

**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.

²The 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

⁸The 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 II*”); *Cherif*, 933 F.2d at 414. District courts have the power to order disgorgement from a relief defendant upon a finding that []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 “[i]t 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 purchase 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.

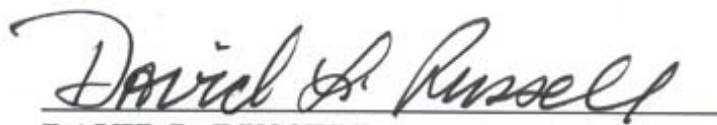
as a result of trading with the fictional Legacy Trading System. Despite reporting only gains to participants, the reality was that the entities sustained trading losses exceeding \$4.3 million dollars. Even when he knew he could not repay investors, Defendant Lee continued to assert that he was suffering 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