UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. Case No. 8:09-cv-0087-T-26TBM

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.

Defendants,

SCOOP REAL ESTATE, L.P.
VALHALLA INVESTMENT PARTNERS, L.P.,
VALHALLA MANAGEMENT, INC.
VICTORY IRA FUND, LTD,
VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT,

Relief Defendants.
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RECEIVER'S VERIFIED (1) EMERGENCY MOTION TO ENJOIN/STAY TEXAS RAILROAD COMMISSION ADMINISTRATIVE PROCEEDING FILED AGAINST RECEIVERSHIP ENTITY QUEST ENERGY MANAGEMENT GROUP, INC.; AND (2) MOTION FOR ORDER TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED AGAINST HATCHETT LEASEHOLDERS AND THEIR REPRESENTATIVES FOR FAILURE TO COMPLY WITH THE COURT'S ORDER APPOINTING RECEIVER

Burton W. Wiand, as Receiver (the "**Receiver**") for Quest Energy Management Group, Inc. ("**Quest**"), brings this Motion for two reasons.

First, Byron Hatchett, who purportedly represents a Quest leaseholder, recently initiated an administrative proceeding (the "**RRC Proceeding**") before the Texas Railroad

Commission ("**RRC**") against Quest despite being repeatedly notified of the Receiver's appointment over Quest and that the Order Appointing Receiver prohibited the prosecution of any actions relating to Quest in any forum besides this Court. The RRC Proceeding threatens to disturb Quest's assets by requiring Quest to show a good-faith claim to operate the pertinent lease and to impose regulatory liabilities and responsibilities on Quest if the RRC were to conclude that Quest lacks a good faith claim. The Receiver seeks to enjoin, or in the alternative stay, the RRC Proceeding, as the prosecution of that action and potential disturbance of Quest's assets violates this Court's injunction and complete jurisdiction over Quest and its assets.

Second, the Receiver moves the Court to fashion appropriate relief to enjoin future violations of the Order Appointing Receiver. Specifically, the Receiver seeks an Order to Show Cause as to why Byron Hatchett and John Carney, who have purported to represent the leaseholders in discussions with the Receiver, should not be held in contempt for their conduct. The Receiver also seeks an Order directing all parties with an interest in the Hatchett Lease (as defined below) to immediately cease and desist from taking any action in violation of the Order Appointing Receiver. The Hatchett Lease leaseholders and their representatives should also be ordered to pay the attorney's fees and costs incurred by the Receiver in filing this Motion. The request for an order enjoining the RRC is made on an emergency basis not only because of the pending nature of the RRC Proceeding but also because the Receiver is in advanced negotiations to sell Quest's assets. The Receiver has provided the RRC with a draft of this Motion and the RRC has indicated it opposes any request to enjoin the RRC Proceeding. Further, counsel for the Receiver has asked Byron Hatchett to withdraw the RRC Proceeding, but Byron Hatchett has refused to do so.

BACKGROUND

On January 21, 2009, the Securities and Exchange Commission instituted this enforcement action following the collapse of a massive Ponzi scheme (the "**scheme**") perpetrated by Arthur Nadel ("**Nadel**") through various hedge funds from 1999 until January 2009. That same day, the Court entered an order appointing Burton W. Wiand as Receiver for Defendants Scoop Capital and Scoop Management, Inc., and Relief Defendants Scoop Real Estate, L.P.; Valhalla Investment Partners, L.P.; Valhalla Management, Inc.; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; Viking IRA Fund, LLC; Viking Fund, LLC; and Viking Management, LLC (the "**Order Appointing Receiver**"). (*See generally* Order Appointing Receiver (Doc. 8).) As part of the scheme, Nadel and his purported business partners, Neil and Christopher Moody (the "**Moodys**"), paid themselves more than $90 million in bogus management and performance fees which were based on fabricated asset values and performance data. As a result of that conduct, Nadel was charged and pled guilty to securities, mail, and wire fraud, and died in prison while serving a 14-year sentence.

