monies with penalties on a private business.

Ken Lee responded to their false accusations and subsequent investigations with the same way of Plaintiffs and just released very limited information of Prestige operations. Because with a purpose

of making easy money on private businesses and investors, Plaintiffs do not honor all the facts that they collected during their investigations of Prestige.

Offshore investment companies, like Prestige Ventures and Federated Management Group, are designed and arranged so that important information of investments and investors are confidential and are off limits of abusing power of government agencies.

Ken Lee / Prestige has obligations of protecting interests of its investors and keeping financial information confidential from the abusing power of all government agents. Ken Lee has well prepared for such a lawsuit since few investors threaded to report to government agencies when they could not withdraw funds as they liked during 2007 to 2009. Ken Lee even told one of investor in an email that all efforts of returning funds to investors would be stopped completely if government agencies involve, and all investors would suffer even more.

Simon Yang was the 398th investor of offshore Federated Management Group (FMG) when he invested his initial \$100,000 capital with the company in February 2003. Simon Yang has known that investor's capitals were invested primarily with brokerages outside the border of the United States. FMG managed assets of at least \$380 million in May 2003.

Several investors of FMG were willing to testify to Simon Yang on their investments with FMG in 2003, but Simon Yang chose to judge the nature of FMG by direct contacts with Ken Lee with his investment / trading knowledge. In 2003 Simon Yang met one of FMG investor who knew Ken Lee very well over 10 years. Simon Yang was aware that one investor of FMG invested \$250,000 in January 1987 and took out over \$17,000,000 in 2001. With the growth of this investor's account over 16 years, Simon Yang found out that Ken Lee stated the annual returns lower (from 1.50% to 4.50%) than the actual returns due to the monthly compound of investments.

Ken Lee told Simon Yang and other investors that he indeed had some investment secrets, which helped him achieve such stable year over year and month over month return from 1987 to 2003. Simon Yang thought that Ken Lee's trading secrets were with trading commodities. In 2006 or 2007 Simon Yang realized that those secrets were with investments of long-term bonds (5 to 10 years)

with heavy borrowed funds (margins) from brokerages. Such strategies (secrets) of investments did not work well since 2006, rather investments of such strategies suffered heavy losses due to cash crunchy / margin calls during the financial storm, which caused all troubles and terrible pains for Ken Lee and all PVC investors, and consequently this lawsuit was filed.

Contrary to claims by Plaintiffs that Ken Lee did not know trading commodity futures market products; Ken Lee has been trading those markets for at least 25 years with excellent accomplishments (over 30% annual return). In June 2003 Ken Lee passed to Simon Yang an analysis report of his all trading records from January 1987 to June 2003 with FMG portfolio of \$598,639,228.26 on June 10, 2003 and 53% winning trades on all 3836 trades. The trading records just amazed Simon Yang for his trading skills and the computer trading programs that Ken Lee wrote. The report was 75 pages long and Simon Yang just printed out the first few pages for reference. In fact Ken Lee does many analyses of his trading programs with real money and improves his trading programs all the time. Included are several pages of the trading records.

Ken Lee was forced by the financial storm from 2006 to 2009 to trade commodities heavily for profits to fill weekly margin calls from PVC long-term bond investments and investors' withdrawals. Ken Lee worked over 20 hours daily watching the markets for trading. Many investors know that Ken Lee was on the computer all the time because Ken Lee responded to emails in minutes after investors sent. To encourage more capitals from existing investors during 2006 to 2009, Ken Lee open more detailed investment strategies with very high returns, and those investment programs focused on very short term (minutes to hours) trading of commodities and currencies. Ken Lee showed 15 to 30 **monthly** trading results of 5.00% to 20% for FENIX, R6 and MIC trading programs in FMG and PVC websites before they were shut down. To encourage and update Simon Yang (the only investor could understand trading among all investors), Ken Lee showed how well he traded with little cash by sending a short trading record of 13% gain in 6 days with \$5,000,000 account on April 6 2009 and changed to 16% gain in 7days. Ken Lee told Simon Yang that he made about 55% gains in a 24-hour computer program trading with \$5,000,000 account on April 8 2009, and the account kept growing next day, and the account investor had about \$780,000,000. Who could be that investor? Attached are the emails. The trading records show that

some trades occurred during the time period that US brokerages are closed for business. Those are the reason Simon Yang called Ken Lee "genius or gifted trader".

According to Kara Mucha of Plaintiffs on commodity trading accounts of Prestige, Prestige lost net \$4.3 million in all 34 trading accounts monthly and yearly from 2004 to 2009. This report just does not make sense to an investor with a common sense. Firstly, Plaintiffs claimed that Ken Lee operated Ponzi scheme without true investment activity, but their own expert said that there were investment activities with 34 trading accounts over 6 years. Secondly, there is **no such an investor** who kept doing the same way of funding his trading business but losing big monies, account after account, month after month, even year after year. More strangely, Ken lee sold his boat for \$60,000 in June or July 2009 and deposited this fund into Prestige bank account, and \$40,000 was transferred to a Prestige trading account, and lost in days according to the same expert of Plaintiffs (Mucha testified in this court on April 21, 2010).

Further more, Simon Yang deposited \$4,440 into Prestige bank account around 9 AM on Friday November 20 2009, and Ken Lee wired the fund into a Prestige trading account (not bank account of himself or his wife) on the same day (see emails of Ken Lee of November 20 and 21 2009). The court order of this lawsuit was effective on Monday November 23 2009. But both Grossman and Mucha of Plaintiffs and Receiver Moriarty did not find this fund. What happened to this fund: transferred to an offshore trading account quickly by Ken Lee or lost with Ken Lee's trading?

It becomes very clear to Simon Yang that funds of PVC investors were transferred from Prestige bank account to those trading accounts of US brokerages and used for trading commodity markets for some periods (days) and then transferred to other trading accounts of offshore brokerages (like Pam America of Panama) outside the USA. Simon Yang tried to confirm such transfers of funds by examining those trading activities of those trading accounts, but Simon Yang could not access to those trading activities because Simon Yang could not open files of a DVD provided by Plaintiffs.

However, Darren Lee, the younger son of Ken Lee, confirms Simon Yang's understanding or conclusion of transferring funds. To defend his house and other properties from being taken away by Receiver Mr. Moriarty, with trading records Darren Lee claims that he has made good profits of

trading with one of 34 trading accounts in 2006, even over \$500,000 gain in a week. and late **transferred** all capitals and gains out to other account, subsequently he closed this trading account. Simon Yang has known since 2003 that Ken Lee taught and trained his two sons on investments and trading. Most likely all 30 plus trading accounts operated this way of trading and transferring.

In his letter to Judge Russell, Ken Lee asks the court to review those trading records of those trading accounts and hinted that trading profits were made and funds were transferred to other places as Darren Lee's personal account. The expert of Plaintiffs Kara Mucha testified that \$40,000 from sale of Ken Lee's boat was deposited into a trading account and later **transferred** to other accounts, but Mucha does not detail other accounts (Declaration of Mucha). The quality of trading account report of Plaintiffs' expert Kara Mucha has to be called into question.

