

COMPOSITE EXHIBIT A

**BURTON W. WIAND, COURT-APPOINTED RECEIVER
FOR QUEST ENERGY MANAGEMENT GROUP, INC.**

June 14, 2019

[REDACTED]

Re: Quest Receivership
Claimant Name: [REDACTED]
Claim Number: 73

Dear [REDACTED]

Notification of Receiver's Determination Of Objection

I am writing to you as the Court-appointed Receiver in the above matter. On March 15, 2019, the Court entered an order granting my Motion to (1) Approve Determinations and Priority of Claims, (2) Pool Receivership Assets and Liabilities, (3) Approve Plan of Distribution, and (4) Establish Objection Procedure (the "**Order**"). Pursuant to the Order, claimants had until April 19, 2019 to submit an objection to my determination of their respective claims, claim priority, or plan of distribution. On April 3, 2019, I received an objection from you regarding the above claim. I have carefully reviewed your objection and pertinent documents and, as discussed in more detail below, have determined that your objection should be overruled.

As set forth in the Motion, I denied the above claim, Claim Number 73, because you cannot satisfy your good faith obligations and because it would be inequitable to allow you to receive Receivership distributions given your role in the scheme. As a "sales agent" for Quest, you were responsible for soliciting victims for Quest's fraudulent scheme. Acting in this capacity, you had either actual or inquiry notice of Quest's fraud, and/or conspired, aided and abetted, or otherwise participated in the fraud. Courts regularly deny claims where the claimants did not show they acted in good faith. *See, e.g., S.E.C. v. Nadel*, Case No. 8:09-cv-0087-RAL-TBM, Doc. 1061 (M.D. Fla. Aug. 29, 2013) ("Whether the claimant acted in good faith is a consideration in the claims process"); *S.E.C. v. Megafund Corp.*, 2007 WL 1099640, *2 (N.D. Tex. 2007) (claims disallowed because claimants did not show they acted in good faith). The concept of good faith derives from fraudulent conveyance statutes, including the Florida Uniform Fraudulent Transfer Act, Fla. Stats. §§ 726.101 *et seq.* ("**FUFTA**"). Under FUFTA, the Receiver may recover transfers for the benefit of the Receivership estate that were made with "actual intent to hinder, delay, or defraud" creditors (Fla. Stats. § 726.105(1)(a)), which intent is established as a matter of law when a transfer is made during a Ponzi scheme. FUFTA provides an affirmative defense, however, under which the Receiver may not recover a transfer if, among other prerequisites, the transferee can demonstrate that it received the transfer in "good faith." *See Fla. Stats. §§ 726.109(1), (2)(b).*

Good faith is an objective standard. *See Terry v. June*, 432 F. Supp. 2d 635, 641 (W.D. Va. 2006). "The relevant inquiry is what the transferee objectively knew or should have known instead of examining the transferee's actual knowledge from a subjective standpoint." *See Quilling v. Stark*, 2007 WL 415351, *3 (N.D. Tex. 2007). "[I]f the circumstances would place a reasonable person on inquiry notice of a debtor's fraudulent purpose, and *diligent* inquiry would have discovered the

fraudulent purpose, then the transfer is fraudulent.” *In re World Vision Entm’t, Inc.*, 275 B.R. 641, 659 (Bankr. M.D. Fla. 2002). “Importantly, a transferee may not remain willfully ignorant of facts which would cause it to be on notice of a debtor’s fraudulent purpose, and then put on ‘blindens’ prior to entering into transactions with the debtor and claim the benefit of [the good faith defense].” *Id.* (internal citations and quotations omitted). In turn, a diligent inquiry “must ameliorate the issues that placed the transferee on inquiry notice in the first place” and cannot consist of merely inquiring with the transferor about the suspicious circumstances. *In re Bayou Group*, 396 B.R. 810, 846 (Bankr. S.D.N.Y. 2008). Put simply, if a sales agent’s reasonable inquiry would have revealed any questions or concerns about Quest or anyone associated with Quest, that sales agent could not have acted in good faith unless he or she subsequently conducted a diligent and reasonable inquiry that ameliorated those questions or concerns. Without satisfying these obligations, the sales agent was, at a minimum, on inquiry notice of fraud.