During the course of the ten-year scheme, Nadel and the Moodys used scheme proceeds – money stolen from the Hedge Funds' investors – to found or otherwise fund numerous businesses. Since the inception of this Receivership and in accordance with his mandate to marshal assets for the benefit of defrauded investors, the Receiver has successfully sought expansion of the Receivership to include those businesses.[1] Quest is one such entity that was funded in large part with scheme proceeds.

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[1] Those businesses include Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; Laurel Mountain Preserve Homeowners Association, Inc.; Marguerite J. Nadel Revocable Trust UAD 8/2/07; Guy-Nadel Foundation, Inc.; Lime

Quest is an oil and gas exploration and production company based in Albany, Texas, that received over $5 million in funding from Nadel's scheme. In February 2009, the Receiver began communicating with Quest's principals, Paul and Jeffrey Downey (the "**Downeys**"), regarding recovery of the scheme proceeds provided to Quest. After considerable time and effort, the Receiver reached a conditional agreement to resolve his claims against Quest dependent upon receipt of $2.3 million from Quest. Quest failed to make this payment, ignored the Receiver's repeated demands for payment, and subsequently informed the Receiver it was having cash flow problems. Because of Quest's failings and to try to preserve Quest's value for the benefit of the Receivership estate and, ultimately, for defrauded investors in Nadel's scheme, on March 21, 2013, the Receiver moved to expand the Receivership to include Quest (Doc. 993). Over Quest's opposition, the Court granted the Receiver's motion and appointed Mr. Wiand as Receiver over Quest (Doc. 1024).[2]

The Receiver has taken significant efforts to carry out his duties of securing Quest's assets and preserving them for the benefit of its defrauded victims.[3] The Receiver traveled to Texas to secure Quest's office, interviewed personnel, and examined Quest's records and assets. The Receiver also hired a forensic accountant to examine Quest's records, which

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Avenue Enterprises, LLC; A Victorian Garden Florist, LLC; Viking Oil & Gas, LLC; Home Front Homes, LLC; Traders Investment Club; Summer Place Development Corporation; Respiro, Inc.; and Quest.

[2] The Downeys were later the subject of an enforcement action by the SEC alleging that they defrauded Quest investors, and on July 25, 2016, the U.S. District Court for the Northern District of Texas entered summary judgment against the Downeys and in favor of the SEC. *See S.E.C. v. Paul R. Downey et al.*, Case No. 14-cv-00185-C (N.D. Tex. July 25, 2016).

[3] While Quest is one of several entities in Receivership, the Receiver has segregated the management and administration of Quest's assets from other entities and assets given that Quest was neither part of nor did it solicit investors for Nadel's scheme. This includes only using funds generated by Quest's assets to preserve its assets.

revealed that Quest was insolvent and seriously mismanaged prior to its addition to the Receivership. Quest also faced serious regulatory issues as a result of its failure to conduct basic well maintenance and management for some time. If uncorrected, these issues would have prevented Quest from legally operating its wells and thus prevented any potential sale to a third party. The Receiver thus spent considerable time and expense to resolve these regulatory issues as well as implement a maintenance and repair plan. It has been the Receiver's strategy to preserve the value of Quest's assets while also seeking a purchaser for Quest and its assets. Following the Receiver's appointment over Quest, the Receiver notified all parties – including the Hatchetts – with a potential interest in Quest of his appointment and provided them with copies of the pertinent Orders Appointing Receiver.

The Hatchett Lease

At the time it was placed in Receivership, Quest maintained leases on three fields which contained a total of 90 gas and oil wells. A significant number of these wells were located on a plot of land in Callahan County, Texas, consisting of twenty-seven tracts covering approximately 4,346.63 mineral acres (the "**Hatchett Lease**"). The Lessors of the Hatchett Lease were Jim Hatchett, Sarah Hatchett, and Jerrye Hatchett (collectively along with any heirs or assignees, the "**Hatchetts**"). The Hatchett Lease became effective April 15, 2011, over two years before Quest was placed into receivership, and carried a five-year term with certain provisions extending the lease based upon various production activities. Specifically, the Hatchett Lease provided that

> 5. If at the expiration of the primary term, oil or gas is not being produced on said land, but Lessee is then engaged in drilling or reworking operations thereon, or shall have completed a dry hole thereon within 60 days prior to the end of the primary term, the lease shall remain in force so long as operations on