The quality of analysis report of Grossman on Prestige bank accounts has to be called into question too. The fund of \$60,000 from sale of Ken Lee's boat was not found in Lee's deposits. Many deposits of Simon Yang were missed from the report. Grossman of Plaintiffs reported that Simon Yang invested around \$240,000 and withdrew around \$120,000 in November 2009. Simon Yang told Plaintiffs his total investments of over \$500,000 in December 2009. Subsequently Grossman reported that Simon Yang invested \$460,000 and withdrew \$130,000 on November 8, 2010. On the table of Prestige Enterprise Investor Summary there are about \$10,000 deposits from Simon Yang (Grossman Exhibit 5, Page 10: Yang, Xiao: \$3,400 + \$6,900). How much did Simon Yang deposit from 2003 to 2009 according to Grossman? One Investor, Hanjiang Zhu, told Simon Yang in an email that he invested \$35,000, but Grossman reported that Mr. Zhu invested \$200,000 (Exhibit 5, Page 12).

There are so much information revealed in Darren Lee's Responses to requests for admissions, interrogatories, and document request. Those evidences are new to Simon Yang; however they confirm Simon Yang's understandings of Prestige operations.

Prestige Ventures operated as early as in 2002 (Simon Yang thought Prestige Ventures was founded in July 2003). A Chinese investor of Taiwan (Account Number 030518, Simon Yang did not know

him.) deposited funds into PVC through an offshore brokerage (Pam America Group?), and later all his funds and gains were returned to him by wire transfers through the same brokerage in 2003.

Ken Lee deposited personal funds of \$142,320 in November 2002 at brokerage house Pam America Group of Panama and managed his investments through direct trading. With just 7 monthly statements of the brokerage provided to the court, return rates of other 5 months were figured out by Simon Yang (See the following table). Ken Lee made profits each month as well as net profits of \$541,073 during this 12-month period of November 2002 to October 2003, a truly wonderful 380% actual return rate, and furthermore, annual return rate of invested capitals was 485%. (If there were no withdrawal during the 12 months, then profits would be \$690,522.) This **actual performance of 485% annual return with 15.85% average monthly return** is an impossible deal for 99.80% professional traders, but achievable for a truly gifted trader. (Ken Lee did not reveal such actual 300% to 400% annual returns, instead of 30% to 40%, to all investors in 2003, 2004 or 2005.)

Summary of Ken Lee's trading account with Pam America Group

Month	Deposit	Withdraw	Gain	Balance	Return Rate
2002.11	\$142,320	-	\$12,970	\$155,290	9.11%
2002.12	-	-	-	-	26.15%
2003.01	-	-	-	-	26.15%
2003.02	-	-	-	\$311,804	26.15%
2003.03	-	-	\$39,164	\$350,968	12.56%
2003.04	-	-	-	-	12.71%
2003.05	-	-	-	445,885	12.71%
2003.06	-	\$9,700	\$54,308	\$490,493	12.18%
2003.07	-	\$12,200	\$73,005	\$550,117	14.88%
2003.08	-	\$105,500	\$86,850	\$529,648	15.79%
2003.09	-	\$380,600	\$75,420	\$208,235	14.24%
2003.10	-	\$113,820	\$19,930	\$61,573	9.57%
Average	-	-	-	-	15.85%
Annual	-	-	-	-	485.03%

For every deposit of Lee family account 030518-1 on the account statement of April 2004, there was a corresponding withdrawal of the same amount stated in the statements of Ken Lee's trading account with Pam America Group of Panama. All those funds were transferred between trading accounts of brokerages outside the USA.

Activities of this Ken Lee's trading account with Pam America Group of Panama support that Ken Lee has been a gifted trader; Lee family purchased houses and boats and cars with their own funds from their investments through bank account of PVC, and Lee family are very wealthy but live with a humble-life style.

Over the years of 2006 to 2009, Ken Lee told Simon and other investors in emails that he used his personal funds meeting those weekly margin calls, totaling over \$5,000,000. Ken Lee provided to Plaintiffs / Receiver a PVC accounting with his personal funds of over \$5 millions, which should be detailed with Lee family account 030518-1 if the full account activities are open to the court.

Ken Lee revealed to investor Hanjian Zhu then Simon Yang and others by emails in September 2009 that he had recovered over \$30 million margin deficit of PVC investments in the first 8 months of 2009, and PVC was on track to return all funds to investors.

Many times (over 20) Ken Lee expressed intend and plan of returning all investors' funds in emails when Ken Lee communicated with Simon Yang and other investors between 2006 and 2009. Even on days after November 20 2009 Ken Lee told Simon Yang that PVC would close many accounts (returning all funds to investors) in 3 months and all accounts of PVC investors in 6 months if the markets continue the present trend.

Conclusion

The Court should be able to conclude justly and logically that: Ken Lee and Simon Yang did not operate a Ponzi scheme on investors of Prestige at any time, rather Prestige Ventures experienced business hardships from 2006 to 2009; Prestige Ventures could not meet those demands of withdrawals of investors in order to preserve all capitals and previous gains of all investors including Ken Lee and Simon Yang; Ken Lee worked very hard and used his personal funds of over \$5 millions helping Prestige Ventures in enduring and overcoming the world financial storm; Simon Yang was an investor with all his savings of over \$500,000, and Simon Yang helped Ken Lee and other friend investors out of his sincere heart all this time period.

This lawsuit should be dropped from this Court, and Defendants Ken Lee and Simon Yang should walk away free, and Prestige Ventures should resume its daily operations for the benefits of all its investors. Plaintiffs should pay the expenses of Receiver Mr. Moriarty.

It is the responsibility and obligation of Prestige Ventures to return to all investors their remained capitals (\$2.5 million) and gains (\$16 million). According to emails of Ken Lee before and around November 20 2009, while the lawsuit is out of way, Prestige Ventures will likely return all the remained capitals of around \$2.5 millions in 12 months or sooner.

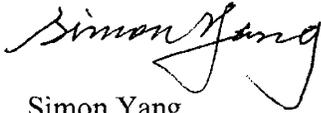
If the Court feel necessary for the benefits of Prestige investors and fairness to Plaintiffs and Defendant Ken Lee, then the Court appoint a supervisor to supervise the distribution of remained capitals (about \$2.5 millions) of investors, the supervisor will report progresses to the Court, Plaintiffs and Ken Lee, and the expenses of supervisor's work will be on Prestige Ventures.

Simon Yang does not plan to take Plaintiffs or their investor witnesses or others into a civil lawsuit for compensations of damages caused by this lawsuit.

Simon Yang asks this Court not to punish those employees of Plaintiffs and their witnesses for their wrong doings or mistakes, so that they may learn from their mistakes of this case and may do justice in the future. All people need mercies from others as well as Jesus Christ.

Date: November 22, 2010 (updating on December 17, 2010)

Respectfully submitted

A handwritten signature in black ink that reads "Simon Yang". The signature is written in a cursive style with a large, stylized 'S' and 'Y'.

Simon Yang

1912 NW 176th Terrace

Edmond, OK 73012

Ph. 405-216-8718

Email: simonyang@cox.net

CC: Ken Lee, James Holl, Terra Bonnell by email

10/28, 2010

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

**U.S. COMMODITY FUTURES TRADING)
COMMISSION and OKLAHOMA)
DEPARTMENT OF SECURITIES *ex*)
rel IRVING FAUGHT,)**

Plaintiffs,

v.

Case No. CIV-09-1284-R

**PRESTIGE VENTURES CORP.,)
a Panamanian corporation, FEDERATED)
MANAGEMENT GROUP, INC., a Texas)
corporation, KENNETH WAYNE LEE,)
an individual, and SIMON YANG)
(a/k/a XIAO YANG, a/k/a SIMON CHEN,)
an individual,)**

Defendants.

and

**SHEILA M. LEE, an individual, DAVID)
A. LEE, an individual, and DARREN)
E. LEE, an individual,)**

Relief Defendants.

