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UNITED STATES DISTRICT COURT

DISTRICT OF IDAHO

R. WAYNE KLEIN, the Court-Appointed Receiver of Trigon Group, Inc. and for the assets of Daren L. Palmer, Plaintiff, vs. DOYLE BECK, an individual, Defendant.	Case No. CV 10-88-E-EJL MOTION FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO RULE 50(b) AND MOTION TO ALTER OR AMEND JUDGMENT OR, IN THE ALTERNATIVE, FOR A NEW TRIAL, PURSUANT TO RULE 59(a) & (e)

Plaintiff R. Wayne Klein, the Court-Appointed Receiver of Trigon Group, Inc. and for the assets of Daren L. Palmer (the "Receiver"), moves this Court to enter judgment as a matter of law in his favor on his Uniform Fraudulent Transfer Act ("UFTA") claims pursuant to Fed. R. Civ. P. 50(b), or, in the alternative, to alter or amend the Judgment in his favor on his UFTA claims pursuant to Fed. R. Civ. P. 59(e), or in the alternative, for a new trial under Fed. R. Civ.

P.59(a). The Receiver also moves this Court to alter or amend the Judgment under Rule 59(e) to include prejudgment interest on the amount awarded in favor of the Receiver.

The Motion for judgment in the Receiver's favor on his UFTA claims or for a new trial is made on grounds that the jury's findings in this case are irreconcilably inconsistent. The Motion for prejudgment interest is made on grounds that Idaho law calls for prejudgment interest on unjust enrichment claims where the amount awarded was mathematically ascertainable.

This Motion is supported by the Receiver's Memorandum of Law filed concurrently herewith as well as by the previous filings with this Court, this Court's prior rulings in this case, the evidence presented at trial, and the jury's findings after trial.

DATED THIS 5th day of September, 2012.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By: /s/ Matthew Gordon
Matthew Gordon
Attorneys for Plaintiff R. WAYNE KLEIN, the Court-Appointed Receiver of Trigon Group, Inc. and for the assets of Daren L. Palmer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of September, 2012, I electronically filed the foregoing MOTION FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO RULE 50(b) AND MOTION TO ALTER OR AMEND JUDGMENT OR, IN THE ALTERNATIVE, FOR A NEW TRIAL, PURSUANT TO RULE 59(a) & (e) with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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Attorneys for Plaintiff R. WAYNE KLEIN, the Court-Appointed Receiver of Trigon Group, Inc. and for the assets of Daren L. Palmer

UNITED STATES DISTRICT COURT

DISTRICT OF IDAHO

R. WAYNE KLEIN, the Court-Appointed Receiver of Trigon Group, Inc. and for the assets of Daren L. Palmer, Plaintiff, vs. DOYLE BECK, an individual, Defendant.	Case No. CV 10-88-E-EJL MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO RULE 50(b) AND MOTION TO ALTER OR AMEND JUDGMENT OR, IN THE ALTERNATIVE, FOR A NEW TRIAL, PURSUANT TO RULE 59(a) & (e)

I.
INTRODUCTION

Plaintiff R. Wayne Klein, the Court-Appointed Receiver of Trigon Group, Inc. and for the assets of Daren L. Palmer (the "Receiver"), by and through his undersigned attorneys of record, submits this memorandum in support of his motion for judgment as a matter of law and motion to alter or amend the judgment entered in this case or, in the alternative, for a new trial.

By his Motion, the Receiver moves this Court: (1) to enter judgment as a matter of law pursuant to Rule 50(b) -- or alter or amend the Judgment under Rule 59(e) -- in the Receiver's favor on his Uniform Fraudulent Transfer Act ("UFTA") claims to remedy the irreconcilably inconsistent findings made by the jury; (2) in the alternative, to order a new trial pursuant to Rule 59(a); and (3) if a new trial is not entered, to amend the Judgment, pursuant to Rule 59(e), to include prejudgment interest.

This Court should enter judgment as a matter of law in the Receiver's favor on his UFTA claims to reflect the legal result of the jury's finding that Duane Yost ("Yost") did not act in good faith. The jury found that $555,000 of Trigon's monies was used by Yost to repay his loan to Defendant Doyle Beck ("Beck"). The jury also found that Beck failed to prove that Yost acted in good faith or that he gave reasonably equivalent value to Trigon. Nevertheless, the jury found that Yost was the initial transferee of the Trigon monies and, as a result, found in favor of Beck on the Receiver's UFTA claims. Because these findings are irreconcilably inconsistent -- because, as a matter of law, Yost lacked dominion over the Trigon monies as a result of his involvement with Trigon and his resultant lack of good faith -- this Court should enter judgment as a matter of law on the Receiver's UFTA claims or, in the alternative, should order a new trial.