> said well or for drilling or reworking of any additional wells are prosecuted with no cessation of more than 60 consecutive days, and if they result in the production of oil or gas, so long thereafter as oil or gas is produced from said land. If, after the expiration of the primary term of this lease and after oil or gas is produced from said land, the production thereof should cease from any cause, this lease shall not terminate if Lessee commences operations for drilling or reworking within 60 days after the cessation of such production, but shall remain in force and effect so long as such operations are prosecuted with no cessation of more than 60 consecutive days, and if they result in the production of oil or gas, so long thereafter as oil or gas is produced from said land. In the event a well or wells producing oil or gas in paying quantities should he brought in on adjacent land and within 330 feet of and draining the leased premises, Lessee agrees to drill such offset well or wells as a reasonably prudent operator would drill under the same or similar circumstances. Lessee may at any time execute and deliver to Lessor or place of record a release or releases covering any portion or portions of the above described premises and thereby surrender this lease as to such portion or portions and be relieved of all obligations as to the acreage surrendered.

Following his appointment and pursuant to the Order Appointing Receiver, the Receiver's main goal has been the preservation of Quest, and by extension its assets such as the Hatchett Lease, and this has included consistent maintenance and upkeep of these assets. This includes the maintenance of injection wells, water extraction activities, renting rigs to pull tubing for a hydraulic fracturing job, and work-overs of several wells in 2015 and 2016. The Receiver also entered into an agreement to sell Quest's gas production from the Hatchett Lease in August 2015, which included the company's replacement of meters and gas lines on the property. These efforts have not only preserved Quest's value to a potential purchaser but have also resulted in the production of saleable oil and gas. To date, the Hatchett Lease has produced over 200 barrels of oil and over 11,000 MCF of natural gas, and there are currently 90 barrels of oil on hand and ready for sale.

The Receiver's agents regularly visited and inspected the wells on the Hatchett Lease both before and after April 2016 on a weekly or bi-weekly basis, and also engaged in numerous

discussions relating to the reworking or drilling of new wells. These discussions resulted in the decision to drill at least one new well on the Hatchett Lease in or around June 2016, and the Receiver's agents subsequently took various actions for several months that were required to drill a new well. This included communications with the Texas Groundwater Advisory Unit, discussions with vendors and suppliers, and obtaining a survey on the land. This also resulted in a filed permit application with the Texas Railroad Commission to drill the new well. The expenses required for these various efforts were paid by the Receiver, and the Hatchetts were aware of these efforts. The Receiver's ability to carry out these efforts, however, has been unnecessarily obstructed by the Hatchetts' actions as described below.

The Receiver believes these efforts operated to extend the Hatchett Lease beyond the primary term. These efforts had been ongoing when, in October 2016, the Receiver received the 2016 Letter (as defined below) which constructively evicted the Receiver and Quest from the Hatchett Lease and prohibited any of Quest's agents from entering the Hatchett Lease. In other words, the Receiver was constructively and wrongfully evicted from the Hatchett Lease and, but for this wrongful eviction, would have continued carrying on reworking and drilling operations to extend the lease term and preserve Quest's value.

The Hatchetts' Interference With Quest And The Receivership

The Hatchetts have engaged in a lengthy pattern of interference with the Receiver and Quest that started immediately after Quest was placed in receivership and most recently resulted in the filing of the RRC Proceeding. When the Receiver traveled to secure Quest's office and assets following entry of the Order Appointing Receiver in May 2013, Bill Hatchett appeared at the office and indicated that he planned to take various actions that would interfere

with and/or adversely affect Quest's assets and interests. *See* Declaration of Burton W. Wiand, as Receiver, which is being filed contemporaneously with this Motion (the "**Receiver's Decl.**") at ¶ 4. The Receiver informed Bill Hatchett, an individual with an interest in the Hatchett Lease, that Quest was in receivership, provided him with a copy of the Order Appointing Receiver, and explained that he was prohibited from taking any action against Quest absent court approval. *Id.* Following this initial conversation, the Receiver's counsel sent correspondence dated June 28, 2013, to Bill Hatchett and other known parties with an interest in the Hatchett Lease, including Sarah Hatchett, Jim Roy Hatchett, Norma Carney, S. Jeanne Gregory, and Peter Gryska, providing copies of the pertinent Orders Appointing Receiver. *Id.* ¶ 5, Ex. 1. That correspondence specifically highlighted Paragraph 15 of the Order Reappointing Receiver enjoining any persons with notice of the Order from disturbing receivership assets or prosecuting any actions or proceedings involving the Receiver or affecting receivership property. *Id.* Two weeks later, similar correspondence was sent to Bill Hatchett and addressed to John H. Carney, who had represented himself as Bill Hatchett's attorney, again noting Paragraph 15 of the Order Reappointing Receiver. *Id.* at ¶ 6, Ex. 2.

Approximately one month after this correspondence, the Receiver was informed by TransOil, an entity that had purchased oil generated from the Hatchett Lease, that it had been contacted on August 15, 2013, by Bill H. Hatchett and notified that "the [Hatchett Lease] has terminated."[4] Receiver's Decl. at ¶ 7, Ex. 3. Neither the Receiver nor his counsel were

[4] In July 2013, the Receiver learned that Quest, likely at the direction of the Downeys, had purportedly assigned a significant portion of the Hatchett Lease to a third party while the Receiver's efforts to place Quest in receivership were public but before the Receiver was appointed over Quest. The Receiver subsequently reached out to this third party who ultimately withdrew from the purported assignment.

contacted by Bill Hatchett regarding this matter prior to being notified by TransOil. As a result of the uncertainty created by Bill Hatchett in TransOil's mind, TransOil suspended the oil sale from the Hatchett Lease as well as the payment of sale proceeds to Quest. The Receiver was subsequently forced to expend time and expense to rectify this situation, and the suspended proceeds were not paid to the Receiver until October 2015. *Id.* at ¶ 7. On August 27, 2013, the Receiver sent correspondence to Bill Hatchett advising that the interference with TransOil's sale of Quest's oil violated the Order Appointing Receiver. *Id.* at ¶ 8, Ex. 4. As a result of this interference, Quest did not receive its share of the suspended oil payments until October 30, 2015 – over two years after the Hatchetts' initial interference. *Id.* The Hatchetts' wrongful interference – which ultimately required more than two years of efforts by the Receiver to resolve – should estop them from any argument that the Hatchett Lease has terminated, but the existence and effect of such estoppel can only be determined by this Court.

On October 14, 2016, correspondence was sent to the Receiver by John Carney on behalf of Hatchett Land & Development Co. LLC (the "**2016 Letter**"), with several individuals copied including Byron Hatchett and Jim R. Hatchett. *Id.* at ¶ 9, Ex. 5. That correspondence requested contact information for the Receiver's insurance carrier and bonding company as a result of "significant liabilities arising under the lease with the Hatchett family interests...," indicated that "you have no right to enter or be on the property for any reason," and stated:

> YOU ARE ADVISED THAT ANY ENTRY BY YOU OR ANY ONE PURPORTING TO BE ACTING ON YOUR BEHALF ONTO THE HATCHETT RANCH IS TRESPASSING. YOU HAVE FORFEITED ANY AND ALL RIGHTS TO SALVAGE ANY EQUIPMENT OR PIPELINE.

Receiver's Decl. at ¶ 9, Ex. 5. At that time, Quest had significant machinery and well-serving assets valued between $75,000 and $200,000 located on the land covered by the Hatchett Lease. *Id.* at ¶ 10.

In response to the 2016 Letter, the Receiver's counsel sent correspondence dated October 24, 2016 "urg[ing] you to review the Order Appointing Receiver" and stating that "any effort to interfere with the Receiver's authority or assets within his control will directly violate the Federal Court's order." *Id.* at ¶ 11, Ex. 6. That correspondence also informed Mr. Carney that the Receiver was actively engaged in efforts to sell Quest and its assets and suggested scheduling a call with the Receiver to provide further information. *Id.* No response was received from the Hatchetts or Mr. Carney.

The RRC Proceeding

On November 29, 2016, the RRC notified the Receiver that a proceeding had been initiated against Quest as a result of a formal complaint received from Byron W. Hatchett, of the Hatchett Law Firm (the "**Hatchett Complaint**"). *Id.* at ¶ 12, Ex. 7. The Hatchett Complaint requested that Quest "be noticed to bring forth a good faith claim as to why they should still control the Hatchett Ranch Lease after the terms of the lease have expired," and also requested that the RRC take certain actions with respect to the Hatchett Lease, including the withdrawal of B14 plugging extensions and setting of a deadline "for completion of their plugging liability." *Id.* Quest was given a deadline of December 29, 2016, to either file evidence in support of its good faith claim to operate the referenced lease(s) or request a hearing.

On December 28, 2016, the Receiver sent correspondence to the RRC advising that Quest was in receivership, enclosing the Order Appointing Receiver, and stating that "any

action or proceeding in contravention of these Orders would require the Court's approval." Receiver's Decl. at ¶ 13, Ex. 8. At the RRC's request, the Receiver later hand-delivered that correspondence and enclosures to the RRC on January 12, 2017, and reiterated that "the orders issued by the federal district court reflect that it will retain exclusive jurisdiction over Quest EMG, Inc. and its assets." *Id.* at ¶ 14, Ex. 9. The Receiver also reiterated his request for an extension of time to demand a hearing until the issue would be resolved or, in the event no extension was granted, a hearing. On January 19, 2017, the RRC sent correspondence to the Receiver asking the parties to submit a "mutually agreeable date for a hearing on the merits." Receiver's Decl. at ¶ 15, Ex. 10. The Receiver has not responded to this request as any dispute regarding Quest should be brought before this Court.

ARGUMENT

I. THIS COURT HAS THE POWER TO ENJOIN OTHER PROCEEDINGS PURSUANT TO THE ALL WRITS ACT

The Court's power to stay proceedings in other courts or forums is derived from (1) the All Writs Act pursuant to 28 U.S.C. § 1651 and (2) the inherent powers of an equity court to fashion relief. *See generally SEC v. Nadel*, 2009 WL 2868642 (M.D. Fla. 2009); *SEC v. Credit Bancorp, Ltd.*, 93 F. Supp. 2d 475 (S.D.N.Y. 2000). The All Writs Act empowers United States District Courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). The ability to enjoin state administrative proceedings falls within the scope of the All Writs Act. *See Del Pino v. AT & T Info. Sys., Inc.*, 921 F. Supp. 761, 765 (S.D. Fla. 1996) (recommending issuance of preliminary injunction barring further action in a pending state administrative proceeding); *U.S. Commodity Futures Trading Com'n v. Amaranth Advisors, LLC*, 523 F.

Supp. 2d 328, 336 (S.D.N.Y. 2007) (court had authority to stay administrative proceeding "if such a stay is necessary to protect this Court's jurisdiction."); *United States v. Norton*, 640 F. Supp. 1257, 1262 (D. Colo. 1986) ("Therefore, since this court obtained jurisdiction first, I have the power to enjoin an administrative proceeding from exercising its jurisdiction over the subject matter and the parties.")

Courts also recognize the necessity for such relief in cases involving receivers in SEC enforcement actions like this case given the complex nature and multitude of parties involved in receivership proceedings. *See Credit Bancorp, Ltd.*, 93 F. Supp. 2d at 476 (granting receiver's motion for order under All Writs Act and inherent power of Court to issue all orders necessary or appropriate in aid of its jurisdiction); *SEC v. Wencke*, 577 F.2d 619, 622–623 (9th Cir. 1978) (enjoining further proceedings in related state-court receivership because doing so "was necessary for the [federal] receivership to achieve its purposes"); *see also Becker v. Greene*, 2009 WL 2948463, *4 (M.D. La. 2009) (noting "[t]he Receiver and the Receivership Court's power to protect and marshal assets would be severely diminished if every court in the nation, state or federal, could make its own determination of what constitutes an asset of the 'Receivership Estate.'"). As such, pursuant to a federal court's power under the All Writs Act, "a federal court may enjoin actions in other jurisdictions that would undermine its ability to reach and resolve the merits of the dispute before it." *Credit Bancorp, Ltd.*, 93 F. Supp. 2d at 476 (internal quotations omitted). The Receiver's request to enjoin the RRC Proceeding falls squarely within the power of the Court under the All Writs Act.

II. THIS COURT'S EXTREMELY BROAD POWER OVER EQUITY RECEIVERSHIPS INCLUDES THE POWER TO ENFORCE ITS ORDERS AND ENJOIN COMPETING CASES

Independent of the All Writs Act, the Court also has broad inherent powers to supervise an equity receivership and determine the appropriate action to be taken in the administration of the receivership. *See, e.g., SEC v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010); *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989); *SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *See Vescor Capital Corp.*, 599 F.3d at 1193–1194 (concluding stay of all actions related to property held within receivership estate was well within the district court's broad equitable powers to fashion relief). The purpose of establishing a receivership is "to protect the estate property and ultimately return that property to the proper parties in interest," and a receiver is vested with the duty and authority to marshal and preserve assets to effectuate an orderly, efficient, and equitable administration. *Credit Bancorp, Ltd.*, 93 F. Supp. 2d at 476–477; *Vescor Capital Corp.*, 599 F.3d at 1197 (observing "in a case involving a Ponzi scheme, the interests of the [r]eceiver are very broad and include not only protection of the receivership *res*, but also protection of defrauded investors and considerations of judicial economy."); *see also* 28 U.S.C. § 754 (noting a receiver "appointed in any civil action or proceeding involving property . . . shall be vested with complete jurisdiction and control of all such property with the right to take possession thereof."). In fact, "[s]uch efforts would be rendered meaningless if third parties are permitted to obtain judgments against the estate and thereby deplete its assets." *Credit Bancorp, Ltd.*, 93 F. Supp. 2d at 477 (internal quotations omitted). As such, a district court presiding over an equity receivership in a Commission enforcement action has the power to stay "competing actions." *Id.*

Courts have expressly recognized the need in receivership proceedings to stay competing actions. *See Credit Bancorp, Ltd.*, 93 F. Supp. 2d at 477 (observing "where a court has appointed a receiver and obtained jurisdiction over the receivership estate, as here, the power to stay competing actions falls within the court's inherent power to prevent interference with the administration of that estate" and "[t]he power of a receivership court to prevent the commencement, prosecution, continuation, or enforcement of such [competing] actions has been recognized specifically in the context of securities fraud cases."); *see also Eller Industries, Inc. v. Indian Motorcycle Mfg., Inc.*, 929 F.Supp. 369, 373 (D. Colo. 1995) ("Federal Courts have the power, if necessary, to take control over an entity and impose a receivership free from interference in other court proceedings."); *Oppenheimer v. San Antonio Land & Irrigation Co.*, 246 F. 934, 935 (5th Cir. 1917) (noting district court has "complete jurisdiction and control" over receivership property, and, thus, "was not in error in restraining proceedings in another court involving the same subject-matter."). Indeed, the absence of such authority would render the receivership process meaningless because non-parties could deplete the receivership estate or prevent it from recovering assets simply by filing competing actions. *See Credit Bancorp, Ltd.*, 93 F. Supp. 2d at 477; *see also Foshee v. Forethought Fed. Sav. Bank*, 2010 WL 3239272, *10 (W.D. Tenn. 2010) (theorizing that allowing plaintiffs to proceed with a separate federal action would serve to circumvent Receiver's exclusive control over receivership property).

The Court's inherent authority to supervise the receivership also allows it to enforce its orders.[5] Each of the Orders Appointing and Reappointing Receiver requires that the Receiver "marshal and safeguard all of the assets of the Receivership Entities and take whatever actions are necessary for the protection of the investors." (*See* Docs. 8, 140, 493, 935, and 984 at ¶ 6). The Receiver has expended significant effort to marshal and secure Quest's assets, investigate the company's financial condition, and preserve the company's assets while seeking a potential buyer. Quest's leases, including the Hatchett Lease, are valuable assets that significantly factor into Quest's valuation to a potential purchaser. The Orders Appointing and Reappointing Receiver also prohibit any person with notice of the Orders from "disturbing the assets or proceeds of the receivership or from prosecuting any actions or proceedings which involve the Receiver or which affect the property of the Defendants or Relief Defendants." The Hatchetts' prosecution of the RRC Proceeding, which seeks determinations on the merits of the Hatchett Complaint relating to Quest's assets and the imposition of liabilities by the RRC, not only expressly violates the Order but also directly threatens Quest's assets by seeking a determination as to Quest's interests in the Hatchett Lease. The Receiver would also be forced to expend assets to defend the RRC Proceeding. Thus, the Court should exercise its inherent authority to enjoin the RRC Proceeding and require that any claims relating to the Hatchett Lease be brought before this Court.

III. ALLOWING THE RRC PROCEEDING TO CONTINUE WILL DISADVANTAGE OTHER QUEST VICTIMS

[5] The Order Appointing Receiver over Quest provided that Quest "is specifically included within the ambit of the Court's previous orders appointing and reappointing Burton W. Wiand as the Receiver in this case" (Doc. 1024).

While the Receiver acts for the benefit of all defrauded investors, including the investors defrauded by Quest and its principals, the Hatchetts are acting solely for their own benefit in attempting to adjudicate Quest's interest in the Hatchett Lease and asking the RRC to impose obligations on the Receiver and Quest. The value of Quest to a potential purchaser is significantly enhanced by the inclusion of the Hatchett Lease, which contains approximately one-third of the drilled wells in which Quest has an interest. This attempt to interfere with Quest – and divest Receivership assets – will undeniably and detrimentally affect Quest's potential value to third parties. This would result in an improper preference to the Hatchetts and interfere with the Receiver's duty to marshal assets. *See e.g. SEC v. George*, 426 F.3d 786, 799 (6th Cir. 2005) ("'[E]quality is equity' as between 'equally innocent investors'...."); *see also Elliott*, 953 F.2d at 1570. The Hatchetts would thus benefit at the expense of other Quest victims with allowed claims, which would thwart the fundamental purpose of a receivership. *See SEC v. Pittsford Capital Income Partners, LLC*, 2007 WL 61096, *2 (W.D.N.Y. 2007) (concluding fundamental purpose of receivership is to protect estate property and ultimately return it to proper parties). As the Receiver's ability to make any distribution to Quest's victims through the court-approved claims process solely depends on the successful sale of Quest's assets, the Hatchetts' continued interference with the Receiver's efforts threaten those victims' chances of any recovery. Notably, neither the Hatchetts nor their agents or representatives submitted any claim in the Quest claims process established by this Court.

In receivership proceedings, courts are generally disinclined to allow non-parties to independently take action towards a recovery by instituting ancillary proceedings. *See Pittsford Capital Income Partners, LLC*, 2007 WL 61096 at *2 ("[G]ranting the relief

requested by the Judgment Creditors would defeat this fundamental purpose because only a handful of victims would receive close to full compensation while the pro rata shares available to the hundreds of other victims would be significantly diminished."); *see also Foshee*, 2010 WL 3239272 at *10 (granting receiver's motion to stay federal court proceeding due to possibility of conflicting claims to assets in dispute); *SEC v. Universal Financial*, 760 F.2d 1034, 1038 (9th Cir. 1985) (refusing to lift receivership stay to allow investors to litigate claims due to concerns of diminution of possible receivership estate); *Credit Bancorp, Ltd.*, 93 F. Supp. 2d at 476 (concluding that allowing non-party to continue prosecuting action would thwart Court's order directed at obtaining orderly and equitable administration of estate). Here, the Hatchetts' prosecution of the RRC Proceeding seeks to do exactly that by both impacting Quest's assets as well as imposing liabilities on Quest.

IV. JOHN CARNEY AND BYRON HATCHETT SHOULD BE REQUIRED TO SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT FOR THEIR REPEATED VIOLATIONS OF THE ORDER APPOINTING RECEIVER

"Courts also have the inherent power to sanction parties, lawyers, or both for engaging in conduct that abuses the judicial process." *Bray & Gillespie Mgmt. LLC v. Lexington Ins. Co.*, 2008 WL 4371345, at *4 (M.D. Fla. Sept. 22, 2008). Further, "[t]he court's inherent power to sanction also includes sanctioning non-parties for bad faith conduct." Id. at *5. Messrs. Carney and Hatchett have communicated with the Receiver on the Hatchetts' behalf, and both were repeatedly advised beginning in June 2013 of the Order Appointing Receiver and its provisions, including the prohibition of taking any action that could disturb Quest's assets. As this Motion and the accompanying Wiand Declaration illustrate, Messrs. Carney and Hatchett have willfully taken actions contrary to the terms and spirit of the Order Appointing Receiver.