ORDER

This matter comes before the Court on the Motion for Summary Judgment, filed by Plaintiffs, the United States Commodities Future Trading Commission (“the Commission”) and the Oklahoma Department of Securities *ex rel.* Irving Faught (“the Department”), and requesting that the Court conclude that no genuine issues of material fact exist with regard to the issue of Defendants’ liability on a number of federal and state law claims. Neither Defendant Kenneth Lee, Simon Yang, nor the relief Defendants responded in opposition to

the motion.¹ Having reviewed the evidence submitted by Plaintiffs, and having considered the applicable law, the Court finds as follows.

Plaintiffs allege that Defendant Kenneth Lee operated a Ponzi scheme; that he, with the help of Defendant Yang, utilized false statements about his trading prowess, recruited investors and suffered massive trading losses with their money, but failed to reveal those losses to investors. According to Plaintiffs, Defendant Lee, at times with the assistance of Defendant Yang, issued fraudulent statements indicating that all accounts had gains, although starting in mid-2006, Defendant Lee was unable to return money to investors when they inquired about withdrawal of their funds. Plaintiffs allege that Defendant Lee paid original investors with the contributions of later investors in an effort to support his claims of trading success. Plaintiffs further allege that Defendant Lee utilized substantial sums provided by investors for his own personal use, including the purchases of homes, cars, boats, and the payment of personal living expenses for his family, including his wife and sons, who have been named Relief Defendants. Plaintiffs seek relief under the Commodities Exchange Act (“CEA”) and Oklahoma law, specifically the Oklahoma Uniform Securities Act (“the Act”). Additional facts will be set forth herein as relevant to each of Plaintiffs’ claims.

Plaintiffs² first contend that Defendants committed fraud in violation of the CEA, specifically violating 7 U.S.C. § 6b(a)(2)(A)-(C), after June 18, 2008, and 7 U.S.C. §

¹ Neither corporate defendant has answered the allegations in the complaint and accordingly they did not respond to the instant motion either.

² The Commission and the Department refer to themselves collectively throughout their joint motion. The Court will do so as well.

6b(a)(2) prior to that date.³ In order to establish liability under either section, Plaintiffs must establish that a defendant made (1) a misrepresentation or omission, (2) with scienter, and (3) the misrepresentation or omission was material. *CFTC v. R.J. Fitzgerald & Co.*, 310 F.3d 1321, 1328-29 (11th Cir. 2002). Scienter requires evidence that a defendant committed the alleged wrongful acts intentionally or “that the representations were made with a reckless disregard for their truth or falsity.” *U. S. Commodity Futures Trading Com’n v. National Inv. Consultants*, 2005 WL 2072105, *8 (N.D.Cal. August 26, 2005). Plaintiffs have presented evidence of misrepresentations by both Defendant Kenneth Lee and Defendant Simon Yang, evidence of scienter, and evidence that the misstatements were material.

By way of background, this case was set in motion by the relationship between Kenneth Lee, a resident of South Carolina, who previously lived in Texas, and Simon Yang, a resident of Oklahoma, although a citizen of China. According to Mr. Yang, he first learned of Kenneth Lee via the internet, when he was researching investment strategies. He became intrigued by Mr. Lay’s alleged trading results and ultimately decided to invest money with him. This eventually evolved into what Simon Yang referred to as a commissioned independent contractor agreement, and in some form or fashion, Simon Yang ultimately recruited a number of investors for Kenneth Lee from the Chinese Baptist Church in Oklahoma City. During the relevant time period, specifically March 2003 through December 2009, Kenneth Lee operated two corporations. Prestige Ventures Corporation (“Prestige”)

³ Effective June 18, 2008, Congress amended the Commodities Exchange Act, which re-designated certain sections. As such, the new designations apply to actions taken on or after June 18, 2008.

is a Panamanian corporation registered by Defendant Kenneth Lee in Panama on July 7, 2003.⁴ Prestige has operated out of Kenneth Lee's Texas residence, and later from his South Carolina home. Defendant Federated Management Group "Federated" is a Texas corporation, formed in 2001, which forfeited its right to conduct business in October 2003.⁵ Federated was also run by Defendant Kenneth Lee from his Texas home, and later from his South Carolina residence. Defendant Lee operated Defendants Prestige and Federated as a common enterprise: they shared offices, telephone numbers and solicitation materials. In fact, their names were often used interchangeably, and Simon Yang informed investors that Prestige was Federated's parent company. Certain of the documents circulated included historical returns for Prestige, while others listed Federated Management's history. Although Kenneth Lee generally used a Prestige-related e-mail address, he also used an address of lkee@famcu.com, consistent with his misrepresentation to investors that Federated Management operated a credit union known as Federated Management Credit Union. Mr. Yang has used e-mail addresses linked to both entities. Furthermore, applications submitted by investors bore the name "Federated Management Group, Inc.,²³" although in most instances money was sent to what was represented to be a Prestige account. In a document entitled "Managed Individual Contracts," whereby Kenneth Lee sought to solicit additional deposits by investors to assist them in closing their Prestige accounts, he

⁴ The company was founded in June 2003, and the original directors resigned on July 14, 2003, appointing Kenneth Lee as the sole director and president.

⁵ This was approximately the same time that Defendant Lee was using the Federated name to solicit investors. Despite forfeiting its rights, Federated continued to operate in some capacity, soliciting money from investors.

referred investors to the website at www.federatedmanagement.com. As such, the Court concludes that Defendant Kenneth Lee, with the aid of Simon Yang, operated the two entities as essentially a single one, creating an enterprise, which the Plaintiffs, and the Court, refer to as the Prestige Enterprise.

Neither Prestige, Federated, Kenneth Lee or Simon Yang, has ever been registered with the Commodities Future Trading Commission, the National Futures Association, or under the Oklahoma Uniform Securities Act, despite representations to the contrary to investors. Both corporate entities claimed to use the Legacy Trading System, which existed in name only, having been suggested by Simon Yang to apply to Defendant Lee's trading strategy to give an aura of longevity.

Starting in approximately March 2003 until November 2009, Defendants Yang and Lee solicited and Kenneth Lee accepted, approximately 8.7 million dollars from investors, including numerous persons residing in Oklahoma. In approximately June 2003, Yang arranged a meeting between Kenneth Lee and several of Yang's acquaintances from Oklahoma. According to Defendant Simon Yang, the meeting, held at Lee's office in Fort Worth, Texas, was intended for prospective participants to learn more about Lee and Federated and verify what Yang had told them. At the meeting, Kenneth Lee and Simon Yang confirmed Yang's representations about Lee's alleged successful trading and stated that the Prestige Enterprise and Lee had never suffered any trading losses. Kenneth Lee "pitched" the idea of investing with him based on his profitable trading record, the fact that investments would be insured, and that money could be withdrawn at any time. Contrary to

Defendant Lee's representations, he suffered substantial losses through his trading activity, showing little monthly gain in any month.⁶

