**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**TAMPA DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

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

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

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, LLC.

Relief Defendants.

_____/

**RESPONSE IN OPPOSITION re 1310 MOTION TO ENFORCE CONSTRUCTIVE TRUST THROUGH TURNOVER OF REAL PROPERTY, OR IN THE ALTERNATIVE, THROUGH FORECLOSURE OF THE RECEIVER'S EQUITABLE LIEN**

Vernon Lee proceeding *pro se* respectfully responds in OPPOSITION to the Receiver's Motion to Enforce Constructive Trust and/or Equitable Lien in the amount of $336,891.39 through Turnover or Foreclosure, respectively, against the real property located at 4018 Via Mirada in Sarasota, Florida for all the reasons provided herein.

## BACKGROUND

ORDER Doc 1315 filed October 4, 2017 stated the Lee's whether proceeding *pro se* or through counsel, shall file a response to the motion on or before **October 25, 2017.** Vernon Lee has no funds for counsel.

The real property in question is Lee's homesteaded home and legal residence at 4018 Via Mirada, Sarasota and will henceforth be referred to as **"Home"**.

As ORDERED by United States District Judge Richard A. Lazzara Lee shall file a response on or before October 25, 2017 to the Motion of Doc 1310. Because of the Receiver's assumption that Lee's bankruptcy attorney was the Lee's attorney in the District Court case No: 8:09-cv-0087-T-26TBM, Docs 1310 and 1311 were emailed to him by mistake. United States District Judge Richard A. Lazzara has corrected this mistake by directing the Receiver to send these documents to Lee at his home address. The documents were received via Fed EX on October 5, 2017 and Lee responded by mail to Judge Lazzara on October 13, 2017 stating Doc 1311 had its header overprinted and was unacceptable for review as well as a request for many documents referenced in Docs 1310 and 1311 that for comprehensive analysis are required. As of October 22, 2017 no response to the request has been received.

Vernon Lee proceeding *pro se* submits this response.

The Demand letters dated December 8, 2009 said Mr. Lee must return to the Receiver over $3,128,000 of false profits **"per long established law".**

Mr. Lee's reaction then and still is today –

**What is that law?**

**What law did I break?**

**What did I do wrong per this law, to owe this amount of money?**

## ARGUMENT

Herewith is Lee's Response to THE RECEIVER'S VERIFIED MOTION TO ENFORCE CONSTRUCTIVE TRUST THROUGH TURNOVER OF REAL PROPERTY, OR IN THE ALTERNATIVE, THROUGH FORECLOSURE OF THE RECEIVER'S EQUITABLE LIEN ("The Motion").

THE MOTION MUST BE **DENIED** FOR THE FOLLOWING REASONS:

### I. Appeal in Progress.

The Bankruptcy Order and Final Judgment - (Doc 1311 Exhibit A (Doc 1311-1) and Exhibit B) - used to support The Motion are currently under Appeal (8:17-cv-01782-CEH; Appellant's Brief filed October 10, 2017 by bankruptcy attorney Benjamin G. Martin). The appeal is proceeding at a pace determined by the judge. If The Motion is granted and the Court demands that Lee turnover the Home prior to the completion of the appeal process which could reverse the Bankruptcy Order and Final Judgment, the Receivership would be left in the difficult position of restoring Lee to the Home. After about 8 years of litigation and numerous opportunities for the Receiver to fairly settle with Lee through various means and several mediations and waiting 16 months for the bankruptcy judge to rule (arguments completed on February 5, 2016 and order issued on June 23, 2017), it is bewildering that a decision so life-altering cannot wait until the appeal process is complete. Certainly the turnover of the Home which is the ***only asset of an elderly veteran living on social security*** should not be done without him receiving the fullest consideration of our judicial system.

## II. FUFTA Extinguishes Actions Against The Home

The action against The Home is based on Florida Uniform Fraudulent Transfer Act (Fla. Stat. § 726.101 *et seq.* or "FUFTA") as noted in Bankruptcy Order (Doc 1311-1). The Extinguishment section of FUFTA reads:

> **726.110 Extinguishment of cause of action.**—A cause of action with respect to a fraudulent transfer or obligation under ss. 726.101-726.112 is extinguished unless action is brought:
> (1) Under s. 726.105(1)(a), within 4 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was or could reasonably have been discovered by the claimant;
> (2) Under s. 726.105(1)(b) or s. 726.106(1), within 4 years after the transfer was made or the obligation was incurred; or
> (3) Under s. 726.106(2), within 1 year after the transfer was made or the obligation was incurred.

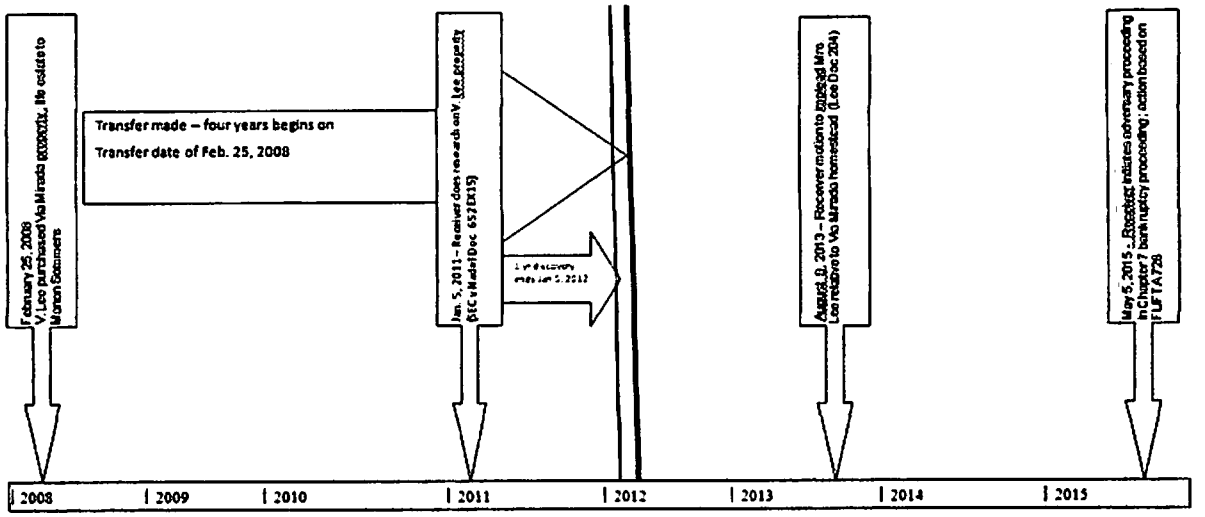
The Receiver's claim on The Home fails because no action related to the property was brought *within 4 years after* the transfer was made (February 25, 2008 home was purchased (Adv. Proc. No. 8:15-ap-00464-KRM Doc 1 filed by Receiver), August 9, 2013 Receiver commenced proceeding supplementary (Doc 1311-1)) AND no action was brought *within 1 year* after transfer was or could have been reasonably discovered (January 5, 2011 Receiver does "research re: V. Lee property " (SEC v Nadel Case No.8:2009cv00087 Doc 652 EX15), August 9, 2013 Receiver commenced proceeding supplementary (Doc 1311-1)). **The action by Receiver was over 5 years after transfer and over 2 years after transfer discovered.**

Recent Florida cases - *National Auto, 192 so.3d* decision (2D14-3632) and *SE Property v. Phillips* 3:15.cv554/MCR/EMT (order filed 50402016; 3:15.cv554) - - define the requirements of the Extinguishment section of FUFTA. Based on *National Auto* it is the discovery of the transfer, not the discovery of the fraudulent nature of the transfer, which starts the 1 year interval. Also *National Auto* affirms that 726.110 is a statute of repose. *SE Property v. Phillips* discusses that failure to state a claim within the time limits of FUFTA 726.110 results in extinguishment. Cause of action is extinguished if not brought within 4 years after the transfer,

or, if later, within 1 year after transfer was or could reasonably have been discovered. The Receiver did not meet the requirements of FUFTA.

The Complaint and Judgment were based on FUFTA; the adversary proceeding was based on FUFTA. In spite of the conspicuous absence of references to the law that the Receiver used to define fraudulent transfers, tainted money and false profits, the bankruptcy Order and Final Judgment were based on FUFTA. The purchase of The Home date is not included in Doc 1311-1. The Home purchase date – date of alleged fraudulent transfer – is critical to the application of FUFTA 726.110. In accordance with the FUFTA statute's Extinguishment Clause 726.110 the Receiver failed to meet the time requirements for filing a claim on The Home. Failure to state a claim within the time limits of FUFTA 726.110 results in extinguishment thus cause of action is extinguished.

The following Home timeline diagram illustrates these facts.




**Vernon Lee Home (Via Mirada property) –**
**Fraudulent transfers and actions:**
**No action within 4 years after transfer or within one year discovery period**
**Transfer extinguished by FUFTA 726.110**

**Because of the untimely filings by the Receiver, FUFTA 726.110 extinguishes all action against the Via Mirada homestead – The Home.**

## III. Bankruptcy Order (Doc 1311-1) must use Actual Data.

The first paragraph of Order (Doc 1311-1) states:

> *Between 2005 and 2008, the Debtor then unmarried, received distributions from the Ponzi scheme totaling $2,942,264, which exceeded the amount of his investment by more than $1 million. Footnote 2*

Footnote 2 states:

> *Debtor invested about $1,873,262 in the Ponzi scheme. See Report and Recommendation, Case No. 810-cv-210-T-17MAP, at 17, filed in adversary proceeding Document 16-2 ("Report"). He received distributions from July 2005 to October 2008 totaling about $2,942,265. Id at 17-18, the debtor received about $1,069,003 more than the invested. Id at 18.*

Using the Receiver's Amended Complaint (Wiand v Lee Case No. 8:10-cv-210-T-17MAP, Doc 25), the actual data as provided by Receiver is:

> *Between **July 2005 and 2008** the Debtor then unmarried, received distributions from the Ponzi scheme totaling **$1,090,000**. This is **LESS THAN** the amount of his investment which was about $1,873,263.*

Again, using the Receiver's actual data (Lee, Doc 25), footnote 2 must read:

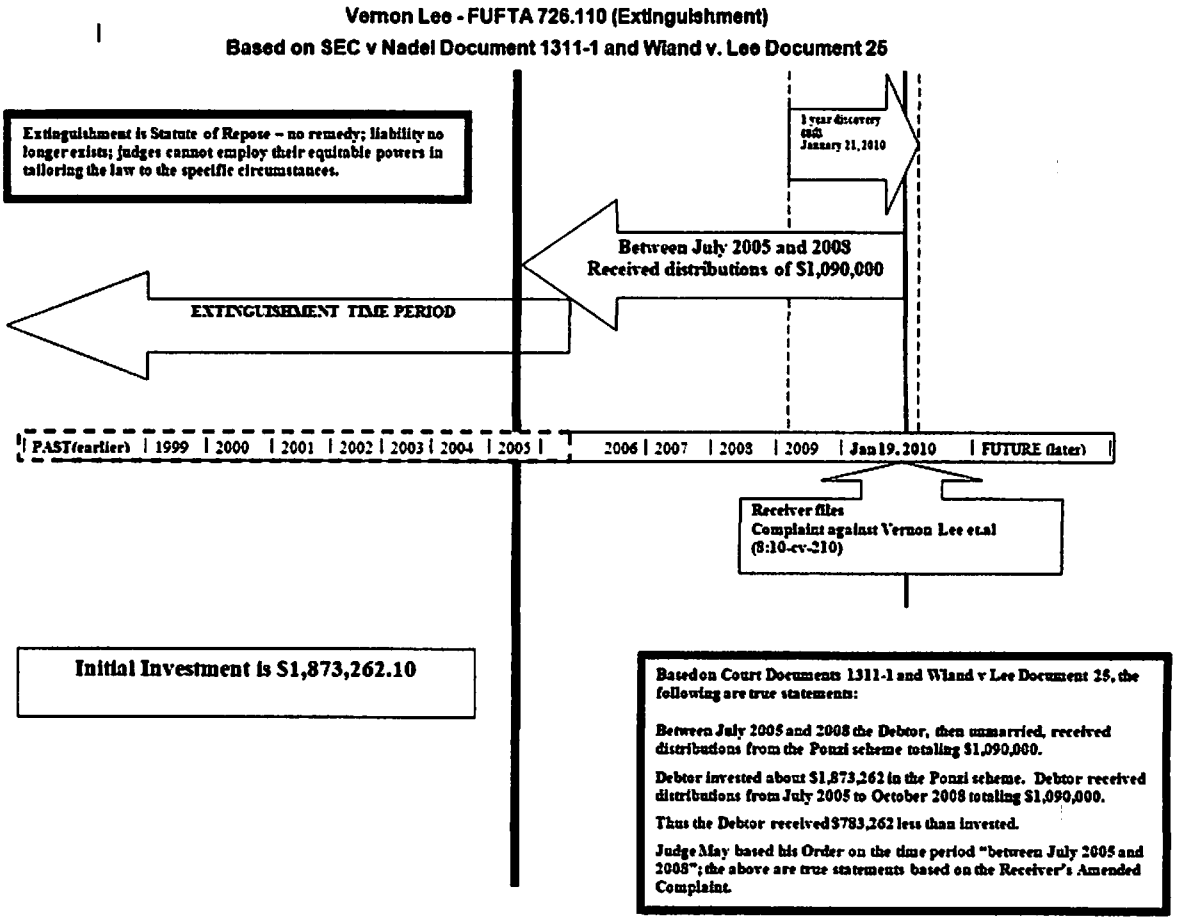
> *Debtor invested about $1,873,262 in the Ponzi scheme, See Report and Recommendation, case No, 8:10-cv-210-T-17Map filed in adversary proceeding Document 16-2 ("Report"). Debtor received distributions from **July 2005 to October 2008** totaling **$1,090,000**. Thus the Debtor received $783,262 **LESS THAN** invested.*

Doc 1311-1 further states *"The district court has determined that these excess proceeds were fraudulent transfers resulting in a judgment against the debtor of $935,631 after the $133,371 was recovered"*. Based upon United States Bankruptcy Judge K. Rodney May's findings as expressed in paragraph 1 of Doc 1311-1 the district court is inaccurate as distribution

between **July 2005 and October 2008 is $1,090,000** (Lee, Doc 25). Thus the debtor received $783,262 **LESS THAN** his investment of $1,873,262. **There are NO false profits, NO tainted money and NO fraudulent transfers.**

In the Bankruptcy Order, Judge May has chosen dates that seem to closely correspond to the four year cutoff specified in FUFTA 726.110. When the actual transfers (from the Receiver's Amended Complaint) are associated with those dates, there are no "false profits". FUFTA 726.110 is a statute of repose.

The following diagram illustrates these facts as provided in the first paragraph of Doc 1311-1.




**Because Lee received LESS THAN invested by $783,262 there are ZERO false profits and NO fraudulent transfers.**

## IV. FUFTA Extinguishes Judgment

Brian Meeker Case 8:10-cv-166-7-17MAP hearing transcript Doc 172 and Meeker Docs 173and 174 correctly read the unambiguous legislature's intent of FUFTA statute 726.110 which specifies extinguishment of transfers older than 4 years from complaint date. Meeker also explains "later" and its grammar reference.

> *The statute specifically states that a cause of action date must be brought within 4 years of the transfer made date or the action is extinguished. There can be no dispute this is what the statute says. But courts and receiver's have claimed the one year discovery wording in the second clause, pertaining to a second time period, "or, if later" gives a receiver a right to recover transfers before or earlier than the 4 year cut-off date. This unfortunately is incorrect for the courts and receivers.*
>
> *There is no question the words "or, if later" only references the following second clause pertaining to 4 years and "later" and not the first clause that references transfers earlier than 4 years. If a transfer is not "within 4 years" then these transfers precede the 4 years and are earlier not later and consequently extinguished as called out in the statute.*

It is noted that Meeker's case was settled (Doc 1182) about 3 months after the Meeker Doc 172 hearing for a total of $25,000. Meeker's total judgment was about $645,641 of false profits (3.9% or if the about $277,160 of prejudgment interest had been added for a total of about $922,801, it would be 2.7%). Mr. Lee's case by comparison has had $133,371 paid which equals 12.4% on $1,069,002 of "false profits". Lee's case – like Meeker's – would have never happened if the Receiver and courts applied the unambiguous Extinguishment of Cause of Action statute.

The details of the settlement with Meeker are not discussed for "obvious reasons" (Meeker Doc 172). It seems plausible that one of those reasons is that the misapplication of FUFTA would show that many of the "profiteer" settlements were illegal. It is also worth noting that Robert K. Levenson, Senior Trial Counsel of the SEC questioned the very low settlement.

On Jun 11,2015, at 6:20PM,Levenson, Robert K. [redacted] wrote:

> Just curious because of the low amounts what assets the trust has that are collectible or period. Bob

From: Michael Lamont
Sent: 11Jun2015 22:41:32
To: Levenson, Robert K.
CC: Gianluca Morello
Subject: Re: SEC v Nadel – Settlement Relating to Payment of a Judgment

We have not been able to locate any collectable assets of the trust. The trust was used to invest up to 2006 but was not used after that. Assets have been used for a number of things, including investing which resulted in losses for Meekers. In short, we believe it is an uncollectable judgment.

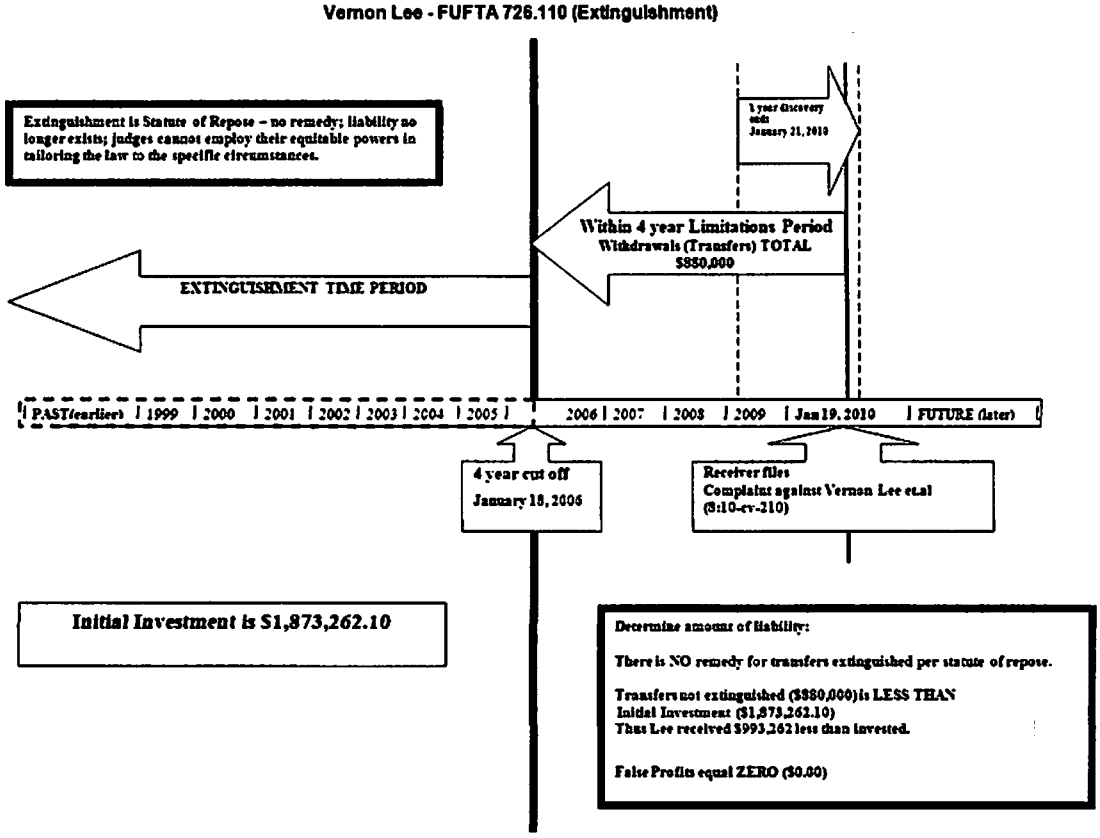
The Receiver had spent over $300,000 of Receivership funds chasing an "uncollectable" judgment for about 5 years and no explanation. (There is no evidence that the Receiver looked for Meeker assets in the weeks prior to the conference nor in the weeks after.) (Docs 1155 and 1196)

Meeker's arguments from the Judge Mark Pizzo Status Hearing (April 15, 2015) that preceded the Judge's suggestion that Meeker talk to Lamont debunk "the savings clause":

> *Even with specific wording, receivers and courts like the Eleventh Circuit Court of Appeals tries to protect the receiver by blindly citing cases that totally ignore statute wording and come up with excuses with their own spin. One such excuse is a savings clause which courts claim allows a court or receiver to recover transfers four years and prior.*
> *The Eleventh Circuit in particular cited the Desak vs. Vanlandingham case, stating that a Florida appeals court applied Florida Statute 725.110(1), which is the extinguishment section, as a savings clause. This is an outright lie and is followed by gibberish stating that recording of a deed without more did not trigger the one-year limitations period. For the Eleventh Circuit's Court information there's no such thing as a savings clause listed in the reference they cite. I challenge anyone to*

*show me the wording they cite in 726.110(1), because there is no such wording. This is nothing more than judges trying to totally convolute the statute wording into what they would like it to say and not what the Legislature intended. In trying to justify their point, the court is actually referencing the discovery wording in the second clause, which has nothing to do with transfers four years or earlier and is the subject matter of the case at hand. The specific words in the statute are "or if later." It doesn't say, or if earlier. The court's and receivers' arguments are misstatements of statute wording and a totally false representation.*
*The repetitive misreading or parroting of this wording by the courts has caused much financial damage to innocent investors by illegally demanding monies that were legally exempt by the extinguishment section in FUFTA.*

The following diagram illustrates the FUFTA 726.110 Extinguishment of Lee's transfers which result in ZERO false profits.



**Because Lee received LESS THAN invested by $993,262 there are ZERO false profits and NO fraudulent transfers.**

## V. Vernon Lee is not a fraudster.

Judge Rodney K. May finds in Doc 1311-1 that ***"The Defendants have not been accused of any wrongdoing associated with Nadel's Ponzi scheme"*** and ***"It is uncontested that Debtor believed his investments in the funds were legitimate and that he had no knowledge of the Ponzi scheme at the time he received distributions."*** and ***"It is not alleged that he or his wife engaged in any fraud or egregious conduct."***

## SUMMARY

The Court needs to apply the Extinguishment section 726.110 of FUFTA to both the 2009 "false profits" assertions and to the action to take the Home which was purchased in 2008, known to the Receiver by January, 2011 and yet no action was initiated until August 2013. Fraudulent transfers are extinguished per FUFTA 726.110 and that is a statute of repose (once the clock runs out there is no remedy).

The Motion relies on decisions that are under Bankruptcy Appeal (Case 8:17-cv-01782-CEH).

It is probably worth noting the Judge Elizabeth A. Kovachevich moved this out of District Court in her ORDER (Lee Doc 308) dated March 26, 2015 which says "This cause is in bankruptcy so the pending motions are terminated until the resolution of the bankruptcy

proceedings. If appropriate, following that resolution, the moving party may request the motions be reactivated and resolved." and reaffirmed by Judge Mark Pizzo in Lee Doc 310 where he declares that this case is "administratively closed due to the fact that you [Lee] filed a petition for bankruptcy." Since there is an appeal in progress in bankruptcy court (Case 8:17-cv-01782-CEH) and there was no action to re-open in District Court, it seems that The Motion (Doc 1310) must be inappropriate.

The Home is Lee's only asset as attested in bankruptcy declarations. It is homesteaded under Florida law. The turnover of the Home will make the Lees' homeless. Lee was an innocent investor in the unbeknownst Nadel fraudulent scheme for almost 10 years. Lee has not broken any laws, yet the granting of this motion will force an elderly veteran and his wife into homelessness. As far as Lee knows, there are no similar actions – forced turnover of homesteaded home by investor-victim - in this case (SEC v Nadel). In Meeker, the Receiver was satisfied with 3.9% of demand; in Goldman Sachs, the Receiver was satisfied with 5.8% of his demand. Mr. Lee by comparison has paid 12.4% of the Receiver's demand.

Lee has offered multiple settlements, but the Receiver prefers to litigate and desires to make an 86 year old Korean War Veteran homeless. Mr. Lee has a serious heart condition, atrial fibrillation, and chronic obstructive pulmonary disease; these serious conditions are negatively impacted by the stress of the Receiver's continued unjustified litigation. Lee has not broken any laws nor has any assets to pay a summary judgment which FUFTA 726.110 proves he does not owe. In fact, Lee does not have any assets to pay for counsel in this case which is why Lee, an electrical engineer without the benefit of requested documents, is responding *pro se*.

## CONCLUSION

BASED UPON ALL THE FACTS DELINEATED ABOVE, I, VERNON LEE, RESPECTFULLY REQUEST THAT THIS MOTION BE **DENIED,** and if not Denied any action should be terminated until the resolution of the bankruptcy appeal proceedings.

## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that on October 23, 2017, I filed the foregoing with the Clerk of the Court by registered U.S. Mail and also served a copy of this response by regular U.S. Mail to Michael Lamont, Attorney for the Receiver, Burton W. Wiand at Wiand Guerra King P.A., 5505 West Gray Street, Tampa, FL 33609.

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