If this Court does not order a new trial, it should amend the Judgment already entered – or any judgment is enters pursuant to this Motion – to include prejudgment interest. Idaho law calls for prejudgment interest on both unjust enrichment and UFTA claims where the amount of the damages are mathematically ascertainable. Because the amount of the Judgment is mathematically ascertainable, prejudgment interest at the statutory rate of 12% is warranted to fully compensate the Receiver.

II.
BACKGROUND

In its Memorandum Decision and Order on the parties' cross-motions for summary judgment (Dkt. 33), this Court held that the critical issue regarding Yost's status as an initial or subsequent transferee was whether Yost had a legal right to Trigon monies. (Dkt. 33 at p.11). Relying on *In re Incomnet*, 463 F.3d 1064, 1070 (9th Cir. 2006), this Court held that an initial transferee "is one who has 'dominion over the money or other asset, the right to put the money to one's own purposes.'" This Court further quoted *Incomnet* in describing how to determine whether one has 'dominion': "The inquiry focuses on whether an entity had legal authority over the money and the right to use the money however it wished." Dkt. 33 at p. 11. The Court accurately set forth the controlling principles from *Incomnet*, and the parties went to trial with the understanding that the Court's discussion of 'dominion' was the applicable law. *See Auza v. United Development, Inc. (In re United Development, Inc.)*, 319 Fed. Appx. 685, 687 (9th Cir. 2009) (stating that individual would be the transferee under the dominion test "if he 'had legal authority over the money and the right to use the money however he wished'") (quoting *Incomnet*, 463 F.3d at 1070).

This case was tried to a jury from July 31 through August 3, 2012. On August 3, 2012, the jury returned its Special Verdict. (Dkt. 63.)

At trial, the Receiver presented evidence that $555,000 of the monies used by Yost to repay his loan from Beck was monies belonging to Trigon, and that those payments represented the return of the $500,000 principal as well as $55,000 of the $105,000 total interest payments Beck received. As indicated by its answers to the questions posed in the Special Verdict, the jury found that Yost used $555,000 of Trigon monies to repay his loan to Beck. (Questions 2 & 3).

At trial, the Receiver presented overwhelming evidence that, among other things, Yost actively participated in the Trigon Ponzi scheme, including evidence that he solicited investors, that the majority of the Trigon investors sent their money to him, and that he made promises to potential investors about guaranteed rates of return. The Receiver also presented evidence that, despite his involvement in Trigon, Yost performed little, if any, investigation into the legitimacy of the investments he was selling. And the jury found that Yost did not act in good faith and that he did not give reasonably equivalent value to Trigon in exchange for the monies he received from Trigon that he used to pay Beck. (Questions 8 & 9.)

Despite these findings, the jury found that Yost was the initial transferee of the funds from Trigon. (Question 4.) And based on that finding, they indicated a finding in favor of Beck on the Receiver's Uniform Fraudulent Transfer Act (UFTA) claims.

The jury also found that Beck received and accepted a benefit from Trigon, and that under the circumstances, it would be unjust for him to retain the benefit without compensating the Receiver. As a result, the jury found in favor of the Receiver on his unjust enrichment claim in the amount of $55,000. (Dkt. 63 at pgs. 6-7.)

On August 8, 2012, this Court entered a Judgment in favor of the Receiver in the amount of the payments of Trigon monies that represented interest on the loan, $55,000, based on the jury's finding that Defendant Doyle Beck was unjustly enriched in that amount. (Dkt. 65.)

III.
ARGUMENT

A. This Motion is Timely.

Motions for judgment as a matter of law and motions to alter or amend a judgment or for a new trial are timely if made within 28 days after entry of the judgment. Fed. R. Civ. P. 50(b), 59(b) & (e). The Judgment was entered on August 8, 2012. Accordingly, this motion is timely.