After that meeting, Lee continued to provide false and misleading Prestige Enterprise information to Yang, including materials indicating growth from a fund of less than two million dollars in 1987 to a fund exceeding 379 million dollars in 2003. There is no evidence of Prestige or Federated ever having 379 million dollars in their funds.⁷ Defendant Yang continued to circulate false information to potential investors, and both individual Defendants made additional misrepresentations on the corporate websites. Simon Yang had a hand in crafting the Prestige Website, which included misrepresentations regarding the strength of the Legacy Trading System. Defendant Yang made additional misrepresentations, including the fact that he told other investors his interest was limited to his role as investor, failing to disclose that he actually served as a commissioned agent for the Prestige Enterprise. He had

⁶ Plaintiffs present evidence that approximately thirty commodity futures or foreign currency accounts were maintained in the name of Federated or Prestige at various Futures Commission Merchants or at off-shore currency brokers. Lee controlled the majority of the trading accounts, which were opened as corporate accounts, not in the name of any trading pool. The Futures Commission Merchants were not informed that the accounts were pool accounts or that investor funds were involved. The accounts suffered losses totaling 4.3 million dollars. Additional securities accounts also suffered losses. Some amounts were returned to investors, and approximately two million dollars was diverted for the personal use of Lee and his family. There is evidence that Kenneth Lee used investor funds to purchase homes, cars and boats for himself, his wife, and their children. Money from the corporate bank accounts was transferred to Defendant's personal account, and at other times corporate checks were used to pay for purely personal expenses. Despite the fact that his sons were never employees of Federated or Prestige, he paid them approximately \$1500 each, weekly, for a period, apparently as compensation for menial tasks such as watching the markets and mowing the lawn.

An investigator for the Oklahoma Department of Securities examined the bank records for three accounts controlled by Defendant Kenneth Lee and held in the names of the two corporations. He attests that on March 5, 2003, the accounts all had zero balances. Deposits totaling \$14,279,409.00 were made between March 5, 2003 and November 30, 2009. Sources for the funds included investors, cash, and transfers from Futures Commission Merchants or Forex brokerage firms. The Lee family deposited approximately \$59,950 and Simon Yang's contributions accounted for \$469,507 of the deposits. He opined that \$1,936,138 was paid directly to Kenneth Lee or members of his family or for expenses on their behalf. Simon Yang received \$133,500 from the accounts.

⁷ At the end of 2003, the Prestige Enterprise bank accounts had a total balance of \$126,950.44.

e-mail addresses affiliated with both Prestige and Federated at various points in the relevant time period.

Defendant Lee generated and circulated via e-mail false statements to pool participants regarding monthly profits. The account statements showed consistent monthly profits of up to 4% and reflect that the funds never suffered a single loss. For example, from September 2005 to February 2009, Lee prepared and sent monthly account statements to Susie Southwell, a participant, showing that her investment of \$20,000 had grown to \$41,020.12, without a single month of loss. The monthly account statements Lee sent to a group of participants falsely indicated their account had earned money every month from July 2003 through January 2009. The fabricated statement indicated that their combined investment of \$100,000 had increased in value to over \$340,000. Account statements were sent from the Prestige Enterprise by Lee, although Yang was also responsible for some of the monthly reports issued to pool participants. Once pool participants started receiving the monthly statements showing consistent profits and withdrew alleged profits⁸, many decided to invest more money with Defendants and new pool participants were convinced to invest with Lee. After investing with Defendants, several pool participants were able to withdraw a portion of their funds, as promised by Defendants. Starting in 2006, however, Defendant Lee informed participants that he could not permit withdrawals, because there had been a

⁸ The Investigator for the Oklahoma Department of Securities opined that \$3,357,732 was paid out to investors.

margin call, and he was no longer willing to use his own funds to cover the call.⁹

Defendant Yang made additional misrepresentations to investors. Reports distributed by Defendant Yang falsely indicate that for 16 years, the Legacy Trading System had outperformed the S&P 500 and the MAR futures. The reports indicated that Prestige achieved positive returns for every month from January 2007 until April 2009, despite the fact that starting in 2006, Lee had started informing investors they could not make withdrawals, a fact known to Defendant Yang.

In short, the Court finds ample evidence of material misrepresentations, by Defendants, with scienter. To summarize, from the outset, Defendant Lee misrepresented the returns he had experienced, misrepresented the current returns on investment, omitted information about the diversion of funds and his criminal past, each of these was undoubtedly material to those persons who chose to invest their money with Prestige and Federated. There can be no doubt that Defendant Lee acted with the requisite intent, falsifying statements for both potential and current investors, and continuing the charade even after he had either lost or spent the original investments. With regard to Defendant Yang, although there is less evidence against him than against Defendant Lee, there is still evidence that he acted with the requisite intent and made material misstatements. Specifically, Defendant Yang crafted the term "Legacy Trading System," specifically designed to give a feeling of longevity that he felt it needed to attract investors, and Defendant Yang created numerous

⁹ There is no evidence of any actual margin trading or any margin call, or that Kenneth Lee covered the margin for pool participants.

false return tables on behalf of Lee, Prestige and Federated. Defendant Yang continued to encourage investment with Lee despite having no actual knowledge about the results of Lees trading. Additionally, Defendant Yang misrepresented his status, informing investors that he was merely an investor rather than revealing his actual commission-based relationship with the corporate entities. As such, the Court finds that Plaintiffs are entitled to summary judgment in their favor on the issue of the Defendants' liability under 7 U.S.C. § 6b(a)(2) and 6b(a)(2)(A)-(C).

Plaintiffs next seek summary judgment on their claims that Defendants Lee and Yang committed fraud as "associated persons" in violation of 7 U.S.C. § 6o(1), which regulates commodity pool operators and prohibits fraudulent transactions by operators and associated persons. Plaintiffs contend Defendants Prestige and Federated were commodity pool operators under the Act.

It shall be unlawful for a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly--

- (A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or
- (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

7 U.S.C. § 6o(1)(A)-(B).

The term "commodity pool operator" means any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds . . . either directly or through capital contributions . . . for the

purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility . . .

7 U.S.C. § 1a.

As it must to hold Defendants Prestige and Federated liable, the Court finds that both were commodity pool operators. Both accepted funds from a variety of persons for the purpose of trading commodities and potential investors were informed by Defendant Lee that their investments would be pooled. The businesses provided a vehicle for collective investment. *See Commodity Futures Trading Com'n v. Equity Financial Group LLC*, 572 F.3d 150, 158 (3d Cir. 2009).

Furthermore, both Defendants Lee and Yang were associated persons whose actions are governed by § 6o as well. 7 U.S.C. § 6k requires the registration of persons associated with a commodity pool operator, including a “partner, officer, employee, consultant, or agent . . . in any capacity that involves . . . the solicitation of funds . . . for participation in a commodity pool.” Defendant Yang concedes that he presented the opportunity to persons he met at the Chinese Baptist Church, that he served as a commissioned contractor for Prestige and Federated, and that he arranged meetings between Kenneth Lee and potential investors. Defendant Lee was the sole person running both Prestige and Federated, and his role in soliciting funds both via live meetings, through e-mail and through Simon Yang is undeniable.

