UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-CV-80946-MIDDLEBROOKS/BRANNON

JAMES D. SALLAH, ESQ., not individually, but solely in his capacity as Court-Appointed Receiver for JCS Enterprises Inc., d/b/a JCS Enterprises Services Inc., T.B.T.I. Inc., My Gee Bo, Inc., JOLA Enterprise Inc., and PSCS Holdings, LLC,

Plaintiff,

-vs.-

JOSEPH SIGNORE, individually, and LAURA SIGNORE, individually,

Defendants.
_____/

RECEIVER'S MOTION FOR SUMMARY JUDGMENT AND DECLARATORY RELIEF WITH INCORPORATED MEMORANDUM OF LAW

Plaintiff JAMES D. SALLAH, ESQ., not individually, but solely in his capacity as Court-Appointed Receiver ("the Receiver") for JCS Enterprises Inc., d/b/a JCS Enterprises Services Inc. ("JCS"), T.B.T.I. Inc. ("TBTI"), My Gee Bo, Inc. ("Gee Bo"), JOLA Enterprise, Inc. ("JOLA"), and PSCS Holdings, LLC ("PSCS") (collectively "the Receivership Entities"), through undersigned counsel, and pursuant to Fed. R. Civ. P. 56 and 57 and 28 U.S.C. § 2201(a), respectfully submits this Motion for Summary Judgment and Declaratory Relief with Incorporated Memorandum of Law against Defendant JOSEPH SIGNORE, individually, ("Defendant" or "Joseph Signore") and states the following:

INTRODUCTION

The Receiver is seeking summary judgment for Count II of the Complaint to recover fraudulent transfers pursuant to FLA. STAT. § 726.105(1)(a) of the Florida Uniform Fraudulent Transfer Act ("FUFTA") that Joseph Signore caused the Receivership Entities to make to him or for his benefit. Specifically, Count II seeks to recover the following total amounts of transfers: (a) **$17,500** jointly transferred to Joseph Signore and his now-ex-wife, Laura Signore (n/k/a Laura

Grande) (hereinafter, "Laura Signore") [1]; (b) **$605,236.25** transferred to Joseph Signore individually plus prejudgment interest; and (c) **$981,936.30** transferred as payments for Joseph Signore's personal benefit plus prejudgment interest.

Additionally, the Receiver is moving for summary judgment under Count VIII of the Complaint for breach of fiduciary duty. Joseph Signore was an officer of JCS and held ultimate control over JCS's financial counts. In violation of his fiduciary duties owed to JCS, Joseph Signore engaged in wasting of corporate assets and self-dealing when he caused JCS to transfer **$819,723.42** to Laura Signore.

The Receiver is also requesting that the Court award pre-judgment interest in the amount of $278,059.01 for the time period from April 7, 2014 through September 12, 2016, based on the applicable rate of interest as mandated by Fla. Stat. § 55.03. The Receiver is also requesting that post-judgment interest be applied in accordance with Fla. Stat. § 55.03, until paid in full, as well as costs.

Further, to the extent the Court denies the Receiver's Motion for Summary Judgment under Count II, the Receiver is moving, in the alternative, for summary judgment against Joseph Signore under Count VIII for breach of fiduciary duty for the transfers of assets Joseph Signore caused to be made to himself; to himself and his wife, jointly; and to third parties for his benefit.

This Motion is also seeking a declaration that the funds Defendants used to purchase real property located at 14161 64th Drive North, Palm Beach Gardens, Florida 33418-7212 (the "Signore Residence") were, and continue to be, the property of the Receivership Estate and that the Receiver is entitled to an equitable lien on the Signore Residence.

STATEMENT OF UNDISPUTED FACTS SUPPORTING THIS MOTION

The Receiver is contemporaneously filing, with this Motion, his Statement of Undisputed Facts in Support of this Motion for Summary Judgment and Declaratory Relief, which is incorporated and referenced herein as (Undisputed Facts ¶__).

BACKGROUND

On April 7, 2014, the United States Securities and Exchange Commission (the "SEC") commenced an action against JCS, TBTI, and two individuals, Joseph Signore and Paul L.

[1] Laura Signore filed for divorce from Joseph Signore on May 4, 2015. The family court entered its "Final Judgment of Dissolution of Marriage (Bifurcated)" on February 3, 2016, and ordered her name restored to Laura Grande. *See* (DE 76-1.)

Schumack, II ("Schumack") in the case styled, *Securities and Exchange Commission v. JCS Enterprises, Inc., d/b/a JCS Enterprises Services, Inc., T.B.T.I. Inc., Joseph Signore, and Paul L. Schumack, II.*, Case No. 14-CV-80468-MIDDLEBROOKS/BRANNON (S.D. Fla. Apr. 7, 2014) ("*JCS Enterprises*" or the "SEC Case") (Undisputed Facts ¶ 1). The Court appointed the Receiver to investigate and conduct legal proceedings against those who "wrongfully, illegally or otherwise improperly misappropriated or transferred monies . . . directly or indirectly traceable . . . ; provided such actions may include . . . recovery and/or avoidance of fraudulent transfers . . . ." (Undisputed Facts ¶5) (citations omitted).

Notably, when sentencing Joseph Signore on March 14, 2016, the Honorable Daniel T.K. Hurley referred to this scheme as a Ponzi scheme. (Undisputed Facts at ¶¶17-18.) *See In re McCarn's Allstate Finance, Inc*., 326 B.R. 843, 851 (M.D. Fla. 2005) ("Even if the information or indictment did specifically label the fraud a 'Ponzi Scheme' if the allegations in the information establish that the debtor ran a scheme whereby the debtor intended to defraud the debtor's creditors, evidence of a guilty verdict . . . can establish the existence of a Ponzi scheme.").