This includes interfering with Quest's oil purchaser and reseller, prohibiting the Receiver's agents from entering the Hatchett Lease and collecting any equipment or pipeline, and initiating the RRC Proceeding. *See* Receiver's Decl. at ¶¶ 7-15. This pattern of defying the Order Appointing Receiver has directly interfered not only with the Receiver's duties to preserve Quest's assets but also impeded efforts to sell Quest and its assets to a third party. Given the aforementioned conduct, the Receiver seeks issuance of an Order to Show Cause directing Messrs. Carney and Hatchett to explain why they should not be held in contempt.

V. THE HATCHETTS SHOULD BE ORDERED TO IMMEDIATELY CEASE AND DESIST FROM ANY VIOLATIVE CONDUCT

The near-entirety of the Receiver's communications relating to the Hatchett Lease have been through either Messrs. Carney or Mr. Byron Hatchett, who have purported to represent the Hatchett leaseholders' interests. The Receiver is thus unaware as to whether the Hatchetts remain the sole parties with an interest in the Hatchett Lease or if any other individual(s) holds any interest in the lease. Additionally, it is unknown whether the Hatchetts or other parties with an interest in the Hatchett Lease were aware that Messrs. Carney and Hatchett were taking the above actions violating the Order Appointing Receiver.[6] Given this uncertainty, the Receiver requests that the Court enter an Order – and require that Messrs. Carney and/or Hatchett certify that such Order is provided to the Hatchetts and any other party in interest within seven days of entry of the Order – requiring the Hatchetts and any other party in interest, as well as their agents, attorneys, and representatives, to comply with the Order Appointing

[6] The Hatchetts and other parties believed to have an interest in the Hatchett Lease were provided notice of the Order Appointing Receiver and its provisions on June 28, 2013 in correspondence from the Receiver. Receiver's Decl. ¶ 5, Ex. 1.

Receiver. Specifically, the Receiver requests that the Order prohibit the Hatchetts and any other leaseholders from taking any actions that in any way impede or hinder the Receiver's administration of Quest's assets.

CONCLUSION

The RRC Proceeding is a "competing action" that should be enjoined, or in the alternative stayed, to both further the administration of the Receivership Estate and also prevent the disturbance of receivership assets. *See Credit Bancorp, Ltd.*, 93 F. Supp. 2d at 477. Accordingly, pursuant to the All Writs Act and the Court's equitable powers, the Receiver seeks an order enjoining the RRC Proceeding to allow the Receiver to marshal and secure Quest's assets and continue his efforts to realize value for all Quest victims through an asset sale. The Receiver also requests that the Court fashion appropriate relief to prevent the Hatchetts and their agents representatives from further violations of the Order Appointing Receiver through (1) entry of an Order to Show Cause directing John Carney and Byron Hatchett to appear at a hearing and explain why they should not be held in contempt; and (2) entry of an Order prohibiting the Hatchetts and any other party(ies) with an interest in the Hatchett Lease from any further action or conduct in violation of the Order Appointing Receiver.

Respectfully submitted,

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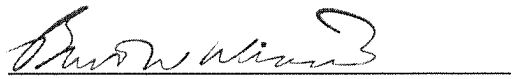
VERIFICATION OF RECEIVER

I, Burton W. Wiand, Court-Appointed Receiver in the above-styled matter hereby certify that the information contained in this Motion is true and correct to the best of my knowledge and belief.



Burton W. Wiand, Receiver

LOCAL RULE 3.01(g) CERTIFICATION OF COMPLIANCE

The undersigned counsel for the Receiver has conferred with counsel for the SEC, and the SEC does not object to the relief sought in this Motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 3, 2017, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I FURTHER CERTIFY that on March 3, 2017, a true and correct copy of the foregoing was provided via U.S. First Class Mail to the following:

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