Finally, as set forth above, Plaintiffs have established that Defendants made material misrepresentations to potential investors and to investors, and that they did so with the

requisite intent. As such, Plaintiffs are entitled to summary judgment on their fraud claims under 7 U.S.C. § 6o(1)(A) and (B).¹⁰

Plaintiffs next seek relief on their claim that Defendants failed to register with the Commission in violation of 7 U.S.C. §§ 6m(1) and 6k(2). 7 U.S.C. § 6m(1) provides in part that “it shall be unlawful for any commodity trading advisor or commodity pool operator, unless registered under this chapter, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as such commodity trading advisor or commodity pool operator. . . .” 7 U.S.C. § 4k(2). 7 U.S.C. § 6k(2) provides, in pertinent part, that it “shall be unlawful for any person to be associated with a commodity pool operator as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (I) the solicitation of funds, securities, or property for a participation in a commodity pool . . . unless such person is registered with the Commission under this chapter as an associated person of such commodity pool operator. . . .”

¹⁰ There are different views about whether the antifraud provision in 7 U.S.C. § 6o(1)(A) includes a scienter requirement. Compare *First Nat'l Monetary Corp. v. Weinberger*, 819 F.2d 1334, 1341-42 (6th Cir.1987) (“[Section 6 o] does not contain the same scienter requirement as § [6b].... [T]he complainant need prove only that the commodity trading advisor intentionally made the statements complained of, and not that the advisor acted with the intent to defraud.”), and *CFTC v. Savage*, 611 F.2d 270, 285 (9th Cir.1979) (concluding a violation of § 6 o(1) only requires the intent to “employ the ‘device, scheme, or artifice’ ”), with *Messer v. E.F. Hutton & Co.*, 847 F.2d 673, 677-80 (11th Cir.1988) (“[W]e conclude that Section 6 o(1)(A) contains the same scienter requirement as Section 10(b) and Rule 10b-5 of the federal securities laws, while Section 6 o(1)(B) does not require proof of scienter.”)

Equity Fin. Group, 572 F.3d at 159, n. 16. Because the Court concludes Defendants' conduct in this case demonstrates scienter, the Court need not decide whether scienter is required.

As set forth above, Plaintiffs have established that Defendants Federated and Prestige used instrumentalities of interstate commerce, most notably the internet, to solicit and receive funds from customers without being registered, and as above, Defendants Lee and Yang were associated persons without the requisite registration. As such, Plaintiffs are entitled to summary judgment on the claims under 7 U.S.C. § 6m(1) and § 6k(2) of the Act.

Plaintiffs next assert that Federated and Prestige constituted a common enterprise for purposes of establishing joint and several liability. Where one or more corporate entities operate in a common enterprise, each may be held liable for the deceptive acts and practices of the other. *Commodity Futures Trading Com'n v. Wall Street Underground, Inc.*, 281 F.Supp.2d 1260, 1271 (D.Kan. 2003)(citation omitted). "In determining whether a common enterprise exists, courts look to a variety of factors, including whether there is common control of the entities, whether the entities are distinct and operate at arms-length from one another, and whether the entities commingle funds." *Id.* (citations omitted). As set forth above, Defendants Yang and Lee often referred to the companies interchangeably, Yang represented to investors that Prestige was Federated's parent company, they shared a common control person, Kenneth Lee, as well as telephone numbers, addresses, and funds were apparently co-mingled in bank accounts. The Court finds that Federated and Prestige were a common enterprise, and thus are jointly and severally liable for the above violations of the CEA.

Plaintiffs next contend that Defendant Lee is liable for the acts of Prestige and Federated pursuant to 7 U.S.C. § 13c(b) as a controlling person. Any person "who, directly

or indirectly, controls any person who has violated any provision of this chapter” is liable for the controlled person’s violation if he “did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation.” 7 U.S.C. § 13c(b). In this case, Defendant Kenneth Lee was fully responsible for all activity of the two corporations, including the trading activity and the fraudulent statements issued from the corporate Defendants to the investors. As noted by Plaintiffs, Defendant Lee repeatedly held himself out as in control of both entities, he controlled their bank accounts, and operated the entities from his homes, moving their operations when he moved. Plaintiffs also contend that Defendant Lee is responsible for Defendant Yang’s actions, because he either controlled them or failed to rectify the fraudulent information that Mr. Yang was disseminating. Again, there can be no dispute that Mr. Lee controlled the flow of information to Mr. Yang, that he directed Mr. Yang’s actions with regard to the information, and as a result, Defendant Lee is responsible for Mr. Yang’s violations of the CEA as well.

Plaintiffs argue summary judgment is appropriate with regard to the relief Defendants as well.

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.” *SEC v. Colello*, 139 F.3d 674, 676 (9th Cir.1998), quoting *SEC v. Cherif*, 933 F.2d 403, 414 (7th Cir.1991). Such a person may be joined in a securities enforcement action “to aid the recovery of relief,” provided she “has no ownership interest in the property which is the subject of litigation.” *SEC v. George*, 426 F.3d 786, 798 (6th Cir.2005) (internal quotation marks omitted); see also *SEC v. Cavanagh*, 445 F.3d 105, 109 n. 7 (2d Cir.2006) (“*Cavanagh IP*”); *Cherif*, 933 F.2d at 414. District courts have the power to order disgorgement from a relief defendant upon a finding that [t]he (1) is in possession of ill-gotten funds and (2) lacks a legitimate claim to those funds.

SEC v. Cavanagh, 155 F.3d 129, 136 (2d Cir.1998) (“*Cavanagh I*”).

Commodity Futures Trading Com'n v. Walsh, 618 F.3d 218, 225 (2nd Cir. 2010). The undisputed evidence establishes that substantial sums of money were expended either directly or indirectly from Prestige and Federated to Kenneth Lee’s wife and sons to which they had no ownership interest. David and Darren Lee, although never real employees of the entities, received thousands of dollars from the corporations. Millions of dollars provided by investors were funneled to support all of the Lees, including the purchase of homes, cars, boats, and payments for utilities, insurance and other household expenses. The relief Defendants have not provided any evidence to rebut the Plaintiffs’ evidence, and as such, the Plaintiffs are entitled to summary judgment with regard to the relief Defendants.

Plaintiffs also seek summary judgment on their state law claims under the Oklahoma Uniform Securities Act of 2004 (“OUSA”). Okla. Stat. tit. 71 § 1-301 provides that it is unlawful in Oklahoma for a person to offer or sell a security unless:

1. The security is a federal covered security;
2. The security, transaction, or offer is exempted from registration under [the Act]; or
3. The security is registered under [the Act].

The Act provides that the Administrator of the Oklahoma Securities Commission is granted authority to enforce the provisions of the Act. The Department argues that the investments offered and sold by Defendants are securities under the Act, that the securities were not registered, nor were they exempt from registration.

The OUSA defines a “security” as including investment contracts, and further it

includes as an "investment contract" an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a 'common enterprise' means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors[.]"

Okla. Stat. tit. 71 § 1-102(32)(d). In this case, it is clear that the investors invested money, in a common enterprise, with the expectation that they would profit from the efforts of Kenneth Lee. As such, the offers made by Defendants Lee and Yang on behalf of Defendants Prestige and Federated were securities under Oklahoma law and therefore subject to the provisions of the OUSA if the securities were offered and sold in Oklahoma.

Okla. Stat. tit. 71 § 1-601 governs when securities are "offered or sold" in Oklahoma for purposes of the Act. According to Okla. Stat. tit. 71 § 1-610(A), registration pursuant to Okla. Stat. tit. 71 § 1-301 does "not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this state or the offer to purchase or the purchase is made and accepted in this state."

C. For the purpose of this section, an offer to sell or to purchase a security is made in this state, whether or not either party is then present in this state, if the offer:

1. Originates from within this state; or
2. Is directed by the offeror to a place in this state and received at the place to which it is directed.