MEMORANDUM OF LAW

A. LEGAL STANDARDS

1. THE RECEIVER'S CLAIM UNDER COUNT II – FLA. STAT. §726.105(1)(a)

Section 726.105(1)(a), FLA. STAT., provides that "[a] transfer made or obligation incurred by a debtor is fraudulent as to a creditor . . . if the debtor made the transfer or incurred the obligation . . . [w]ith actual intent to hinder, delay, or defraud any creditor of the debtor." In order to establish liability under FLA. STAT. §726.105(1)(a), the Receiver "must demonstrate that '(1) there was a creditor to be defrauded; (2) a debtor intending fraud; and (3) a conveyance of property which could have been applicable to the payment of the debt due." *Wiand v. Lee*, 753 F.3d 1194, 1203 (11th Cir. 2014) (citing *Nationsbank, N.A. v. Coastal Utils., Inc.*, 814 So.2d 1227, 1229 (Fla. 4th DCA 2002) (emphasis that was added in *Lee*, omitted); *see Wiand v. Dewane*, 2012 U.S. Dist. LEXIS 30216, *8 (M.D. Fla. Feb. 7, 2012) ("What the statute [Fla. Stat. §726.105(1)(a)] does require Wiand to show is that the debtor made the transfer with the requisite intent to hinder, delay or defraud, a fact that Wiand can establish by proving the underlying scheme"). As shown herein, the Receiver, on behalf of the Receivership Entities, is a creditor who was defrauded by a debtor, Joseph Signore, who intended to defraud the Receivership Entities by causing the Receivership

Entities to transfer property to himself that could have been applicable to the payment of the debt due.

FUFTA expressly provides for the remedies available to the Receiver for fraudulent transfers, include "avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim," or, subject to "applicable principles of equity . . . [a]ny other relief the circumstances may require." FLA. STAT. § 726.108(1)(a) and (c)(3). In short, FLA. STAT. § 726.108 grants the court "broad equitable powers." *Freeman v. First Union Nat.*, 329 F.3d 1231, 1234 (11th Cir. 2003). Under FUFTA, the Receiver is entitled to a judgment for the value of the property transferred fraudulently to Joseph Signore, individually or jointly with Laura Signore, or for his benefit, or any other remedy that the Court finds appropriate under the circumstances. FLA. STAT. §§ 726.108(1)(a) – (c), 726.109(2).

2. CLAIMS UNDER COUNT VIII AGAINST JOSEPH SIGNORE FOR BREACH OF FIDUCIARY DUTY

The Receiver has also asserted a claim against Joseph Signore for breach of fiduciary duty based on his position as a corporate officer. The Florida Supreme Court has cited approvingly Section 874, Restatement (Second) of Torts for the proposition that "[o]ne standing in a fiduciary relation with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation." *Doe v. Evans*, 814 So.2d 370, 374 (Fla. 2002). Under Florida law, a corporate officer owes "both a duty of loyalty and a duty of care to the corporation they serve." *McCoy v. Durden*, 155 So.3d 399, 403 (Fla. 1st DCA 2014).

Under the "corporate opportunity" doctrine, a corporate officer or director cannot seize a business opportunity for him- or herself. *Uvanille v. Denoff*, 495 So.2d 1177 (Fla. 4th DCA 1986) (Hurley, Daniel T.K., J., concurring) (citing *Farber v. Servan Land Co., Inc.*, 662 F.2d 371, 377 (5th Cir. 1981). A corporate officer also cannot engage in corporate waste in transferring corporate assets, especially when engaging in self-interest, rather than on behalf of the corporation. *South End Improv. Group, Inc. v. Mulliken*, 602 So.2d 1327, 1333 (Fla. 4th DCA 1992) (per curiam). These prohibitions clearly extend to corporate officers who are operating Ponzi schemes through the corporations they serve. *Wiand v. Lee*, 753 F.3d 1194, 1202-03 (11th Cir. 2014) (stating "the receivership entities became 'creditors' of Nadel at the time he made the transfers of profits to Lee and others because, as FUFTA requires, they had a 'claim' against Nadel. They had a 'claim' against Nadel because he harmed the corporations by transferring assets rightfully belonging to

the corporations and their investors in breach of his fiduciary duties. . . . **The receivership entities were thus creditors because they had a right to a return of the funds Nadel transferred for unauthorized purposes for the benefit of their innocent investors**").

3. DECLARATION UNDER 28 U.S.C. § 2201(a)

Based on findings that Defendants received fraudulent transfers or that Joseph Signore breached his fiduciary duty or both, the Receiver has moved for a declaration that the Signore Residence should be subject to the imposition of a constructive trust or an equitable lien in the Receiver's favor. Significantly, Laura Signore has consented to the relief requested. (DE 61-1.) Such a declaration would allow the Receiver to take possession of the Signore Residence, even though such type of property is typically subject to homestead protection under Art. X, § 4 of the Florida Constitution.

Count I of the Receiver's Complaint arises under the Declaratory Judgment Act, 28 U.S.C. § 2201(a), which provides that a court "may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." This Court must consider "whether the facts alleged demonstrate the existence of a substantial controversy, between parties with adverse interests, with sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Triple R Paving, Inc. v. Liberty Mut. Ins. Co.*, 510 F. Supp. 2d 1090, 1093 (S.D. Fla. 2007) (citations omitted). The Declaratory Judgment Act is an "enabling Act, which confers a discretion on the courts rather than an absolute right upon the litigant." *Wilton v. Seven Falls Co.*, 515 U.S. 277, 278 (1995) (citations omitted).