B. A Rule 50(b) Motion is Procedurally Proper Even Though the Receiver did not Move Under Rule 50(a).

Although the general rule is that Rule 50(b) motion for judgment as a matter of law cannot be granted unless the moving party previously moved under Rule 50(a) at the close of evidence, in the Ninth Circuit, judgment may be entered under Rule 50(b) even absent any Rule 50(a) motion if the motion alleges "inconsistencies in the answers given in the special verdict" rather than defects in proof. *Pierce v. Southern Pacific Transp. Co.*, 823 F.2d 1366, 1369 (9th Cir. 1987). "When a special verdict does not support a judgment a reviewing court may make an exception to the Rule 50(b) requirement of a motion for directed verdict as a prerequisite to a motion for JNOV....Similarly, when a jury's answers are irreconcilably inconsistent, a reviewing court may review whether the answers support the judgment even in the absence of either a motion for directed verdict or a motion for JNOV." *Id.* (citing *Traders & Gen. Ins. Co. v. Mallitz*, 315 F.2d 171, 175 (5th Cir.1963) and *Fugitt v. Jones*, 549 F.2d 1001, 1004 (5th Cir.1977)). *See Fugitt*, 549 F.2d at 1005 ("If the answers were legally inconsistent, the entry of judgment on such a special verdict embodies the same error as the denial of a motion to set aside the verdict or denial of a motion for a new trial.").

The premise of the Receiver's Rule 50(b) motion for judgment as a matter of law is that the jury's answers are irreconcilably inconsistent and do not support the finding in favor of Beck on the UFTA claims. As a result, the motion is procedurally proper notwithstanding that the Receiver made no Rule 50(a) motion at the close of evidence.

C. Because the Jury's Answers to the Special Verdict are Irreconcilably Inconsistent, this Court Should Enter Judgment as a Matter of Law in the Receiver's Favor on his UFTA Claims.

The jury found that Yost did not act in good faith and did not give reasonably equivalent value to Trigon. As a matter of law, that finding leads to the conclusion that Yost lacked

dominion over the monies he received from Trigon. But the jury found that Yost was the initial transferee and, therefore, that he had dominion over those monies. That finding is irreconcilably inconsistent with the finding that Yost lacked good faith. As a result, this Court should enter judgment as a matter of law in the Receiver's favor on his UFTA claims.

1. **Based Upon the Jury's Finding that Yost Lacked Good Faith, Yost Could not Have had Dominion Over the Funds Received from Trigon.**

As a matter of law, a Ponzi scheme investor who lacks good faith has no right to receive monies from the Ponzi scheme and therefore has no legal authority -- and no dominion -- over any such monies. This rule follows from established Ninth Circuit law that a Ponzi scheme investor who lacks good faith must repay to the receiver all amounts received from the scheme. *Donell v. Kowell*, 533 F.3d 762, 771 (9th Cir. 2008) (holding that a receiver of a Ponzi scheme can recover all amounts paid – both principal and interest -- to an investor who lacked good faith); *Wyle v. C.H. Rider & Family (In re United Energy Corp.)*, 944 F.2d 589, 596 n. 7 ("If investments were made with culpable knowledge, all subsequent payments made to such investors within one year of the debtors' bankruptcy would be avoidable under section 548(a)(2), regardless of the amount invested, because the debtors would not have exchanged a reasonably equivalent value for the payments.").

As a result, a Ponzi scheme owes no legally enforceable debt to an investor who lacks good faith, and such investor therefore has no right to receive any monies from the scheme. *Picard v. Merkin (In re Bernard Madoff Investment Securities LLC)*, 440 B.R. 243, 262 (Bankr. S.D.N.Y. 2010) ("if the consideration for a transfer is satisfaction of an antecedent debt, the debt must be legally enforceable. Since investors in a Ponzi scheme are entitled to only an equitable right of repayment, there can be no legally enforceable debt if the investors acted in bad faith") Indeed, "one who has himself participated in a violation of law cannot be permitted to assert in a

court of justice any right founded upon or growing out of the illegal transaction." *Id.* (*quoting Gibbs & Sterrett Mfg. Co. v. Brucker*, 111 U.s. 597, 601 (1884)). In other words, someone who lacks good faith has neither legal authority over money received from a Ponzi scheme nor "the right to use the money however he wished"; to the contrary, he must return all of the funds he received.

There is no dispute that Yost received the Trigon monies before Beck. But, as a matter of law, "[d]epositing a third party's money into one's own account is insufficient to establish legal authority to that money." *Auza*, 319 Fed. Appx. at 687. This is particularly true where, as here, the recipient's involvement in a Ponzi scheme establishes that he has no right to the money deposited into his account.

The evidence at trial was that Yost actively participated in Trigon by soliciting numerous investors in Trigon. And the jury found that Yost lacked good faith. It necessarily follows from that finding that Yost had no right to receive monies from Trigon and that he lacked legal authority to the $555,000 in Trigon funds that he used to pay Beck, irrespective of the fact that he deposited the monies into his bank account: Yost was the initial recipient of the Trigon monies at issue, but based on the jury's finding that he lacked good faith, he could not be the initial transferee. As a result, the jury's finding that Yost was the initial transferee, which was necessarily based on a finding that Yost had dominion over those funds, was irreconcilably inconsistent with its findings that Yost lacked good faith and failed to provide reasonably equivalent value to Trigon.

2. **Because the Jury's Findings are Irreconcilably Inconsistent, this Court Should Enter Judgment as a Matter of Law in the Receiver's Favor on his UFTA Claims.**

The court has a duty to attempt to reconcile jury findings on any reasonable theory consistent with the evidence. *Pierce*, 823 F.2d at 1370. But if a special finding of fact is

inconsistent with the verdict, "the former shall control the latter, and the court shall give judgment accordingly." *Golden North Airways, Inc. v. Tanana Publishing Co.*, 218 F.2d 612, 618 (9th Cir. 1954) (quoting A.C.L.A. 1949, §§ 55-7-85 and identifying this as the "general rule"). In other words, if the answers are "legally inconsistent, the entry of judgment on such a special verdict embodies the same error as the denial of a motion to set aside the verdict or denial of a motion for a new trial." *Fugitt*, 549 F.2d at 1005. For this reason, if the conflicting answers "cannot be reconciled 'after a concerted effort,'" the judgment cannot stand. *Guidry v. Kem Mfg. Co.*, 598 F.2d 402, 406 (5th Cir. 1979) (reversing and remanding for a new trial) (quoting *Miller v. Royal Netherlands Steamship Co.*, 508 F.2d 1103, 1106 (5th Cir. 1975)).

As set forth above, the jury's finding that Yost did not act in good faith cannot be reconciled with its finding that Yost was the initial transferee because his lack of good faith meant that Yost could not have had dominion over the funds he received from Trigon. As a matter of law, the former finding "nullifies" the verdict in favor of Beck on the UFTA claims. *Golden North Airways*, 218 F.2d at 621. And if Yost was not the initial transferee, Beck was, and he would have a defense to the UFTA claims only if he gave reasonably equivalent value to Trigon. Idaho Code § 55-917. Because the undisputed facts at trial established that Beck gave his money to Yost as a personal loan rather than an investment in Trigon, and that Beck's money did not go to Trigon, the evidence cannot support any argument that Beck gave value, let alone reasonably equivalent value, to Trigon. Judgment should therefore enter in the Receiver's favor on the UFTA claims for the amount of Trigon monies that the jury found was used to repay Beck for his loan to Yost, $555,000.

D. In the Alternative, This Court Should Alter or Amend the Judgment or Order a New Trial Under Rule 59.

If this Court concludes that it cannot enter judgment in the Receiver's favor on his UFTA claims under Rule 50(b), it should alter or amend the Judgment under rule 59(e) or, at minimum, exercise its discretion to order a new trial under Rule 59(a).

"Rule 59(e) provides a means whereby a district court may alter or amend its judgment." *Northern Cheyenne Tribe v. Hodel*, 851 F.2d 1152, 1155 (9th Cir. Mont. 1988). Amendment or alteration is appropriate under Rule 59(e) to correct a clear error or prevent manifest injustice. *See Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001).

Rule 59(a) broadly authorizes this Court to order a new trial "for any reasons for which a new trial has heretofore been granted in an action at law in federal court." Irreconcilably inconsistent jury findings justify a new trial. *Guidry*, 598 F.2d at 408 (reversing and remanding for a new trial because "the jury's answers to the questions reflect inconsistent fact findings"); *Global Van Lines, Inc. v. Nebeker*, 541 F.2d 865, 868 (10th Cir. 1976) ("It is true that where the verdict is inconsistent, indicating either confusion or abuse on the jury's part, a motion for a new trial is not discretionary and a new trial must be granted."); *Fibermark, Inc. v. Brownville Specialty Paper Prods.*, 419 F. Supp. 2d 225, 233 (N.D.N.Y 2005) ("When there is no way to reconcile the inconsistent jury findings, the law demands a new trial.").

For the reasons set forth above, the irreconcilably inconsistent nature of the jury's answers to the Special Verdict do not support the finding in favor of Beck on the Receiver's UFTA claims. As a result, that finding is both clear error and manifest injustice, and if this Court does not grant the Receiver's motion for judgment as a matter of law, it should grant the motion to alter or amend the judgment under Rule 59(e) or, at minimum, order a new trial.

E. The Receiver is Entitled to Prejudgment Interest on the Amount of the Judgment From the Date of the Transfers.

If this Court denies the above motions, the Judgment in this case should be amended to include prejudgment interest on the jury's $55,000 award for unjust enrichment because Idaho law specifically calls for prejudgment interest in these circumstances. If the Court grants the motion to enter judgment as a matter of law in the Receiver's favor on the UFTA claim or to alter or amend the Judgment to that effect, the judgment entered by this Court should likewise include prejudgment interest because Idaho law also calls for prejudgment interest on UFTA claims.

A Rule 59(e) motion is the proper vehicle for requesting prejudgment interest. *See, e.g., RD Legal Funding, LLC v. Erwin & Balingit, LLP*, 2011 WL 90222 *2 (S.D. Cal. 2011); *Osterneck v. Ernst & Whinney*, 489 U.S. 169 (1989).

1. **If the Existing Judgment Stands, this Court Should Amend it to Include Prejudgment Interest Because Idaho Law Calls for Prejudgment Interest on Unjust Enrichment Damages.**

Idaho Code § 29-22-104 calls for an award of prejudgment interest on certain types of money claims, and Idaho case law specifically "calls for prejudgment interest on damages awarded for unjust enrichment." *Ross v. Ross*, 145 Idaho 274, 276 (Ct. App. 2007). *See Hixon v. Allphin*, 76 Idaho 327, 332 (1955) (holding that in an action for restitution to prevent unjust enrichment, the plaintiff is entitled to value of the property unjustly received "plus interest on said sum during the time of its detention"); *Jones v. Whiteley*, 112 Idaho 886, 889 (Ct. App. 1987) (the rule allowing prejudgment interest on a restitution award is "well-established").

The purpose of prejudgment interest is merely to compensate the aggrieved party "for the loss of the use of [its] money during the pendency of the action." *Davis v. Professional Business Services*, 109 Idaho 810, 817 (1985). The only limitation on an award of prejudgment interest is

that "the amount of liability is liquidated or capable of ascertainment by mere mathematical processes." *Ross*, 145 Idaho at 276. Even this limitation is not absolute, however, but, rather, is "based upon equitable considerations." *United States Fidelity and Guar. Co. v. Clover Creek Cattle Co.*, 92 Idaho 889, 900 (1969). *See also Bergkamp v. Carrico*, 108 Idaho 476, 481 (1985). The basis for the "ascertainable" limitation is "the notion that a person who could not determine the amount owed should not be charged interest on the sum that is ultimately found to be due." *Ross*, 145 Idaho at 276. But in the event that the amount found to be due is reasonably ascertainable by mathematical processes, "the interest in fully compensating the injured party predominates over other equitable considerations." *Id.* at 276–77 (quoting *Farm Dev. Corp. v. Hernandez*, 93 Idaho 918, 920 (1970)). And in an action for restitution based on unjust enrichment, the amount need merely be a "reasonably certain" estimate of the benefit retained. *Jones*, 112 Idaho at 889. Of course, "[t]he mere fact that a claim is disputed or litigated does not render damages 'unascertainable.'" *Ross*, 145 Idaho at 277.

Prejudgment interest is thus warranted where the award of damages at issue is merely a product of simple math. For example, in *Davis*, the Idaho Supreme Court approved prejudgment interest on an award of damages for costs the plaintiffs were forced to incur in moving their accounts receivable to a new company. 109 Idaho at 817. In response to an argument that the award was unascertainable, the Court retorted that "all the district court had to do was add up the amount of the checks" delivered to the new company. *Id.*

Prejudgment interest is also awarded even where the mathematics are more complicated. In *Bergkamp*, the Idaho Court of Appeals approved prejudgment interest on an award whose calculation required more than simple math, holding that a dispossessed commercial tenant was entitled to interest on a projected income stream for the remainder of the lease discounted to present value. 108 Idaho at 481. Although the damage award involved the uncertain task of

appraising the fair market rental value of the remainder of the lease, the court reasoned that the "limitation on prejudgment interest is not absolute" and turned to equitable considerations to approve prejudgment interest on the award. *Id.*

Here, the amount awarded by the jury on the unjust enrichment claim was readily ascertainable by simple mathematical calculation, and a prejudgment interest on the award is therefore appropriate to fully compensate the Receiver. As Beck has acknowledged, the jury simply awarded an amount equivalent to the amount of interest that Beck received from Trigon, $55,000. *See* Dkt. 66-1 at 3. The undisputed evidence at trial was that Beck received three payments of Trigon monies from Yost, in the amount of $25,000, $25,000, and $505,000, and that the first two payments -- as well as $5,000 of the final payment -- were for interest on the loan. As a result, the jury's award was a product of simple math made up of concrete and undisputed values—the amounts of the interest payments made with Trigon monies. Indeed, all the jury had to in this case was "add up the checks." *Davis*, 109 Idaho at 817.

Therefore, pursuant to Idaho Code § 28-22-104(1), the Receiver is entitled to prejudgment interest at a rate of 12 percent yearly on the $55,000 the jury found to be unjustly detained by Beck. Because the purpose of awarding prejudgment interest is to compensate for the loss of the use of the money, interest is calculated from the date that the monies were transferred to Beck. *See Bergkamp*, 108 Idaho at 481 (awarding prejudgment interest on the value of a leasehold from the date that tenant was wrongfully dispossessed); *Hixon*, 76 Idaho at 332 (plaintiff is entitled to interest on the value of goods, rights, and benefits "during the time of its detention").

Here, the undisputed evidence established: (1) that the first payment to Beck, in the amount of $25,000, was made on July 9, 2007; (2) that the second payment to Beck, also in the amount of $25,000, was made on October 16, 2007; and (3) that the third payment to Beck,

which included the final $5,000 in interest, was made on November 14, 2007. The Judgment entered on August 8, 2012, should, therefore, be amended to include $32,524.56 in prejudgment interest, calculated as follows: (1) $15,248.1 in prejudgment interest on the first payment (1,855 days at $8.22 per day from the date of the payment to the date judgment entered); (2) $14,442.54 in prejudgment interest on the second payment (1,757 days at $8.22per day); and (3) $2,833.92 in prejudgment interest on the third payment (1,728 days at $1.64 per day).[1]

2. **A Judgment in the Receiver's Favor on his UFTA Claims Should Include Prejudgment Interest.**

If this Court grants the Receiver's motion for judgment as a matter of law and enters judgment in the Receiver's favor on his UFTA claims, that judgment should likewise include prejudgment interest at the statutory 12% rate from the date of the transfers. In the Ninth Circuit, the receiver of a Ponzi scheme is entitled to recover prejudgment interest on fraudulent transfers from the date each transfer was made. *See Donell*, 533 F.3d at 772. Idaho law is in accord. *See In re Fehrs*, 391 B.R. 53, 76-77 (Bankr. D. Idaho 2008) (awarding prejudgment interest under Idaho law on fraudulent transfer); *In re Acequia, Inc.*, 34 F.3d 800, 818-819 (9th Cir. 1994).

IV.
CONCLUSION

For the foregoing reasons, this court should enter judgment in the Receiver's favor on his UFTA claims to remedy the irreconcilably inconsistent findings of the jury or, in the alternative,

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[1] If this Court grants the Receiver's motion to enter judgment in his favor on his UFTA claims, in the amount of $555,000, such judgment should also include $316,590.48 in prejudgment interest, as follows: (1) $15,248.10 in prejudgment interest on the first payment (1757 days at $8.22 per day); (2) $14,442.54 in prejudgment interest on the second payment (1,757 days at $8.22 per day); and (3) $286,899.84 in prejudgment interest on the third payment (1,728 days at $166.03 per day).

should order a new trial. Moreover, any judgment should include prejudgment interest calculated from the date of the relevant transfers.

DATED THIS 5th day of September, 2012.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By: /s/ Matthew Gordon
Matthew Gordon
Attorneys for Plaintiff R. WAYNE KLEIN, the Court-Appointed Receiver of Trigon Group, Inc. and for the assets of Daren L. Palmer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of September, 2012, I electronically filed the foregoing MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT AS A MATTER OF LAW PURSUANT TO RULE 50(b) AND MOTION TO ALTER OR AMEND JUDGMENT OR, IN THE ALTERNATIVE, FOR A NEW TRIAL, PURSUANT TO RULE 59(a) & (e) with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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