Okla. Stat. tit. 71 § 1-610. Plaintiffs have presented evidence that Defendants offered and sold securities to persons living in Oklahoma. Certain of the offers to sell came through Defendant Yang and other were offered directly by Defendant Kenneth Lee via e-mail to persons in Oklahoma. As such, the Department has established that Defendants offered and

sold securities in Oklahoma. The Court has concluded that securities that should have been registered were sold in this action, and it is undisputed that the securities were not registered. There is no evidence that the securities fell within any of the enumerated statutory exceptions to registration, *see* Okla. Stat. tit. 71 §§ 1-301, 1-201 through 1-203. Additionally, the burden is on a defendant to establish an exception or exemption from registration, and all Defendants have failed in this regard. As such, Plaintiffs are entitled to summary judgment on their claim that Defendants violated the Oklahoma Uniform Securities Act by failing to register in violation of Okla. Stat. tit. 71 § 1-301.

Plaintiffs next contend that Defendants Lee and Yang failed to register as agents as required by Okla. Stat. tit. 71 § 1-402(A) of the OUSA, and that Prestige and Federated employed unregistered agents in violation of section 1-402 of the OUSA. Title 71 § 1-402(A) provides that “[i]t is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this act as an agent or is exempt from registration as an agent under subsection B of this section.” Okla. Stat. tit. 71 § 1-402(D) provides “[it] is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection A of this section or exempt from registration under subsection B of this section.” Plaintiffs have presented undisputed evidence that by virtue of their efforts and activities in soliciting investors to purchases securities issued by Prestige and Federated, that Lee and Yang are agents of the corporate entities. Yang admitted his role as an independent

contractor of Defendants and Lee undoubtedly controlled both entities. Both men have transacted business in Oklahoma as agents of the Prestige/Federated enterprise. Furthermore, it is undisputed that Lee and Yang have not been registered as agents, or in any other capacity, under the Act, nor have Defendants asserted or presented evidence that they are entitled to an exemption from registration. Accordingly, Plaintiffs are entitled to summary judgment on the issue of Lee and Yang acting as unregistered agents in violation of Title 71 § 1-402.

Plaintiffs also seek summary judgment on their contention that Prestige and Federated, acting as a common enterprise, associated with unregistered agents in violation of Okla. Stat. tit. 71 § 1-402. As set forth above, Defendant Lee was the president, lead trader, chairman, beneficial owner and/or principal portfolio manager of Prestige and Federated. Yang was an independent contractor of the enterprise and received commissions for soliciting pool participants. Both Lee and Yang used email addresses tied to the enterprise to communicate with investor. As such, Plaintiffs are entitled to summary judgment on their claim that Defendants Prestige and Federated employed or associated with unregistered agents in violation of Okla. Stat. tit. 71 § 1-402.

Plaintiffs also seeks summary judgment on their claim that Defendants violated Okla. Stat. tit. 71 § 1-501(2), which makes it unlawful for a person, directly or indirectly, "to make an untrue statement of material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading," in connection with the offer or sale of a security. As with the Commission's

claims for fraud under the CEA, the Court finds that Plaintiffs have established that Defendants made material misrepresentations in connection with the offer or sale of a security. As such, Plaintiffs are entitled to summary judgment on their claim under Okla. Stat. tit. 71 § 1-501(2).

Plaintiffs also seek summary judgment on their claim that the Defendants employed a device, scheme, or artifice to defraud in violation of Okla. Stat. tit. 71 § 1-501(1). Section 1-501(1) makes it unlawful for a person, directly or indirectly, “to employ a device, scheme, or artifice to defraud,” in connection with the offer or sale of a security. As above with regard to their federal claims, Plaintiffs have established that Defendants employed a scheme to defraud, specifically they enticed pool participants to invest with Kenneth Lee by making untrue statements of material fact regarding his history with trading which led pool participants to believe Kenneth Lee, via the corporations, was a successful trader who consistently achieved positive returns. Lee clearly acted with intent to deceive, manipulate, and defraud. Kenneth Lee was the admitted principal of both corporations. He not only solicited funds based on false statements, but continued to perpetuate the fraud by creating and circulating false monthly statements. Defendant Lee also misappropriated participant funds for his own personal use and for the use of his family. Both Defendant Kenneth Lee and Defendant Yang knew the Legacy Trading System was a fiction. With regard to Defendant Yang, in all respects his conduct evidences recklessness, that is “an extreme departure from the standards of ordinary care.” *See Trivectra v. Ushijima*, 144 P.3d 1, 16 (Haw. 2006)(scienter requirement for violation of Uniform Securities Law § 501, HRS §

485-25(a)(1) is satisfied with either a showing of intent or recklessness). Plaintiffs have presented evidence that Defendant Yang he produced financial disclosure documents without independently verifying any of the information therein before disseminating such information to investors, and he further misled investors by indicating that he was merely a participant, failing to reveal his commissioned status with the Prestige/Federated enterprise. As a result, Plaintiffs are entitled to summary judgment on their claim under Okla. Stat. tit. 71 § 1-501(1).

Plaintiffs also seek summary judgment on their claim that Defendants violated Okla. Stat. tit. 71 § 1-501(3). That section makes it unlawful for a person “directly or indirectly, “to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person,” in connection with the offer and/or sale of a security. Defendants undoubtedly and purposefully misled pool participants into believing that Kenneth Lee via Prestige and Federated was a successful trader. Defendants created and distributed to prospective pool participants marketing materials replete with blatantly false statements including, but not limited to, representations that the corporations consistently achieved high returns without a single month of losses between 1987 and March 2003. Defendants did not disclose at any time that during the allegedly profitable period Kenneth Lee, trader and president was in prison for a portion of that period.¹¹ Defendants also fabricated monthly account statements and reports reflecting the positive returns generated

¹¹ Numerous investors stated in their declarations that knowledge of Lee’s imprisonment for fraud would have affected their decision to invest with him.

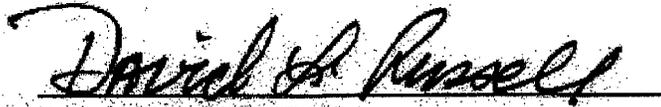
as a result of trading with the fictional Legacy Trading System. Despite reporting only gains to participants, the reality was that the entities sustained trading losses exceeding \$4.3 million dollars. Even when he knew he could not repay investors, Defendant Lee continued to assert that he was suffering only temporary setbacks in trading, but that the gains would be realized upon maturation of the long term investments. Defendants clearly engaged in acts, practices, and a course of business that operated and would operate as a fraud or deceit upon investors, in connection with the offer and sale of securities. As such, Plaintiffs are entitled to summary judgment on their claim pursuant to Okla. Stat. tit. 71 § 1-501(3). Plaintiffs are entitled to summary judgment on all of their claims under the OUSA.

Having granted summary judgment in favor of the Plaintiffs with regard to liability on their claims against the Defendants, the Court turns to two recent filings by Defendants. Defendants Darren Lee and Simon Yang filed individual Requests for Damages. In order to seek damages against the Plaintiffs, the Defendants would have needed to amend their answers to include counterclaims. However, in light of the Court's conclusion that summary judgment is appropriate in favor of Plaintiffs against Defendant Yang and relief Defendant Lee, and because Defendants have not made sufficient factual allegations to sustain claims, especially in light of the evidence presented by the Plaintiffs in support of their motion for summary judgment, the Defendants' motions are DENIED.