A case arising under the Declaratory Judgment Act must answer the threshold question as to whether a justiciable controversy exists. *Atlanta Gas Light Co. v. Aetna Cas. & Sur. Co.*, 68 F.3d 409, 414 (11th Cir. 1995). Further, the movant must prove that "the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Maryland Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 272 (1941).

A declaration that the Receiver is entitled to an equitable lien is proper because there is: (1) an inadequate remedy at law; (2) evidence of fraud; and (3) the use of an instrument of fraud. *In re Lexi Dev. Co., Inc.*, 453 B.R. 440, 445 (Bankr. S.D. Fla. 2011); *Jennings v. Connecticut General Life Ins. Co.*, 177 So. 2d 66, 68 (Fla. 2d DCA 1965); *Palm Beach Sav. & Loan Ass'n, F.S.A. v. Fishbein*, 619 So.2d 267 (Fla. 1993). Further, the assets used to purchase the Signore

Residence that is the subject of the requested declaration are directly traceable to the Receivership. Without a declaration, the Signore Residence would potentially remain outside of the Receiver's grasp. *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 213 (2002).

Courts have routinely awarded equitable liens to equity receivers for property purchased with funds procured through fraud, including property protected by homestead. *Levy v. Kozyak (In re: Fin. Federated Title & Trust)*, 347 F.3d 880 (11th Cir. 2003) (per curiam) ("the [homestead] exemption is not to be so liberally construed as to make it an instrument of fraud"); *SEC v. Kirkland*, 2008 U.S. Dist. LEXIS 31061, *5 (M.D. Fla. Apr. 11, 2008) ("as the instant action is an equitable receivership, the Court is empowered to both the equitable lien and to direct the sale of the . . . home"); *CFTC v. Hudgins*, 620 F. Supp. 2d 790, 795 (E.D. Tex. 2009) (rejecting homestead protection argument and ordering wife who retired mortgage with Ponzi scheme proceeds to transfer title to receiver and vacate property). *See also Collinson v. Miller*, 903 So.2d 221, 228 (Fla. 2d DCA 2005) ("As Justice Cardozo stated, 'A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest equity converts him into a trustee'") (citing *Beatty v. Guggenheim Exploration Co.*, 122 N.E. 378, 380 (N.Y. 1919). For these reasons, the Receiver is seeking a declaration that the Signore Residence is subject to an equitable lien in the Receiver's favor.

B. THE RECEIVER IS ENTITLED TO JUDGMENT AS A MATTER OF LAW ON COUNT II FOR FRAUDULENT TRANSFER, FLA. STAT. § 726.105(1)(a)

As discussed herein, there are no genuine issues of material fact and the Receiver is entitled to judgment as a matter of law under Count II of the Complaint for fraudulent transfer, pursuant to FLA. STAT. §726.105(1)(a), because (1) the Receiver is a creditor who was defrauded; (2) Signore was a debtor intending fraud; and (3) the transfers Signore caused to be made could have been applied to the payment of the debt due to the Receiver. *Lee*, 753 F.3d at 1203.

1. THE RECEIVER IS A CREDITOR

Section 726.102(4), FLA. STAT., defines a creditor as "a person who has a claim," and FLA. STat. 726.102(3) defines "Claim" as "a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." In the context of a Ponzi scheme, the corporation used for the execution of the Ponzi scheme is a creditor of a debtor, the Ponzi scheme operator, because

the Ponzi scheme operator-debtor harms the corporation when assets are transferred for an unauthorized purpose. *Lee*, 753 F.3d at 1202.

On April 7, 2014, this Court commenced an action against Signore and Schumack in the case styled as *Securities and Exchange Commission v. JCS Enterprises Inc., et al.*, Case No. 14-cv-80468-MIDDLEBROOKS/BRANNON (S.D. Fla. Apr. 7, 2014). (Undisputed Facts at ¶1). The Court ordered that Signore be removed from control over JCS, and appointed Mr. Sallah as Receiver over JCS. (Undisputed Facts at ¶2). On April 14, 2014, this Court ordered that Signore be removed from control over Gee Bo, and appointed Mr. Sallah as Receiver over Gee Bo. (Undisputed Facts at ¶3.) Similarly, on December 11, 2014, this Court ordered that Signore be removed from control over JOLA, and appointed Mr. Sallah as Receiver over JOLA. (Undisputed Facts at ¶4.) On December 12, 2014, this Court reappointed Mr. Sallah as Receiver over JCS, TBTI, Gee Bo, JOLA, and PSCS. (Undisputed Facts at ¶5.)

With the removal of Signore, "the receivership entities [were] no more the 'evil zombies' of the Ponzi operator but [were] '[f]reed from his spell' and bec[a]me entitled to the return of the money diverted for unauthorized purposes." *Lee*, 753 F.3d at 1202 (citing *Scholes v. Lehmann*, 56 F.3d 750, 754 (7th Cir. 1995)). As the *Lee* Court stated:

> [T]he Receiver has standing to sue on behalf of the receivership entities because they were harmed by Nadel[, the Ponzi scheme operator,] when he transferred profits to investors, such as the Lee Defendants, from the principal investment of others for the unauthorized purpose of continuing the Ponzi scheme. Although the receivership entities were the instruments of Nadel's fraud, they were distinct legal entities whose purpose was to use client funds to invest in securities, and they were harmed when Nadel diverted the funds for unauthorized uses. **Applying *Lehmann* to FUFTA, the receivership entities became "creditors" of Nadel at the time he made the transfers of profits to Lee and others because, as FUFTA requires, they had a "claim" against Nadel**. They had a "claim" against Nadel because he harmed the corporations by transferring assets rightfully belonging to the corporations and their investors in breach of his fiduciary duties, and a "claim" under FUFTA includes "any right to payment" including a contingent, legal, or equitable right to payment.

Lee, 753 F.3d at 1202-03 (emphasis added) (citing Fla. Stat. § 726.102(3), *Cook v. Pompano Shopper, Inc.*, 582 So.2d 37, 40 (Fla. 4th DCA 1991). The Receivership Entities are "thus creditors because they ha[ve] a right to a return of the funds [Signore] transferred for unauthorized purposes for the benefit of their innocent investors." *Id.* at 1203. *See also Goldberg v. Chong*, 2007 U.S.

Dist. LEXIS 49980, *12 (S.D. Fla. July 11, 2007). Accordingly, the Receiver is a creditor of the debtor, Joseph Signore.

2. SIGNORE IS A DEBTOR WHO INTENDED FRAUD

The existence of the Ponzi scheme proves actual intent to defraud under FUFTA. *Lee*, 753 F.3d at 1201. Under the law in the Eleventh Circuit, "proof that a transfer was made in furtherance of a Ponzi scheme establishes actual intent to defraud under FLA. STAT. §726.105(1)(a) without the need to consider the badges of fraud." *Lee*, 753 F.3d at 1201. "To prove a ponzi scheme, the Receiver must establish that: (1) deposits made by investors; (2) the Receivership Entities conducted little or no legitimate business operations as represented to investors; (3) the purported business operations of the Receivership Entities conducted little or no profits or earnings; and (4) the source of payments to investors was from cash infused by new investors." *Morgan*, 919 F. Supp. 2d 1342, 1344 (M.D. Fla. 2012) (*citing Wiand v. Waxenberg*, 611 F. Supp. 2d 1299, 1312 (M.D. Fla. 2009)). Here, those elements are clearly met.

JCS manufactured and marketed virtual concierge machines ("VCMs"), which are free-standing or wall-mounted, ATM-like machines that were promised to be placed at various locations to enable businesses to advertise their products and services via touch screen and printable tickets or coupons which were dispensed from the VCMs. (Undisputed Facts at ¶25.) From at least as early as 2011 through April 7, 2014, Joseph Signore operated JCS and Schumack operated TBTI. (Undisputed Facts ¶¶26, 27). Joseph Signore and Schumack, through JCS and TBTI, respectively, offered and sold investments in JCS's virtual concierge machines ("VCMs"), which would purportedly pay income to investors from advertising revenues generated by the VCMs. (Undisputed Facts ¶28).

JCS and TBTI, combined, raised approximately $80.8 million from at least 1,800 investors nationwide by selling contracts for more than 22,500 VCMs. (Undisputed Facts ¶29). These sales to investors were documented through contracts with JCS and TBTI, and those contracts represented that advertising revenue would provide investors with a return of $300 per month for thirty-six (36) to forty-eight (48) months, or a return of at least $10,800 over a 36 month period. (Undisputed Facts ¶32). When asked to explain "what JCS's Virtual Concierge Program was" and discuss JCS's contracts, Joseph Signore invoked his Fifth Amendment against self-incrimination. (Undisputed Facts at ¶30.) Significantly, advertising revenues were insufficient to pay the promised returns to investors. (Undisputed Facts ¶33).

During the relevant time period from 2011 through April 7, 2014, JCS and TBTI, combined, earned a total of approximately $21,000 or $22,000 in advertising revenue from these machines. (Undisputed Facts ¶34). Indeed, the advertising revenue actually generated by VCMs would not even have supported the obligations for **two** (2) VCMs that were sold under the shorter, 36-month contracts. (Undisputed Facts ¶35).

Moreover, based on a conservative calculation assuming that the payment stream would be limited to 36 months, JCS and TBTI would have been obligated to pay more than $243.4 million to investors during the duration of these investment contracts, or $6.75 million per month. (*Id.*) Besides approximately $21,000 or $22,000 in advertising revenue, JCS and TBTI generated no other meaningful source of revenue or cash inflows from which to pay investors or any other creditors. (Undisputed Facts ¶37). In order to maintain the fiction that the investment was valid and make these payments to investors, Joseph Signore and Schumack caused JCS and TBTI, respectively, to use new investor funds to make so-called "returns" to earlier investors in the total amount of $49.7 million. (Undisputed Facts ¶38). Moreover, Joseph Signore operated JCS as a part of a single, continuous illegal Ponzi scheme. (Undisputed Facts ¶42). Thus, Joseph Signore is a debtor who intended to defraud the Receivership Entities.

3. THE TRANSFERS COULD HAVE BEEN APPLICABLE TO THE PAYMENT OF THE DEBT DUE

The third element for establishing liability under FUFTA requires a showing of "a conveyance of property which could have been applicable to the payment of the debt due." *Lee*, 753 at 1203 (citing *Coastal Utils., Inc.*, 814 So.2d at 1229). As the *Lee* Court stated:

> . . . because the funds that Nadel controlled and transferred to investors could have been applied by him to pay the debt he owed to the receivership entities as a result of his use of funds to perpetrate a Ponzi scheme. With each transfer that Nadel made, Nadel became a debtor of the receivership entities because he diverted the funds from their lawful purpose in violation of his fiduciary duties and was thus obligated to return those same funds to the entities to be used for the benefit of the investors. Therefore, with each transfer, Nadel diverted property that he controlled and that could have been applicable to the debt due, namely, the very funds being transferred. As the Receiver states, "[T]he money transferred to the Defendants is not only 'applicable to the payment of the debt due,' but it is the actual money that generated and deepened (in part, along with money transferred to other investors) the debt owed by Nadel to the Investment Funds. In other words, it is the

> exact same money that generated the debt and gave rise to the claims in this case."

Id.

Similarly, in this case, Joseph Signore furthered the Ponzi scheme and deepened the debt owed to the Receivership Estate when he caused JCS to make tens of millions of dollars in unauthorized transfers of funds rightfully belonging to the Receivership Entities. *Lee*, 753 F.3d at 1203. Among other transfers made, Joseph Signore exercised control over JCS's and JOLA's funds and diverted them to himself or for his benefit. (Undisputed Facts at ¶11.) As was the case in *Lee*, Joseph Signore was thus obligated to return those same funds to the Receivership Entities to be used for the benefit of the investors. As such, those transfers could have been applied to the payment of the debt due to the Receivership Entities. *Lee*, 753 F.3d at 1203.

4. AVOIDANCE OF THE TRANSFERS TO DEFENDANT OR FOR HIS BENEFIT

Based on the above reasoning, there are no genuine issues of material fact, and the Receiver is entitled to a judgment avoiding the transfers that were made to Joseph Signore under FLA. STAT. § 726.108(1)(a), for the following amounts plus prejudgment interest:

5. $17,500.00, which was transferred to Joseph Signore and Laura Signore jointly (Undisputed Facts at ¶43);
6. $605,236.25, which was transferred to Joseph Signore individually (*id.*); and
7. $981,936.30, which represents the value of the goods and services purchased by the Receivership Entities for Defendants' benefit (Undisputed Facts at ¶44).

C. THE RECEIVER IS ENTITLED TO A JUDGMENT ON COUNT VIII FOR BREACH OF FIDUCIARY DUTY

The Receiver is entitled to a judgment as a matter of law on Count VIII for Breach of Fiduciary Duty. Joseph Signore was Chairman and President of JCS, the President of Gee Bo, and President of JOLA. (Undisputed Facts at ¶¶6, 8, 9.) Joseph Signore also controlled the financial accounts for JCS, Gee Bo, and JOLA. (Undisputed Facts at ¶11.) As such, Joseph Signore owed JCS, Gee Bo, and JOLA a duty of loyalty and a duty of care. *McCoy*, 155 So.3d at 403.

1. CORPORATE WASTE IN CONNECTION WITH PAYMENTS TO LAURA SIGNORE

Joseph Signore caused JCS to transfer funds to Laura Signore. These payments represent corporate waste because the payroll payments were made to operate a Ponzi scheme and because the commission payments were made so the Ponzi scheme could continue. Specifically, when

asked whether JCS would have paid Laura Signore any money other than for payroll or commissions, Joseph Signore testified under oath: "No." (Undisputed Facts at ¶48.) As a result, Joseph Signore proximately caused damages to JCS as a result of this corporate waste in the amount of the transfers, or $819,923.42.

2. SELF-DEALING IN CONNECTION WITH PAYMENTS TO JOSEPH SIGNORE OR FOR HIS BENEFIT

The Receiver is also moving the Court, in the alternative, for Summary Judgment as to Count VIII for the payments Joseph Signore made to himself, which are the same transfers that are the subject of the Receiver's Motion for Summary Judgment as to Count II.

During the period from December 2011 to April 7, 2014, Joseph Signore caused JCS to be operated as part of a continuous Ponzi scheme that used later investors' funds to pay purported income to earlier investors. While in a position of trust with control over the financial accounts of JCS, Joseph Signore caused JCS to transfer $605,236.25 to him in cash and $17,500.00 to Laura Signore and him, jointly. He also caused JCS to make payments to third parties for Defendants' personal benefit, including transfers that were made from JCS to JOLA. Among other transfers, Joseph Signore caused JCS and JOLA to transfer $424,159.39 to South Florida Title Insurers of Palm Beach County for the purpose of purchasing the 2 pieces of real property that are held in the names of Joseph Signore and Laura Signore, which include the Signore Residence and a vacant lot of land. (Undisputed Facts at ¶¶50-55.) These transfers also included payments to Boca Tanning Club, Craft Master Pool, Disney, Gold Distributors, Inc., Hula Pools, Inc., Palms Pool Service, Inc., Mike Mieves (who worked on Joseph Signore's Rolls Royce), and Universal Orlando—indeed, Joseph Signore admitted the transfers were for his own personal benefit and not for the benefit of the actual transferees, JCS and JOLA. (Undisputed Facts at ¶¶45, 46.)

D. THE RECEIVER IS ENTITLED TO A DECLARATION UNDER COUNT I

The Receiver is entitled to a declaration that the Receiver is entitled to the imposition of a constructive trust or an equitable lien because Joseph Signore: (a) engaged in fraud, (b) caused JCS to fraudulently transfer monies to himself and Laura Signore in connection with the Ponzi scheme, and (c) Defendants used these fraudulent transfers to purchase the Signore Residence. Significantly, Laura Signore has consented to this relief already. (DE 61-1.) The Receiver is seeking a declaration that provides that the Signore Residence is properly the property of the Receivership.

Florida courts have routinely held that, where a person has purchased a home with fraudulently obtained funds, "the Florida Constitution does not protect [the person's] homestead property from an equitable lien or constructive trust. . . ." *In re: Fin. Fed. Title & Trust*, 347 F.3d at 880. Specifically, where homesteaded property is purchased with funds derived from a breach of fiduciary duty, Florida courts have imposed a constructive lien over the homesteaded property. *Hirchert Family Trust v. Hirchert*, 65 So.3d 548 (Fla. 5th 2011). In this case, an equitable lien is proper, and, therefore, should be established for the Signore Residence because: (1) there is a lack of an adequate remedy at law; (2) there is evidence of fraud; and (3) the Signore Residence is being used as an instrument of fraud.

1. THE RECEIVER HAS AN INADEQUATE REMEDY AT LAW

Lack of adequate remedy at law is required for the establishment of an equitable lien. *In re Lexi Dev. Co., Inc.*, 453 B.R. 440, 445 (Bankr. S.D. Fla. 2011). The availability of economic damages does not always mean that the remedy is adequate. *Janvey v. Alguire, et al.*, 647 F.3d 585, 600 (5th Cir. 2011). In *Janvey*, the SEC brought suit against Stanford International Bank for perpetrating a Ponzi scheme. *Id.* at 589. The court appointed a receiver who sought a preliminary injunction against numerous former financial advisors and employees of the investment company, freezing the accounts of those individuals pending the outcome of trial. *Id.* at 585. The Fifth Circuit determined that if a preliminary injunction were not granted, there would be irreparable harm and, thus, an inadequate remedy at law. *Id.* at 600. The court reasoned that "the mere fact that economic damages may be available does not always mean that a remedy at law is 'adequate.'" *Id.* The court further explained that because "the Receiver provided evidence of a massive Ponzi scheme and proof that each individual received proceeds from the fraudulent scheme," irreparable harm would result, and there was no adequate remedy at law. *Id.* at 601.

Similarly, the court in *Allen* found irreparable harm where the defendant had removed half of the loan proceeds procured by fraud from his bank account:

> If an injunction does not issue, Defendants will continue to further dissipate the money remaining in the account, money of which Defendants have no legitimate claim. Any recovery attempts by Bloomfield of the money it can specifically trace to Shapiro Lending's Bank of America account will therefore be rendered meaningless if Defendants have the opportunity to continue to access and use the money in that accounts. Accordingly, Bloomfield has shown it will suffer irreparable harm if the injunction does not issue as to the Bank of America account.

Bloomfield Institutional Opportunity Fund, LLC v. Allen Inv. Props., LLC, 2010 U.S. Dist. LEXIS 88192, *19 (M.D. Fla. Aug. 9, 2010).

In this case, a judgment avoiding the transfers to Defendants or for money damages would be inadequate to satisfy the total amount of funds that were fraudulently transferred to Defendants. The Court froze Joseph Signore's assets and financial accounts at the outset of the SEC Case. (SEC Case DE 16.) Similarly, Laura Signore consented to the entry of a preliminary injunction freezing her assets, as well. Defendants' financial accounts, as well as the accounts of JCS, Gee Bo, and JOLA, held inadequate assets to satisfy the claims asserted by the Receiver. While the inclusion of the two parcels of real property would still prove inadequate, a declaration that those parcels are the property of the Receiver would reduce the deficit owed to the Receiver.

Significantly, all but approximately $20,000 of the $555,000 used by Defendants to purchase the Signore Residence are traceable to the Receivership Estate—and Defendants were indebted to the Receivership Estate by much more than $20,000 when the Signore Residence was purchased. (Undisputed Facts at ¶¶50-54.) Because the Signore Residence is subject to homestead, the Receiver likely cannot obtain complete relief without a declaration that the Receiver is entitled to an equitable lien for the property. *Janvey*, 647 F.3d at 600; *Bloomfield*, 2010 U.S. Dist. LEXIS 88192 at *18-19. Because a creditor "may obtain . . . [a]ny other relief the circumstances may require", FLA. STAT. § 726.108(1)(c)(3), the Court is empowered to establish an equitable lien and may effectuate an adequate remedy only by establishing an equitable lien on the Signore Residence.

2. AN EQUITABLE LIEN SHOULD BE ESTABLISHED DUE TO EVIDENCE OF FRAUD

An equitable lien is appropriate where there is evidence of fraud. *Jennings v. Connecticut General Life Ins. Co.*, 177 So. 2d 66, 68 (Fla. 2d DCA 1965); *Hallmark Mfg., Inc. v. Lujack Const. Co., Inc.*, 372 So. 2d 520, 522 (Fla. 4th DCA 1979). In this case, the transfers were made with intent to defraud creditors – the Receivership Entities. *Lee*, 753 F.3d at 1203. Because Joseph Signore operated JCS as a Ponzi scheme, every transfer made to Defendants was, by definition, made with actual intent to defraud. *Id.* at 1202. Accordingly, the Receiver is entitled to an equitable lien. *See In re Thiel*, 275 B.R. 633, 638-39 (Bankr. M.D. Fla. 2001) (holding that an equitable lien should be established on the defendant's homestead because the lien was "based upon the debtor's fraud . . . ").

3. THE SIGNORE RESIDENCE IS BEING USED AS AN INSTRUMENT OF FRAUD

An equitable lien is appropriate to prevent allowing homesteaded property from harboring fraudulently obtained monies through the use of instruments of fraud. *Palm Beach Sav. & Loan Ass'n, F.S.A. v. Fishbein*, 619 So.2d 267 (Fla. 1993) (reasoning that "the homestead exemption is intended to be a shield, not a sword"). As in *Fishbein*, Defendants' alleged lack of knowledge is irrelevant because Joseph Signore's fraud renders the Signore Residence an instrument of fraud. While the Florida Supreme Court "has long emphasized that the homestead exemption is to be liberally construed in the interest of protecting the family home," that "exemption is not to be so liberally construed as to make it an instrument of fraud or imposition upon creditors." *In re Financial Federated Title & Trust, Inc. v. Kozyak*, 347 F.3d 880, 886 (11th Cir. 2003) (citing *Milton v. Milton*, 63 Fla. 533 (Fla. 1912)).