Florida courts have specifically addressed whether a securities broker – like you as a sales agent – acted in good faith when receiving commissions for selling interests in a fraudulent investment scheme. Under Florida law, “any broker selling short-term promissory notes, even unregistered promissory notes such as the debtor’s notes, has a minimal duty of care owed to investors.” *World Vision Entm’t, Inc.*, 275 B.R. at 654. This includes reviewing audited financial statements, company-provided literature on sales history, and key employees. *Id.* at 659; *see also In re Evergreen Sec., Ltd.*, 319 B.R. 245, 255 (Bankr. M.D. Fla. 2003). Thus, as a sales agent, you had a legal duty to: (i) investigate Quest’s financial statements, its business performance, and the background of its personnel; (ii) ensure the associated risk factors and costs surrounding the investment strategy were evaluated and disclosed to investors; and (iii) not rely solely on information provided by scheme insiders regarding Quest. You also could not “refrain from asking hard questions about the legitimacy of the product, and then assume a proper investigation was completed.” *World Vision Entm’t, Inc.*, 275 B.R. at 660. In short, “circumstances putting the transferee on inquiry notice as to a debtor’s insolvency, an underlying fraud, or the improper nature of a transaction, will preclude a transferee from asserting a good faith defense.” *Evergreen Sec., Ltd.*, 319 B.R. at 255.

In your objection you do not claim that you acted in good faith or conducted proper due diligence. Rather, you argue that you made this investment as an individual and that there is a separation between you as an advisor and you as an individual investor. You ask to be awarded “the same rights as any other investor.” It is clear, however, that you are not similarly situated to other victim investors. Receivership records reflect that you were involved in the investments of at least \$275,000 by at least six victims of the Quest scheme. The Receiver further has information and belief that you received commissions and/or overrides in connection with the solicitation of these investments. The above known victims suffered losses of nearly \$200,000.

Courts routinely hold that treating similarly situated parties alike in claims processes is fair and equitable. *See S.E.C. v. Elliott*, 953 F. 2d 1556, 1566 (11th Cir. 1992); *United States v. Petters*, 2011 WL 281031, *7 (D. Minn. 2011). There is no requirement, however, that all claimants be treated in the same manner; rather, fairness only requires that similarly situated claimants should be treated alike. *See, e.g., S.E.C. v. Byers*, 637 F. Supp. 2d 166, 184 (S.D.N.Y. 2009) (“The Receiver’s proposal to treat differently those involved in the fraudulent scheme when distributions are being made is eminently reasonable and is supported by caselaw.”); *Quilling v. Trade Partners, Inc.*, 2006 WL 3694629, *1 (W.D. Mich. 2006) (distinguishing between fraud victims and general creditors). In the end, “[a]n

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equitable plan is not necessarily a plan that everyone will like.” *S.E.C. v. Credit Bancorp*, 2000 WL 1752979, *29 (S.D.N.Y. 2000). Indeed, “when funds are limited, hard choices must be made.” *Byers*, 637 F. Supp. 2d at 176 (quoting *Official Comm. of Unsecured Creditors of WorldCom, Inc. v. S.E.C.*, 467 F.3d 73, 84 (2d Cir. 2006)). Funds are extremely limited in this Receivership. It is unlikely that there will be funds available to distribute to investors. Most of the funds recovered from the sale of Quest’s assets likely will be distributed to Class 1 and Class 2 creditors, as those classes are described in the Motion. As a matter of equity, if any minimal amount of funds is available to distribute to investors, those funds should go to victims of the fraud.

As set forth in the Order, if you wish to maintain your objection, you must serve me with a written response to this Notification on or before **July 15, 2019**. Your written response must clearly state whether you maintain the objection or accept my further determination of the claim as set forth in this Notification. Your response must be served on me, Burton W. Wiand, as Receiver c/o Maya M. Lockwood, Esq., Wiand Guerra King P.A., 5505 West Gray Street, Tampa, FL 33609, and should not be filed with the Court. Proper service may be accomplished by sending your written response by one of the following means: (1) U.S. mail to the above address; (2) hand delivery to the above individual at the above address; (3) facsimile to the above address at (813) 347-5198; or (4) overnight or other express delivery to the above address. Service by mail is completed upon mailing, service by facsimile is completed upon transmission, and service by hand delivery is completed upon receipt of delivery. **Failure to properly and timely serve a written response to this Notification will be deemed as an acceptance of my determination as set forth above.**

If you choose to maintain your objection, I will file with the Court: (1) my further determination of your claim with any supporting documents or statements I consider are appropriate, if any; and (2) the unresolved objection, with any supporting statements and documentation you serve on me. The Court may make a final determination based on the submissions identified above or may set the matter for hearing and, following the hearing, make a final determination. You will have the burden to prove that your position should prevail. I will provide you notice of the hearing if the Court sets a hearing on your particular objection.

If you have any questions, please feel free to call or email Mary Gura at (813) 347-5121 or mgura@wiandlaw.com.

Sincerely yours,



Burton W. Wiand
as Court-Appointed Receiver

MML/meg

**BURTON W. WIAND, COURT-APPOINTED RECEIVER
FOR QUEST ENERGY MANAGEMENT GROUP, INC.**

June 14, 2019

[REDACTED]

Re: Quest Receivership
Claimant Name: [REDACTED]
Claim Number: 75

Dear [REDACTED]

Notification of Receiver's Determination Of Objection

I am writing to you as the Court-appointed Receiver in the above matter. On March 7, 2019, I filed a Motion to (1) Approve Determinations and Priority of Claims, (2) Pool Receivership Assets and Liabilities, (3) Approve Plan of Distribution, and (4) Establish Objection Procedure (the "**Claims Determination Motion**") (Doc. 1383). The Court entered an order granting the Claims Determination Motion on March 15, 2019 (the "**Order**") (Doc. 1384). Pursuant to the Order, claimants had until April 19, 2019 to submit an objection to my determination of their respective claims, claim priority, or plan of distribution. On April 19, 2019, I received another Proof of Claim Form from you which I am treating as an objection regarding the above claim ("**Second Proof of Claim Form**"). I have carefully reviewed the Second Proof of Claim Form and pertinent documents and, as discussed in more detail below, have determined that to the extent you intended to object to the determination of your claim, it should be overruled.

The above claim, Claim Number 75, was denied because the investment was made in an entity distinct from Quest, Callahan Energy Partners ("**Callahan**"), and I was unable to identify any transfer of funds from Callahan to Quest for this claim. On the Second Proof of Claim Form, you indicate that you invested \$25,000 with Callahan and you attach a balance sheet from Callahan showing your \$25,000 investment. There is no mention of Quest on the balance sheet you provided. As such, you did not provide any documents evidencing that the claimed \$25,000 investment was actually received by Quest. The Receivership does not extend to all victims of fraud but is limited to the scope of the order appointing me as Receiver of Quest and other Court orders relating to this Receivership. It is important to note, however, that funds are extremely limited in this Receivership. It is unlikely that there will be funds available to distribute to investors with allowed claims. Most of the funds recovered from the sale of Quest's assets likely will be distributed to Class 1 and Class 2 creditors, as those classes are described in the Claims Determination Motion.

On June 15, 2016, I filed a Motion to (1) Approve Procedure to Administer Claims and Proof of Claim Form, (2) Establish Deadline for Filing Proofs of Claim, and (3) Permit Notice by Mail and Publication ("**Claims Motion**") (Doc. 1240). As set forth in the Claims Motion, a claim should be allowed if the claimant properly completed and timely filed a Proof of Claim Form, and (1) the claim arises out of Quest's activities; (2) losses recognized by law resulted from such activities; (3) any alleged claim and losses are consistent with the books and records available to the Receiver; and (4) no other ground exists for denying the claim. See Claims Motion at 10. The Claims Motion also sought

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the approval of a Proof of Claim Form which required claimants to provide all documents substantiating the claim. The Court granted the Claims Motion in its entirety on June 17, 2016 (Doc. 1241).

This claim does not fall within the parameters for an allowed claim as set forth above. The claim you submitted is for a \$25,000 investment in Callahan. Callahan is not a Receivership Entity. Investments made in Callahan did not arise out of Quest's activities. I have not found any evidence in the Receivership's books and records that the investment amount you claim was deposited into any account for Quest. Consistent with the Net Investment Method set forth in the Claims Determination Motion, an investor is only entitled to a claim for the amount of funds actually deposited into the scheme less dollars the investor received from the scheme. Because I have been unable to find any evidence of actual dollars deposited into Quest for this investment, it would inequitable and unfair to investors who invested in Quest to allow this claim. *See S.E.C. v. Homeland Communications Corp.*, 2010 WL 2035326, at *5 (S.D. Fla 2010) ("The Court finds compensating victims of other investment schemes which are outside of the SEC's complaint (and thus the Receivership) would lead to inequitable and unfair results to those victims who were defrauded directly by the Homeland scheme."); *S.E.C. v. Callahan*, 193 F. Supp. 3d 177 (E.D.N.Y. 2016) (upholding the receiver's reduction of a claim because the claimants failed to provide any evidence that the money invested in a non-receivership entity was co-mingled or placed into the same account as money invested in the receivership entities).

As set forth in the Order, if you wish to maintain your objection, you must serve me with a written response to this Notification on or before **July 15, 2019**. Your written response must clearly state whether you maintain the objection or accept my further determination of the claim as set forth in this Notification. Your response must be served on me, Burton W. Wiand, as Receiver c/o Maya M. Lockwood, Esq., Wiand Guerra King P.A., 5505 West Gray Street, Tampa, FL 33609, and should not be filed with the Court. Proper service may be accomplished by sending your written response by one of the following means: (1) U.S. mail to the above address; (2) hand delivery to the above individual at the above address; (3) facsimile to the above address at (813) 347-5198; or (4) overnight or other express delivery to the above address. Service by mail is completed upon mailing, service by facsimile is completed upon transmission, and service by hand delivery is completed upon receipt of delivery. **Failure to properly and timely serve a written response to this Notification will be deemed as an acceptance of my determination as set forth above.**

If you choose to maintain your objection, I will file with the Court: (1) my further determination of your claim with any supporting documents or statements I consider are appropriate, if any; and (2) the unresolved objection, with any supporting statements and documentation you serve on me. The Court may make a final determination based on the submissions identified above or may set the matter for hearing and, following the hearing, make a final determination. You will have the burden to prove that your position should prevail. I will provide you notice of the hearing if the Court sets a hearing on your particular objection.

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Sincerely yours,



Burton W. Wiand
as Court-Appointed Receiver

MML/meg

**BURTON W. WIAND, COURT-APPOINTED RECEIVER
FOR QUEST ENERGY MANAGEMENT GROUP, INC.**

June 14, 2019

[REDACTED]

Re: Quest Receivership
Claimant Name: [REDACTED]
Claim Number: 79

Dear [REDACTED]

Notification of Receiver's Determination Of Objection

I am writing to you as the Court-appointed Receiver in the above matter. On March 7, 2019, I filed a Motion to (1) Approve Determinations and Priority of Claims, (2) Pool Receivership Assets and Liabilities, (3) Approve Plan of Distribution, and (4) Establish Objection Procedure (the "**Claims Determination Motion**") (Doc. 1383). The Court entered an order granting the Claims Determination Motion on March 15, 2019 (the "**Order**") (Doc. 1384). Pursuant to the Order, claimants had until April 19, 2019 to submit an objection to my determination of their respective claims, claim priority, or plan of distribution. On March 29, 2019, I received an objection from you regarding the above claim. I have carefully reviewed your objection and pertinent documents and, as discussed in more detail below, have determined that your objection should be overruled.

The above claim, Claim Number 79, was denied because the investment was made in an entity distinct from Quest, Callahan Energy Partners ("**Callahan**"), and I was unable to identify any transfer of funds from Callahan to Quest for this claim. You objected to the determination of this claim stating that "we gave \$55,000 of our hard-earned money into an investment (perhaps it was Gibraltar/Callahan?), which was then converted into the Quest group at some point." You did not provide any documents evidencing that the claimed \$55,000 was actually received by Quest. While I am sympathetic to your position, the Receivership does not extend to all victims of fraud but is limited to the scope of the order appointing me as Receiver of Quest and other Court orders relating to this Receivership. It is important to note, however, that funds are extremely limited in this Receivership. It is unlikely that there will be funds available to distribute to investors with allowed claims. Most of the funds recovered from the sale of Quest's assets likely will be distributed to Class 1 and Class 2 creditors, as those classes are described in the Claims Determination Motion.

On June 15, 2016, I filed a Motion to (1) Approve Procedure to Administer Claims and Proof of Claim Form, (2) Establish Deadline for Filing Proofs of Claim, and (3) Permit Notice by Mail and Publication ("**Claims Motion**") (Doc. 1240). As set forth in the Claims Motion, a claim should be allowed if the claimant properly completed and timely filed a Proof of Claim Form, and (1) the claim arises out of Quest's activities; (2) losses recognized by law resulted from such activities; (3) any alleged claim and losses are consistent with the books and records available to the Receiver; and (4) no other ground exists for denying the claim. *See* Claims Motion at 10. The Claims Motion also sought the approval of a Proof of Claim Form which required claimants to provide all documents

substantiating the claim. The Court granted the Claims Motion in its entirety on June 17, 2016 (Doc. 1241).

This claim does not fall within the parameters for an allowed claim as set forth above. The claim you submitted is for an alleged \$55,000 investment in Callahan or Gibraltar, which you claim was converted into an investment in Quest. Neither Callahan nor Gibraltar are Receivership Entities. Investments made in Callahan or Gibraltar did not arise out of Quest's activities. I have not found any evidence in the Receivership's books and records that the investment amount you claim was deposited into any account for Quest. Consistent with the Net Investment Method set forth in the Claims Determination Motion, an investor is only entitled to a claim for the amount of funds actually deposited into the scheme less dollars the investor received from the scheme. Because I have been unable to find any evidence of actual dollars deposited into Quest for this investment, it would inequitable and unfair to investors who invested in Quest to allow this claim. *See S.E.C. v. Homeland Communications Corp.*, 2010 WL 2035326, at *5 (S.D. Fla 2010) ("The Court finds compensating victims of other investment schemes which are outside of the SEC's complaint (and thus the Receivership) would lead to inequitable and unfair results to those victims who were defrauded directly by the Homeland scheme."); *S.E.C. v. Callahan*, 193 F. Supp. 3d 177 (E.D.N.Y. 2016) (upholding the receiver's reduction of a claim because the claimants failed to provide any evidence that the money invested in a non-receivership entity was co-mingled or placed into the same account as money invested in the receivership entities).

As set forth in the Order, if you wish to maintain your objection, you must serve me with a written response to this Notification on or before **July 15, 2019**. Your written response must clearly state whether you maintain the objection or accept my further determination of the claim as set forth in this Notification. Your response must be served on me, Burton W. Wiand, as Receiver c/o Maya M. Lockwood, Esq., Wiand Guerra King P.A., 5505 West Gray Street, Tampa, FL 33609, and should not be filed with the Court. Proper service may be accomplished by sending your written response by one of the following means: (1) U.S. mail to the above address; (2) hand delivery to the above individual at the above address; (3) facsimile to the above address at (813) 347-5198; or (4) overnight or other express delivery to the above address. Service by mail is completed upon mailing, service by facsimile is completed upon transmission, and service by hand delivery is completed upon receipt of delivery. **Failure to properly and timely serve a written response to this Notification will be deemed as an acceptance of my determination as set forth above.**

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Burton W. Wiand
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MML/meg