For the reasons set forth herein, the Plaintiffs' motion for summary judgment is GRANTED with regard to Defendants' liability. Unless the parties request a jury trial within five days of entry of this Order, the Court will conduct a non-jury trial on the issue of

damages and penalties on November 8, 2010. Defendant Darren Lee's Request for Damages is DENIED. Defendant Simon Yang's Request for Damages is DENIED.

IT IS SO ORDERED this 27th day of October 2010.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

U.S. COMMODITY FUTURES)
TRADING COMMISSION and)
OKLAHOMA DEPARTMENT OF)
SECURITIES ex rel. IRVING L. FAUGHT,)

Plaintiffs,)

v.)

CASE NO CIV-09-1284-R

PRESTIGE VENTURES CORP.,)
Panamanian corporation, FEDERATED)
MANAGEMENT GROUP, INC.,)
a Texas corporation, KENNETH WAYNE)
LEE, an individual, and SIMON YANG)
a/k/a XIAO YANG a/k/a SIMON CHEN),)
an individual,)

Defendants; and)

SHEILA M. LEE, an individual,)
DAVID A. LEE, an individual, and)
DARREN LEE, an individual,)

Relief Defendants.)

ORDER

On November 8, 2010, this matter came to trial before this Court on the issues of sanctions and penalties to be ordered against Defendants and Relief Defendants. Plaintiffs U.S. Commodity Futures Trading Commission (the "Commission") and Oklahoma Department of Securities ("ODS") appeared by its counsel; and Defendant Simon Yang appeared pro se. The Receiver, Stephen J. Moriarty ("Receiver"), appeared in person.

Defendant Kenneth Wayne Lee and Relief Defendants David A. Lee, Darren Lee, and Sheila M. Lee did not appear.

On October 27, 2010, the Court granted Plaintiffs' Motion for Summary Judgment, finding Defendants liable for violations of the Commodity Exchange Act ("Act"), 7 U.S.C. §§ 1 et seq. (2006), Commission Regulations ("Regulations"), 17 C.F.R. §§ 1.1 et seq. (2009), and the Oklahoma Uniform Securities Act of 2004 ("OUSA"), Okla. Stat. tit. 71, §§ 1-101 through 1-701 (Supp. 2009). (Doc. No. 120). The Court further found that Relief Defendants Sheila Lee, David Lee, and Darren Lee directly or indirectly received substantial sums of money to which they had no legitimate ownership interest or entitlement from Defendants Prestige Ventures Corp. ("Prestige") and Federated Management Group, Inc. ("Federated") (hereinafter referred to collectively as the "Prestige Enterprise"). Having considered the submissions by the Plaintiff and Defendant Yang at the trial, the Court hereby finds as follows.

FINDINGS OF FACT

1. The Prestige Enterprise received at least \$10,656,921 from investors between March 5, 2003 and November 30, 2009 (the "Relevant Time Period").
2. The Prestige Enterprise returned \$3,357,732 to investors during the Relevant Time Period.
3. The Prestige Enterprise received \$469,507 in investments from Simon Yang and disbursed \$133,500 to him during the Relevant Time Period.

4. The Prestige Enterprise received \$17,108 from Sheila Lee and disbursed \$728,953 to or for the benefit of Sheila Lee during the Relevant Time Period.

5. The Prestige Enterprise received \$190 from David Lee and disbursed \$574,464 to or for the benefit of David Lee during the Relevant Time Period.

6. The Prestige Enterprise received \$15,162 from Darren Lee and disbursed \$654,101 to or for the benefit of Darren Lee during the Relevant Time Period.

7. Kenneth Lee and Sheila Lee's residence, having a legal description of Lot 30, Phase 2A, Berkleigh at Parkwest, Mt. Pleasant, Charleston County, South Carolina, street address 1660 Jorrington Street, Mt. Pleasant, South Carolina ("Kenneth and Sheila Lee Residence"), was purchased with funds received by the Prestige Enterprise from investors and is an asset of the Prestige Enterprise.

8. Darren Lee's residence, having a legal description of Lot 165, Tract J, Phase II, Palmetto Hall at Dunes West, Mt. Pleasant, Charleston County, South Carolina, street address 2676 Palmetto Hall Boulevard, Mt. Pleasant, South Carolina ("Darren Lee Residence"), was purchased with funds received by the Prestige Enterprise from investors and is an asset of the Prestige Enterprise.

9. A boat (2004 Edgewater 175 cc, Boat registration number 1016BR, Hull number DMA03840H304) registered to David Lee and Darren Lee, along with an engine (2004 Yamaha F115, #68VL1018414, Engine serial number MAA0712198) and trailer (2004 Trailer, AA6515-17, #40ZBA1712Z3P101627) (hereinafter collectively referred to as the

“Edgewater Boat”), were purchased with funds received by the Prestige Enterprise from investors and are assets of the Prestige Enterprise.

CONCLUSIONS OF LAW

1. Section 6c(d)(1) of the Act, and Regulation 143.8, provide that the Commission may seek, and a District Court of the United States shall have jurisdiction to impose, a civil monetary penalty for violations of the Act and Regulations in the amount of not more than the greater of i) triple the monetary gain to each person for the violation, or ii) \$110,000 for violations committed between November 27, 1996 and October 22, 2000, \$120,000 for violations committed between October 23, 2000 and October 22, 2004, \$130,000 for violations committed between October 22, 2004, and/or \$140,000 for violations committed on or after October 23, 2008.

2. Upon a proper showing, this Court may enter a permanent injunction to enforce compliance with the Act and any rule, regulation or order thereunder. 7 U.S.C. § 13a-1.

In order to be entitled to injunctive relief, [the CFTC must] show a reasonable likelihood that [a defendant] would violate the Act in the future. The factors to be considered are “the egregiousness of the defendant’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant’s assurances against future violations, the defendant’s recognition of the wrongful nature of his conduct, and the likelihood that the defendant’s occupation will present opportunities for future violations.”

CFTC v. Risk Capital Trading Group, Inc., 452 F.Supp.2d 1229, 1247 (N.D.Ga. 2006)(quoting *SEC v. Ginsburg*, 362 F.3d 1292, 1304 (11th Cir. 2004))(citation and quotation omitted).

3. The Court finds that in light of Defendants' prior conduct, notably Defendant Lee's prior conviction for fraud-related activities, Defendants defrauded investors out of millions of dollars, which were whittled away to thousands, yet continue to refuse to acknowledge in any manner their misdeeds, that there is a reasonable likelihood that Defendants will violate the Act in the future. For this reason, and for the reasons set forth in the Court's order granting Plaintiffs summary judgment, permanent injunctive relief is warranted.

4. "[T]he Court has the authority to award 'ancillary equitable relief,' including restitution." The purpose of restitution is to "restore the status quo and order [] the return of that which rightfully belongs to" the investors. *Commodity Futures Trading Com'n v. Brockbank*, 505 F.Supp.2d 1169, 1175 (D.Utah 2007).

5. The Court finds restitution is an appropriate remedy for Defendants, as more fully set out below.

6. Imposition of a substantial civil monetary penalty is appropriate in this case because certain Defendants' violations of the Act and Regulations were egregious.