Here, Defendants transferred funds from the Receivership Entities to purchase the Signore Residence. (Undisputed Facts at ¶¶50-54.) Notwithstanding the purported protections of the Florida Constitution, Defendants' transfers of funds rightfully belong to the Receivership Entities, and the property acquired with those funds should be declared to be held by Defendants for the benefit of the Receivership. As was the case in *Fishbein*, the deposit of funds derived from Defendants' fraud into the Signore Residence means that the Signore Residence is being used as an instrument of fraud. Accordingly, this Court should recognize that the Signore Residence is being used as an instrument of fraud and should establish an equitable lien on the Signore Residence in favor of the Receiver.

E. THE RECEIVER IS ENTITLED TO PRE- AND POST-JUDGMENT INTEREST AND COSTS

Finally, the Receiver is entitled to recover prejudgment interest on the fraudulent transfers at issue. *In re Int'l Admin. Svcs. Inc.*, 408 F.3d 689, 710 (11th Cir. 2005) (holding prejudgment interest on fraudulent transfers is mandated by "fairness and equity); *In re Maul Indus. Loan & Finance Co.*, 77 B.R. 134, 147 (D. Hawaii 2012) (awarding prejudgment interest on fraudulent transfers made to Ponzi scheme investors). While prejudgment interest accrues from the date of loss – that is, the date of each fraudulent transfer, the Receiver recommends that, to preserve Estate resources and costs, the Court grant interest accruing from the date of the Receivership's inception (April 7, 2014). *SEB S.A. Sunbeam Corp.*, 148 Fed. App'x 774, 793 (11th Cir. 2005) (holding that, for each offense, prejudgment interest begins to accrue from the date of loss); *Hayes v. FPI Nursery Partners 1984-1*, 936 F.2d 577 (9th Cir. 1991) (holding that the district court properly

awarded prejudgment interest from date when the entity received fraudulent transfers from Ponzi scheme), *DiBraccio v. Raybin*, 1999 WL 33596531, *3 (Bankr. S.D. Fla. Feb. 24, 1999) (prejudgment interest calculated from date of loss). *Cf. Wiand v. Dancing $, LLC*, 2015 U.S. Dist. LEXIS 81369, *14-16 (M.D. Fla. Mar. 27, 2015) (where defendant profiteer "was an unwitting investor duped like the others [who invested]," the court awarded prejudgment interest only from the date of filing of the complaint); *Lee*, 753 F.3d at 1205 (remanding for determination of "whether equitable considerations justify denying or reducing a prejudgment interest award in light of Florida's general rule that prejudgment interest is an element of pecuniary damages").

When state law provides the basis for a judgment, federal courts apply state law in determining entitlement to prejudgment interest and the applicable rate. *See, e.g., Millennium Partners, L.P. v. Colmar Storage*, LLC, 494 F.3d 1293, 1304 (11th Cir. 2007) (noting that entitlement to "prejudgment interest is a question of state law"); *SEB S.A. v. Sunbeam Corp.*, 476 F.3d 1317, 1320 (11th Cir. 2007) (holding that federal courts apply state prejudgment interest law in diversity cases); *Jones v. United Space Alliance, LLC*, 494 F.3d 1306, 1309 (11th Cir. 2007) (holding that federal courts apply state prejudgment interest law when exercising supplemental jurisdiction); *see also Hayes*, 936 F.2d at 577 (affirming use of Hawaii law in awarding prejudgment interest); *Geltzer v. Artists Mktg. Corp*., 338 B.R. 583, 600 (Bankr. S.D.N.Y. 2006) (concluding that because avoidance of fraudulent transfer under Bankruptcy Code is predicated on state substantive law, state law determines the rate of interest); *Von Gunten v. Neilson*, 243 Fed. App'x 225, 259 (9th Cir. 2007) (same).

Here, FUFTA and Florida common law are the substantive bases for the Receiver's claims. Florida law mandates an award of prejudgment interest, and Florida's statutory interest rate must be applied (which is codified at Fla. Stat. § 55.03(1)). *See Argonaut Ins. Co. v. May Plumbing Co.*, 474 So. 2d 212, 215 (Fla. 1985) (holding that Florida law "forecloses discretion in the award of prejudgment interest" and "in the rate of that interest"). Under applicable law, the annual rate for the year in which each voided transfer was made must be applied. *Allstate Ins. Co. v. Palterovich*, 653 F. Supp. 2d 1306, 1329 (S.D. Fla. 2009); *Greenberg v. Grossman*, 683 So.2d 156, 157-58 (Fla. 3d DCA 1996). The Chief Financial Officer of the State of Florida has established the interest payable on judgments and decrees on a quarterly basis, which is currently published at http://www.myfloridacfo.com/Division/AA/Vendors/ and at http://www.myfloridacfo.com/Division/AA/Vendors/JudgmentInterestRates.htm for current and

historical rates, respectively. The interest rates applicable during the relevant time period have been as follows:

From	To	Annual Rate	Daily Rate
4/1/2013	6/29/2013	4.75%	0.0130137%
7/1/2013	9/29/2013	4.75%	0.0130137%
10/1/2013	12/31/2013	4.75%	0.0130137%
1/1/2014	3/31/2014	4.75%	0.0130137%
4/1/2014	6/29/2014	4.75%	0.0130137%
7/1/2014	9/29/2014	4.75%	0.0130137%
10/1/2014	12/31/2014	4.75%	0.0130137%
1/1/2015	3/31/2015	4.75%	0.0130137%
4/1/2015	6/29/2015	4.75%	0.0130137%
7/1/2015	9/29/2015	4.75%	0.0130137%
10/1/2015	12/31/2015	4.75%	0.0130137%
1/1/2016	3/31/2016	4.75%	0.0129781%
4/1/2016	6/30/2016	4.78%	0.0130624%
7/1/2016	9/30/2016	4.84%	0.0132332%

Based on the foregoing, the rate of pre-judgment interest for the time period from the inception of the Receivership through September 12, 2016, is 11.4693094%, and the total amount of prejudgment interest due on the amount presented in this Motion is $278,059.01. The Receiver is also moving the Court to award post-judgment interest and costs.

F. THE RECEIVER IS ENTITLED TO SUMMARY JUDGMENT ON JOSEPH SIGNORE'S AFFIRMATIVE DEFENSE OF SETOFF

In his Answer, Joseph Signore has claimed that the "$607,036 includes a salary of $221,000 paid over 3 years, credit card payments for inventory purchases, and a no interest loan made to JCS for $350,000." (DE 74 at 2.) However, Joseph Signore cannot avail himself of the affirmative defense of setoff because he did not receive these transfers in good faith and for a reasonably equivalent value. FLA. STAT. § 726.109(1) ("A transfer or obligation is not voidable under s.

726.105(1)(a) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee").

In this case, Joseph Signore could not have provided any valid services to JCS for any purported salary, because Joseph Signore's services rendered to JCS consisted of running a Ponzi scheme through JCS. As such, the services he performed only extended the fraud that was designed to benefit Joseph Signore. *See Wing v. Dockstader*, 482 Fed. Appx. 361, 366 (10th Cir. June 6, 2012) (*citing Sender v. Simon*, 84 F.3d 1299, 1307 (10th Cir. 1996); *see Warfield v. Byron*, 436 F.3d 551, 560 (5th Cir. 2006) ("It takes cheek to contend that in exchange for the payments he received, the RDI Ponzi scheme benefitted from his efforts to extend the fraud by securing new investment") (*citing Ramirez Rodriguez v. Dunson (In re Ramirez Rodriguez)*, 209 B.R. 424, 434 (Bankr. S.D. Tex. 1997) ("[A]s a matter of law, the Defendant gave no value to the debtors [Ponzi scheme operators] for the commissions attributable to investment made by others pursuant to the verbal agreement with [the debtors]" (additions in *Byron* decision); *Martino v. Edison Worldwide Capital (In re Randy)*, 189 B.R. 425, 438-39 (Bankr. N.D. Ill. 1995) (as illegal services premised on illegal contracts, broker services provided in furtherance of a Ponzi scheme do not provide reasonably equivalent value); *Dicello v. Jenkins (In re Int'l Loan Network, Inc.)*, 160 B.R. 1, 16 (Bankr. D.D.C. 1993) (investors who talked up Ponzi scheme, even if they had a contract, conferred no value since enforcing an illegal contract exacerbates harm to defrauded creditors)).

Mr. Signore's reliance on the purported $350,000 loan is also unavailing. Joseph Signore has testified that the source of the funds for this loan were derived from an inheritance from in or around 1995. (Undisputed Facts at ¶20.) However, Joseph Signore filed for personal bankruptcy after receiving the inheritance, but before making the loan to JCS. (Undisputed Facts at ¶23.) Moreover, the Receiver has found no evidence of Joseph Signore having made this loan, and Joseph Signore has invoked his Fifth Amendment right against self-incrimination when asked about where the funds were located immediately before the loan was made. (Undisputed Facts at ¶58, 24.)

Regardless, in order to prove that he received transfers from JCS that are not avoidable, Joseph Signore is required to prove that he received transfers in good faith. *Cuthill v. Kime (In re Evergreen Sec., Ltd)*, 310 B.R. 245, 254 (Bankr. S.D. Fla. 2003) (*citing Cuthill v. Greenmark, LLC (In re World Vision Entm't, Inc.)*, 275 B.R. 641, 659 (Bankr. M.D. Fla. 2002). But the person who operates a Ponzi scheme and makes unauthorized transfers of funds to him- or herself cannot prove

that he or she received any of the funds in good faith, because each unauthorized transfer made by the Ponzi scheme operator harms the corporation through which the Ponzi scheme has been perpetrated. *See Lee*, 753 F.3d at 1202-03. Further, Joseph Signore was twice previously convicted of fraud and subject to restitution orders. (Undisputed Facts at ¶¶12-15.) He was not operating in good faith while running a Ponzi scheme as a convicted felon.

Thus, Joseph Signore is not entitled to any setoff against any of the funds he received, directly or indirectly, from the Receivership Entities.

CONCLUSION

WHEREFORE, the Receiver respectfully requests that the Court grant the Receiver summary judgment against Joseph Signore as follows:

a. $1,604,672.55 under either Count II, for FLA. STAT. § 726.105(1)(a), or, alternatively, Count VIII for breach of fiduciary duty, based on the amount of transfers received by Joseph Signore, individually or jointly with Laura Signore, and the amounts of the transfers made to third parties for Defendants' benefit;
b. $819,923.42 under Count VIII, for breach of fiduciary duty, based on the amount of payments made to Laura Signore;
c. $278,059.01 in pre-judgment interest on the principal amount demanded herein, at the aggregate rate of 11.4692093% for the time period from April 7, 2014, to September 12, 2016;
d. Post-judgment at the rate prescribed by the Florida Chief Financial Officer in accordance with FLA. STAT. § 55.03; and
e. Costs, with the Court to retain jurisdiction to enter the amount of costs on motion for final judgment; and

that the Court enter declaratory judgment, under Count I, that the Receiver is entitled to an equitable lien over the Signore Residence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 12, 2016 I caused the foregoing to be filed through CM/ECF and to have served the foregoing on the following persons via U.S. Mail, postage prepaid, as indicated in the Service List, below.

/s/Joshua A. Katz
Joshua A. Katz, Esq.

SERVICE LIST

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