



Group, Inc. (“Trigon”), monies that rightfully belong to innocent Trigon investors. The transfers of Trigon assets to Mr. Lawson are avoidable under Idaho’s Uniform Fraudulent Transfer Act, and the Receiver is entitled to a judgment in the amount of that transfer, plus prejudgment interest and attorney fees.

In the alternative, the transfer to Mr. Lawson was made pursuant to a loan agreement, and Mr. Lawson has breached his obligation to repay the balance owed on that agreement. As a result, the Receiver is entitled to a judgment in the amount of the transfer.

Also accompanying this Motion are a Statement of Undisputed Material Facts and the Affidavit of Matthew Gordon.

DATED THIS 7<sup>th</sup> day of December, 2012.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By                     /s/ Matthew Gordon                    .  
Matthew Gordon, ISB No. 8554  
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 7<sup>th</sup> day of December, 2012, I electronically filed the foregoing PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT with the Clerk of the Court using the CM/ECF system.

And, I hereby certify that I have served the foregoing document to the following non-CM/ECF Registered Participants (list names and addresses):

Stephan D. Lawson  
348 East Sunnyside  
Idaho Falls, ID 83404

*(Defendant)*

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 E-mail  
 Telecopy

/s/ Matthew Gordon  
Matthew Gordon



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**I.  
INTRODUCTION**

This memorandum is filed by Plaintiff R. Wayne Klein (the “Receiver”), the court-appointed receiver of Trigon Group, Inc. (“Trigon”) and for the assets of Daren L. Palmer (“Palmer”), in support of his Motion for Summary Judgment against Defendant Stephan D. Lawson (“Lawson”). For the reasons discussed below, the Receiver is entitled to judgment as a matter of law because there is no genuine dispute as to any material fact.

**II.  
SUMMARY OF ARGUMENT**

The Receiver was appointed by this Court to recover money lost by innocent investors in the Ponzi scheme perpetrated by Trigon and Palmer. Pursuant to his appointment, the Receiver is charged with, among other things, recouping those Trigon assets that were fraudulently transferred to third parties. Because Trigon operated a Ponzi scheme, transfers of assets from Trigon were actually fraudulent transfers under the law and therefore subject to avoidance unless the transferee took in good faith and gave reasonably equivalent value to Trigon.

Among the Trigon assets that were diverted to third parties was a \$20,000 payment made to Lawson on or about September 9, 2008. The Receiver seeks repayment of those funds pursuant to the Uniform Fraudulent Transfer Act (“UFTA”), under which transfers of Ponzi scheme assets are actually fraudulent transfers and are avoidable by the Receiver. Because Lawson admits that he did not provide reasonably equivalent value to Trigon, he cannot establish any defense under the UFTA, and the Receiver is entitled to recover the payment \$20,000 from him.

Lawson is expected to contend that the \$20,000 payment was a loan from Trigon. But he admits that he has not repaid the loan (or that he repaid, at most \$200 of the loan). For this reason, if the payment was made pursuant to a loan, Defendant has breached by failing to repay

the loan. In either event, there is no disputed material fact that would prevent entry of summary judgment in the Receiver's favor for the amount of the transfer to Defendant.

### III. STATEMENT OF FACTS

Beginning before 2006 and continuing through 2009, Trigon and Palmer operated a Ponzi scheme pursuant to which Trigon and Palmer used monies obtained from investors to pay distributions to other investors. (Affidavit of Matthew Gordon filed concurrently herewith [“Gordon Aff.”], ¶¶ 3-6, Exhs. C-F.) Since as early as 2002 and at all times thereafter, Trigon was insolvent and became increasingly insolvent each year after 2002. (*Id.*)

On or about September 9, 2008, Defendant received and deposited a check made payable to him in the amount of \$20,000 that was drawn on Trigon's account at Bank of America. (Gordon Aff., ¶¶ 7-8, Exhs. G-H, Responses to Requests for Admission Nos. 1-3.)

Defendant provided no value to Trigon in exchange for that payment, and he has not repaid any more than \$200 to Trigon.<sup>1</sup> (*Id.*, Responses to Requests for Admission Nos. 6-9.)

Eventually, the Trigon Ponzi scheme collapsed. On February 26, 2009, the Securities and Exchange Commission and the Commodity Futures Trading Commission each filed a Complaint against Trigon and Palmer in this Court. On that same date, this Court appointed Plaintiff R. Wayne Klein as the Receiver for Trigon and for the assets of Palmer. (Gordon Aff., ¶ 2, Exhs. A & B.)

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<sup>1</sup> Defendant's discovery responses are inconsistent on this point (compare Responses to Request for Admission No. 6 and No. 8.) Defendant has provided no evidence of such payment in discovery. In any event, even if there is a genuine dispute about the \$200 payment, there is no dispute that the remaining \$19,800 has not been repaid. The Receiver's position is that he is entitled to recover \$20,000 from Lawson, but if this Court determines that there is a genuine dispute regarding the alleged \$200 payment, that would not indicate

On October 4, 2010, this Court entered an Order Granting Summary Judgment and Entering Final Judgment of Permanent Injunction and Other Relief Against Daren L. Palmer in Case Civ. No. 09-075-S-EJL [Docket. 75] in which this Court found, among other things, that Palmer admitted to running a Ponzi scheme for many years, and that Palmer had used funds obtained from investors to pay phony returns to earlier investors. (Gordon Aff., ¶ 3, Exh. C.)

On or about May 25, 2011, the United States of America and Palmer entered into a Rule 11 Plea Agreement pursuant to which Palmer plead guilty to the allegations contained in the Information based on his involvement in the Ponzi scheme that was operated through Trigon during the period from approximately 2002 through 2008. Case 4:11-cr-001130-EJL. (Gordon Aff., ¶¶ 4-5, Exhs. D & E.)

On August 3, 2012, at trial in a related case, this Court ruled, as a matter of law, that Palmer admitted that he was operating a Ponzi scheme via Trigon from prior to 2006 through January 2009, that payments made from Ponzi scheme funds are made with the “actual intent to defraud,” and that a Ponzi scheme is by definition insolvent. (Gordon Aff., ¶ 6, Exh. F.)

Pursuant to his obligation to recover funds wrongly diverted from Trigon, the Receiver seeks the repayment of the Trigon monies fraudulently transferred to Defendant.

#### IV. ARGUMENT

##### A. Summary Judgment Standard.

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Although the non-moving party’s evidence must be accepted as true, and

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that there is a genuine dispute regarding the other \$19,800, and the Receiver would still be entitled to recover that amount from Lawson.



reasonable inferences arising from the evidence must be drawn in its favor, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986), summary judgment must be granted unless a reasonable jury could find for the non-moving party based on the evidence presented. *Id.* at 252. A reasonable jury would not find for the non-moving party if merely a “scintilla of evidence” supports its position. *Id.* Consequently, the non-moving party must “do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

**B. The Transfer of Trigon Assets to Lawson is Avoidable as a Fraudulent Transfer, and the Receiver is Entitled to a Judgment Against Lawson in the Amount of the Transfer.**

Lawson received \$20,000 of Trigon funds, but Trigon received no value in return. Because Trigon was operating a Ponzi scheme and was insolvent, the transfer to Lawson is a fraudulent transfer under the law. As a result, the transfer is avoidable by the Receiver, and the Receiver is entitled to a judgment against Lawson in the amount of the transfer unless Lawson can establish that he received the transfer in good faith and gave reasonably equivalent value to Trigon. Because Lawson cannot meet these burdens, he must repay the funds to Trigon.

**1. The Transfer of Trigon Assets to Lawson was both Actually and Constructively Fraudulent under the UFTA.**

Idaho’s version of the UFTA provides for several circumstances under which transfers of funds from a debtor are fraudulent as to the debtor’s creditors. First, under the “actual fraud” provision, transfers are fraudulent as to present and future creditors if made “With actual intent to hinder, delay, or defraud any creditor of the debtor.” I.C. § 55-913(1)(a). Second, under the “constructive fraud” provision transfers are fraudulent as to present and future creditors if made:

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

1. was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
2. intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

I.C. § 55-913(1)(b). Finally, transfers are fraudulent as to present creditors “if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time.” I.C. § 55-914(a).

Under Idaho Code Sections 55-913(1)(b) and 55-914(a), “reasonably equivalent value” is measured by what the debtor received, not by what the transferee provides. For this reason, whether a transferee gave “reasonably equivalent value” is determined not by whether he gave value, in general, but whether the transferee gave value to the debtor. *E.g., In re Jordan*, 392 B.R. 428, 441 (Bankr. D. Idaho 2008) (“Whether a debtor received a reasonably equivalent value is analyzed from the point of view of the debtor's creditors, because the function of this element is to allow avoidance of only those transfers that result in a diminution of a debtor's prepetition assets.”). In other words, the question is not whether a transferee “gave reasonably equivalent value; it is whether the debtor *received* reasonably equivalent value.” *In re Lucas Dallas, Inc.*, 185 B.R. 801, 807 (B.A.P. 9th Cir. 1995).

If a transfer is actually or constructively fraudulent, it is avoidable by creditors of the debtor, I.C. § 55-916(1)(a), and the creditors may obtain a judgment against both initial and subsequent transferees equivalent to the amount of the transfer. I.C. § 55-917(2).

The \$20,000 payment to Lawson was an actually fraudulent transfer because it was a payment from a Ponzi scheme. Under Idaho law, a Ponzi scheme is defined as “a phony

investment plan in which monies paid by later investors are used to pay artificially high returns to the initial investors[.]” *State v. Gertsch*, 137 Idaho 387, 392-393, 49 P.3d 392, 397-398 (2002). Transfers of Ponzi scheme assets are actually fraudulent transfers under the UFTA because they are made with “actual intent to defraud” creditors. *Donell v. Kowell*, 533 F.3d 762, 770 (9th Cir. 2008) (holding that payments from Ponzi schemes are actually fraudulent transfers as a matter of law); *Hayes v. Palm Seedlings Partners (In re Agric. Res. & Tech. Group, Inc.)*, 916 F.2d 528, 536 (9th Cir. 1990) (“the mere existence of a Ponzi scheme, which could be established by circumstantial evidence, has been found to fulfill the requirement of actual intent on the part of the debtor”). See *Johnson v. Neilson (In re Slatkin)*, 525 F.3d 805, 814 (9th Cir. 2008) (collecting cases). Moreover, a Ponzi scheme is insolvent as a matter of law. *Warfield v. Byron*, 436 F. 3d 551, 558-59 (5th Cir. 2006) (Ponzi scheme is, “as a matter of law, insolvent from its inception”); *In re Ramirez Rodriguez*, 209 BR 424, 430-31 (Bankr. S.D. Texas 1997) (“The promised rate of return render a Ponzi scheme operator insolvent from the scheme's inception, because the returns exceed any legitimate investments.”) *In re Independent Clearing House Co.*, 77 BR 843, 871 (D. Utah 1987) (“By definition, an enterprise engaged in a Ponzi scheme is insolvent from day one”).

Because the inquiry under the UFTA focuses on whether a transfer of assets is fraudulent as to the debtor’s creditors, the question of whether the transferee was a knowing participant in the scheme is irrelevant to determining whether the transfer was fraudulent. *Warfield*, 436 F.3d at 559.

The undisputed evidence in this case establishes that Trigon was operating a Ponzi scheme and was insolvent at the time that its assets were transferred to Lawson. In particular, Palmer pled guilty to an Information charging him with operating, through Trigon, a scheme to



defraud investors by soliciting investments. (Gordon Aff., ¶¶ 4 & 5, Exhs. D & E.) Moreover, in his plea agreement, Palmer admitted that he made up a scheme for obtaining money by making false promises and that he solicited funds from investors by promising high rates of return without disclosing that he intended to use the funds to pay other investors. (Gordon Aff., ¶ 5, Exh. E, at pp. 3-4.) Palmer further admitted that he lost more than \$20 million of the approximately \$75.8 million that he obtained from investors between 2002 and 2008. (*Id.* at 4.) Palmer thus admitted to conduct that meets the definition of a Ponzi scheme, and his admission is sufficient to establish, as a matter of law, that Trigon and Palmer operated a Ponzi scheme. *In re Slatkin*, 525 F.3d at 812-814 (plea agreement wherein debtor admitted that he operated a Ponzi scheme is admissible under F.R.E. 807 and conclusively establishes the debtor's actual fraudulent intent for purposes of UFTA). Moreover, this Court has already ruled, in a related case, that Palmer admitted that he was operating a Ponzi scheme through Trigon in 2008 and that, as a result, Trigon was insolvent at that time. (Gordon Aff., ¶ 6, Exh. F.)

The \$20,000 payment to Lawson was also a constructively fraudulent transfer because it occurred when Trigon was insolvent and Trigon received no value -- let alone reasonably equivalent value -- in return. Because a Ponzi scheme is insolvent as a matter of law, the evidence establishing that Trigon was operating a Ponzi scheme also establishes that Trigon was insolvent. Because Trigon did not receive any value for the transfers of Trigon assets to Lawson, the transfers were also constructively fraudulent transfers under I.C. §§ 55-913(1)(b) and 55-914(a).

For these reasons, the transfer of Trigon's assets to Lawson was both actually and constructively fraudulent under the UFTA and is avoidable by the Receiver unless Lawson can



demonstrate that he took Trigon's assets in good faith and gave reasonably equivalent value to Trigon.

2. **Lawson Cannot Meet his Burden of Establishing the Statutory Defenses to Fraudulent Transfers Because He Gave no Value to Trigon.**

Idaho Code Section 55-917 provides the defenses to otherwise avoidable fraudulent transfers. In particular, Section 55-917(1) provides that an actually fraudulent transfer is not voidable "against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee." Under this section, as under Sections 55-913(1)(b) and 55-914(a), the relevant question for purposes of determining "reasonably equivalent value" is not whether a transferee "gave reasonably equivalent value; it is whether the debtor [here, Trigon] *received* reasonably equivalent value." *In re Lucas Dallas, Inc.*, 185 B.R. 801, 807 (B.A.P. 9th Cir. 1995).

A transferee of an actually fraudulent transfer has the burden of proving that he took in good faith and gave reasonably equivalent value to the debtor. *E.g., In re Agric. Res. & Tech. Group, Inc.*, 916 F.2d at 535 (transferee bears the burden of establishing that it received transfer in good faith); *Scholes v. Lehmann*, 56 F.3d 750, 757 (7th Cir. 1995) ("If the plaintiff proves fraudulent intent, the burden is on the defendant to show that the fraud was harmless because the debtor's assets were not depleted even slightly.").

Lawson admits that he gave no value -- let alone reasonably equivalent value -- to Trigon in exchange for the \$20,000 payment. (Gordon Aff., ¶¶ 7-8, Exhs. G&H, Responses to Requests for Admission Nos. 6-9.) As a result, he has no viable defense under the UFTA, and the \$20,000 transfer is avoidable by the Receiver.

**3. The Receiver is Entitled to Recover the Amount of the Transfer to Lawson Because he is the Initial Transferee.**

Under the UFTA, the Receiver is entitled to a judgment for full recovery of the amount transferred to Lawson, because Lawson was the initial transferee of Trigon funds.

Idaho Code Section 55-917(2) provides that where a transfer is avoidable, a creditor may recover judgment for the value of the asset transferred against: “(a) The first transferee of the asset or the person for whose benefit the transfer was made; or (b) Any subsequent transferee other than a good-faith transferee or obligee who took for value or from any subsequent transferee or obligee.”

Lawson is expected to contend that the \$20,000 payment to him was intended for Denali Group, LLC (“Denali”), a limited liability company controlled by him. The documentary evidence shows otherwise. But even if the payment was intended for Denali, Lawson is liable for repayment because he was the initial transferee.

There is no dispute that the \$20,000 check from Trigon was made payable only to “Steve Lawson.” Moreover, Lawson endorsed the check in his personal capacity. Indeed, there is no mention of or reference to Denali anywhere on the check. (Gordon Aff., ¶ 7, Exh. H, Responses to Requests for Admission Nos. 1-3.)

Even if the payment was intended to benefit Denali, the Receiver can recover from Lawson because the transfer was to Lawson, not Denali, and he is the initial transferee of the transfer from Trigon. At best, a showing that the payment was intended to benefit Denali would establish only that the Receiver is entitled recover a judgment against Lawson or Denali. *See* I.C. § 55-917(2)(a).

**C. To the Extent that Lawson Received the Payment From Trigon Pursuant to a Loan Agreement, Lawson has Breached Any Such Agreement by Failing to Repay the Loan.**

It is expected that Lawson will contend that the \$20,000 payment to him was a loan to Denali. If the payment was actually a loan, Lawson has, by his own admission, failed to repay that loan. (Gordon Aff., ¶¶ 7-8, Exhs. G& H, Response to Requests for Admission No. 6.) He is therefore liable, in the alternative, for breach of contract in the amount of \$20,000.

**D. The Receiver is Entitled to Prejudgment Interest on the Amount of Each Payment from the Date of the Payments.**

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 763. 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). The statutory prejudgment interest rate is 12% per annum. I.C. § 28-22-104. As a result, the Receiver is entitled to 12% interest on the payment to Lawson from September 9, 2008, the date of the payment.

**E. The Receiver is Entitled to Attorney Fees**

The Receiver is also entitled to recover his reasonable attorney fees expended in the effort to recover the funds transferred to Lawson, whether or not those funds were transferred pursuant to a loan agreement.

Idaho Code Section 12-120(3) mandates attorney fee awards to the prevailing party in a civil action to recover on a note or involving a commercial transaction. *Meyers v. Hansen*, 221 P.3d 81, 90 (Idaho 2009) (“The court must always award attorney fees to the prevailing party in commercial transactions.”). The statute broadly defines “commercial transactions” as “all transactions except transactions for personal or household purposes.” Idaho Code § 12-120(3).



If the transaction was for the benefit of a limited liability company, it was not “for personal household purposes.”

The Idaho Supreme Court has interpreted Idaho Code Section 12-120(3) to include within its scope tortious conduct – including fraud – in connection with commercial transactions – so long as the transaction is “integral” to the claim. *Esser Elec. v. Lost River Ballistics Technologies, Inc.*, 145 Idaho 912, 921, 188 P.3d 854, 863 (Idaho 2008). In this regard, the Ninth Circuit has ruled that Section 12-120(3) applies to a fraudulent transfer claim brought under the Idaho UFTA. *In re Bybee*, 945 F.2d 309, 315-316 (9th Cir. 1991).

As a result, the Receiver is entitled to recover his attorney fees expended in this matter, regardless of whether recovery is awarded under the UFTA or for breach of contract.

**V.  
CONCLUSION**

For the foregoing reasons, the Receiver is entitled to summary judgment in his favor on all claims against Lawson and is entitled to prejudgment interest and attorney fees.

DATED THIS 7<sup>th</sup> day of December, 2012.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By                     /s/ Matthew Gordon                    .  
Matthew Gordon, ISB No. 8554  
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 7<sup>th</sup> day of December, 2012, I electronically filed the foregoing MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT with the Clerk of the Court using the CM/ECF system.

And, I hereby certify that I have served the foregoing document to the following non-CM/ECF Registered Participants (list names and addresses):

Stephan D. Lawson  
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/s/ Matthew Gordon  
Matthew Gordon

John F. Kurtz, Jr., ISB No. 2396  
Matthew Gordon, ISB No. 8554  
HAWLEY TROXELL ENNIS & HAWLEY LLP  
877 Main Street, Suite 1000  
P.O. Box 1617  
Boise, ID 83701-1617  
Telephone: 208.344.6000  
Facsimile: 208.954.5232  
Email: jkurtz@hawleytroxell.com

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,	)	Case No. 10-197-EJL
	)	
Plaintiff,	)	PLAINTIFF'S STATEMENT OF
	)	UNDISPUTED MATERIAL FACTS
vs.	)	
	)	
STEPHAN D. LAWSON, an individual,	)	
	)	
Defendant.	)	
	)	

Pursuant to Local Civil Rule 7.1(b)(1), Plaintiff R. Wayne Klein (the "Receiver") submits this Statement of Undisputed Material Facts in support of his Motion for Summary Judgment.

The following material facts are undisputed:

1. From prior to 2006 through 2009, Daren L. Palmer ("Palmer") operated a Ponzi scheme through Trigon Group, Inc. ("Trigon"). (Affidavit of Matthew Gordon filed concurrently herewith ["Gordon Aff."], ¶¶ 3-6, Exhs. C-F.)

2. On or about September 9, 2008, Defendant received and deposited a check made payable to him in his personal capacity in the amount of \$20,000 that was drawn on the account of Trigon at Bank of America. (Gordon Aff., ¶¶ 7-8, Exhs. G-H, Responses to Requests for Admission Nos. 1-3.)

3. Defendant provided no value to Trigon in exchange for the \$20,000 payment received on September 9, 2008, and he has not repaid any more than \$200 to Trigon. (*Id.*, Responses to Requests for Admission Nos. 6-9.)

4. On February 26, 2009, the Securities and Exchange Commission and the Commodity Futures Trading Commission each filed a Complaint against Trigon and Palmer in this Court. On that same date, this Court appointed Plaintiff R. Wayne Klein as the Receiver for Trigon and for the assets of Palmer. (Gordon Aff., ¶ 2, Exhs. A & B.)

DATED THIS 7<sup>th</sup> day of December, 2012.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By /s/ Matthew Gordon  
Matthew Gordon, ISB No. 8554  
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 7<sup>th</sup> day of December, 2012, I electronically filed the foregoing PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS with the Clerk of the Court using the CM/ECF system.

And, I hereby certify that I have served the foregoing document to the following non-CM/ECF Registered Participants (list names and addresses):

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Idaho Falls, ID 83404

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/s/ Matthew Gordon  
Matthew Gordon





Trigon and Palmer in the United States District Court for the District of Idaho, Case Nos. Civ. No. 09-075-S-EJL (“SEC Action”) and Civ. No. 09-075-S-EJL (“CFTC Action”), respectively. These suits allege, among other things, that Trigon and Palmer operated an investment program in violation of the registration, licensing and anti-fraud requirements of federal securities and commodities laws. On February 26, 2009, the Receiver was appointed by the District Court to act as receiver in connection with the SEC Action and the CFTC Action. True and correct copies of the Orders appointing the Receiver are attached hereto as Exhibits A and B, respectively.

3. Attached hereto as Exhibit C is a true and correct copy of the Order Granting Summary Judgment and Entering Final Judgment of Permanent Injunction and Other Relief Against Daren L. Palmer [Docket 75] entered on October 4, 2010 in the CFTC Action.

4. Attached hereto as Exhibit D is a true and correct copy of the Information filed May 18, 2011 charging Daren Palmer with violations of 18 U.S.C. §§ 1343 and 1957 in *United States v. Daren Palmer*, United States District Court for the District of Idaho, case No.4:11-cr-00130-EJL.

5. Attached hereto as Exhibit E is a true and correct copy of the Rule 11 plea agreement signed by the parties in *United States v. Daren Palmer*.

6. Attached hereto as Exhibit F is a true and correct copy of portions of the Jury Instructions entered by this Court on August 3, 2012, in *Klein v. Beck*, Case No. 4:10-CV-0088-EJL-REB [Docket 61].

7. Attached hereto as Exhibit G is a true and correct copy of the Plaintiff’s First Set of Requests for Admission to Defendant.

8. Attached hereto as Exhibit H is a true and correct copy of Defendant’s responses to Plaintiff’s First Set of Requests for Admission, received on November 6, 2012.

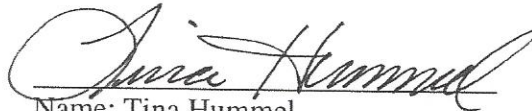
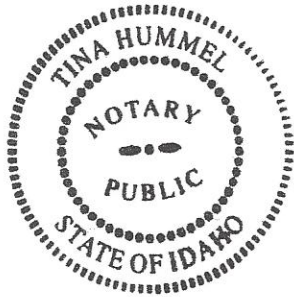
Further your affiant sayeth naught.



Matthew Gordon

STATE OF IDAHO            )  
  ) ss.  
County of Ada             )

SUBSCRIBED AND SWORN before me this 7<sup>th</sup> day of December, 2012.



Name: Tina Hummel  
Notary Public for Idaho  
Residing at Boise, Idaho  
My commission expires June 11, 2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7<sup>th</sup> day of December, 2012, I electronically filed the foregoing AFFIDAVIT OF MATTHEW GORDON IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT with the Clerk of the Court using the CM/ECF system.

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Matthew Gordon