THEREFORE, IT IS ORDERED THAT:

The Defendants and all persons insofar as they are acting in the capacity of their agents, servants, employees, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with them who receive actual notice of such order by personal service or otherwise, shall each be permanently restrained, enjoined and prohibited from directly or indirectly:

1. engaging in conduct in violation of Sections 4k(2), 4m(1), 4o(1), 6(c) and 9(a)(3) of the Act, 7 U.S.C. §§ 6k(2), 6m(1), 6o(1), 9(c) and 13(a)(3) (2006), Sections 4b(1)(A)-(C) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 6b(1)(A)-(C), Regulations 4.20(a)(1) and (b) and 4.21(a)(1) and (b), 17 C.F.R. §§ 4.20(a)(1) and (b) and 4.21(a)(1) and (b) (2009), and Sections 1-301, 1-402, and 1-501 of the OUSA;

2. trading on, or subject to the rules of, any registered entity (as that term is defined in Section 1a(29) of the Act, 7 U.S.C. § 1a(29)(2006));

3. entering into any transactions involving commodity futures, options on commodity futures, commodity options (as that term is defined in Regulation 32.1(b)(1), 17 C.F.R. § 32.1(b)(1) (2009)) (“commodity options”), and/or foreign currency (as described in Sections 2(c)(2)(B) and 2(c)(2)(C)(I) of the Act as amended by the CRA, to be codified at 7 U.S.C. §§ 2(c)(2)(B) and 2(c)(2)(C)(I)) (“forex contracts”) for their own personal account or for any account in which they have a direct or indirect interest;

4. having any commodity futures, options on commodity futures, commodity options, and/or forex contracts traded on their behalf;

5. controlling or directing the trading for or on behalf of any other person or entity, whether by power of attorney or otherwise, in any account involving commodity futures, options on commodity futures, commodity options, and/or forex contracts;

6. soliciting, receiving, or accepting any funds from any person for the purpose of purchasing or selling any commodity futures, options on commodity futures, commodity options, and/or forex contracts;

7. applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009);

8. acting as a principal (as that term is defined in Regulation 3.1(a), 17 C.F.R. § 3.1(a) (2009)), agent or any other officer or employee of any person registered, exempted from registration or required to be registered with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2009);

9. transacting business in and/or from the state of Oklahoma as an issuer, issuer agent, broker-dealer, broker-dealer agent, investment adviser and investment adviser representative, as those terms are defined by Section 1-102 of the OUSA;

10. transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing, dissipating, destroying, converting, or otherwise disposing of any asset subject to this Order or any other asset of the Prestige Enterprise, except as provided in this Order; and

11. interfering with the Receiver's performance of his duties including, but not limited to, the acquisition and liquidation of assets of the Prestige Enterprise.

IT IS FURTHER ORDERED THAT:

1. The Receiver is hereby authorized to take possession of, market and sell the Kenneth and Sheila Lee Residence, the Darren Lee Residence and the Edgewater Boat. Receiver is hereby authorized to take all actions necessary to close such sales including, but

not limited to, (a) retention of real estate professionals, brokers and/or auctioneers, (b) execution of a deed, bill of sale or other conveyance document and (c) payment of a reasonable real estate commission and/or auctioneer fee.

2. Kenneth Lee, Sheila Lee, and any other occupant(s) of the Kenneth and Sheila Lee Residence, shall vacate the Kenneth and Sheila Lee Residence within twenty (20) days of the date of entry of this Order.

3. Having previously concluded that the relief Defendants, Sheila Lee, Darren Lee and David Lee were in possession of ill-gotten funds to which they lacked a legitimate claim, the Court orders:

- a. Sheila Lee shall disgorge the total sum of \$711,845.
- b. Darren Lee shall disgorge the total sum of \$638,938.
- c. David Lee shall disgorge the total sum of \$574,273.

4. Darren Lee, David Lee, and any other occupant(s) of the Darren Lee Residence shall vacate the Darren Lee Residence within twenty (20) days from the date of entry of this Order.

5. Prestige, Federated, and Kenneth Lee shall, jointly and severally, pay restitution totaling \$5,857,503.00 (plus prejudgment and post-judgment interest¹) to the Receiver for distribution to the Prestige Enterprise investors. This restitution obligation

¹ Prejudgment interest is a matter of discretion for the Court, and is based on the wrongful deprivation of an aggrieved party of its money, including deprivation of the opportunity to earn a return on that money. See *SEC v. Hasho*, 784 F.Supp. 1059, 1112 (S.D.N.Y. 1992). The Court concludes that given the blatant nature of the fraud and the widespread abuse of investors' money by Defendants, that prejudgment interest is appropriate.

represents the amount of funds that the Prestige Enterprise investors deposited into bank accounts controlled by Defendant Lee as a result of the course of illegal conduct alleged in the Complaint, less the amount of identified funds paid to investors. The amount to be paid to each investor shall be determined by the Court after recommendation by the Receiver.

6. Prestige and Federated shall, jointly and severally, pay a civil monetary penalty in the amount of \$18.2 million to the Commission, plus post-judgment interest, within ten (15) days of the date of the entry of this Order. This represents \$130,000 times the 140 known investors. Should Defendants Prestige and Federated not satisfy their civil monetary penalty obligation within fifteen (15) days of the date of entry of this Order, post judgment interest shall accrue on the obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

7. Kenneth Lee shall pay a civil monetary penalty in the amount of \$7.2 million to the Commission, reflecting three times his direct, personal monetary gain of approximately \$2.4 million, plus post-judgment interest, within fifteen (15) days of the date of the entry of this Order. Should Kenneth Lee not satisfy his civil monetary penalty obligation within fifteen (15) days of the date of entry of this Order, post judgment interest shall accrue on the obligation beginning on the date of entry of this Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Order pursuant to 28 U.S.C. § 1961.

8. Simon Yang shall pay restitution totaling \$133,000 (plus prejudgment and post-judgment interest) to the Receiver for distribution to the Prestige Enterprise investors.

The amount reflects the amount paid to Simon Yang by Defendants during the relevant time period. The amount to be paid to each investor shall be determined by the Court after recommendation by the Receiver.

9. The Court finds that in view of the prior order of restitution set forth herein and disgorgement remedies already imposed and his inability to pay a civil fine, that no civil fine will be imposed as to Defendant Yang.

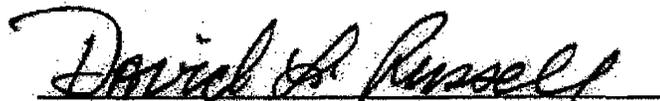
10. Simon Yang is precluded from making a claim for restitution or any return of funds or payment from Prestige, Federated, Kenneth Lee, the Receiver and/or the Receivership.

11 All payments by Defendants pursuant to this Order shall first be applied to satisfaction of the restitution obligations. After satisfaction of the restitution obligations, Defendants' payments pursuant to this Order shall be applied to satisfy the civil monetary penalty obligations.

12. Stephen J. Moriarty, as Receiver, is hereby authorized, empowered and directed to take all necessary and appropriate acts to carry out and implement this Order in accordance with its terms without further order of the Court. This includes, but is not limited to, the acquisition and liquidation of the assets of the Prestige Enterprise. Receiver shall make a report to the Court on all asset sales and will deposit the proceeds from such sales in a segregated account pending further Order of this Court.

13. After the termination of the Receivership, any restitution payment that is made shall be made in accordance with the terms of the order terminating the Receivership and/or discharging the Receiver.

IT IS SO ORDERED this 29th day of November, 2010.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE