IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
THE HEARTLAND GROUP VENTURES, LLC; HEARTLAND PRODUCTION AND RECOVERY LLC; HEARTLAND PRODUCTION AND RECOVERY FUND LLC; HEARTLAND PRODUCTION AND RECOVERY FUND II LLC; THE HEARTLAND GROUP FUND III, LLC; HEARTLAND DRILLING FUND I, LP; CARSON OIL FIELD DEVELOPMENT FUND II, LP; ALTERNATIVE OFFICE SOLUTIONS, LLC; ARCOOIL CORP.; BARRON PETROLEUM LLC; JAMES IKEY; JOHN MURATORE; THOMAS BRAD PEARSEY; MANJIT SINGH (AKA ROGER) SAHOTA; and RUSTIN BRUNSON,	§	**No. 4:21-cv-1310-O-BP**
	§	
Defendants,	§	
	§	
and	§	
	§	
DODSON PRAIRIE OIL & GAS LLC; PANTHER CITY ENERGY LLC; MURATORE FINANCIAL SERVICES, INC.; BRIDY IKEY; ENCYPHER BASTION, LLC; IGROUP ENTERPRISES LLC; HARPRIT SAHOTA; MONROSE SAHOTA; SUNNY SAHOTA; BARRON ENERGY CORPORATION; DALLAS RESOURCES INC.; LEADING EDGE ENERGY, LLC; SAHOTA CAPITAL LLC; and 1178137 B.C. LTD.,	§	
	§	
Relief Defendants.	§	
	§	
	§	

RECEIVER'S RESPONSE TO MOVANT, JOHN ROGERS'S BRIEF IN SUPPORT OF MOVANT'S MOTION TO LIFT STAY [ECF NO. 336]

Deborah D. Williamson, in her capacity as the Court-appointed Receiver (the "Receiver") for the Receivership Parties (as defined in the Receivership Order) and receivership estates (collectively, the "Estates") in the above-captioned case (the "Case" or the "Receivership"), hereby files this *Receiver's Response to Movant, John Rogers's Brief in Support of Movant's Motion to Lift Stay* (the "Response"), pursuant to this Court's *Order Appointing Receiver* [ECF No. 17] (the "Receivership Order") and this Court's February 10, 2023 *Order* [ECF No. 331], to *Movant, John Rogers's Brief in Support of Movant's Motion to Lift Stay* [ECF No. 336] (the "Movant's Brief") of Movant, John Rogers ("Rogers") and in support of the *Receiver's Objection to Movant, John Rogers's Motion to Lift Stay* [ECF No. 279] (the "Objection").[1]

RELEVANT FACTS AND PROCEDURAL BACKGROUND

1. The Receiver expressly incorporates paragraphs 1-10 of the Objection herein by reference.

ARGUMENT AND AUTHORITIES

Rogers's Authority

2. Rogers argues that he has cause to lift the stay under the *Wencke* test, which was adopted by the Ninth Circuit in *SEC v. Wencke*, ("*Wencke II*"), 742 F.2d 1230, 1231 (9th Cir. 1984). Movant's Brief, p. 3.[2] Pursuant to the *Wencke* test, there are three factors courts consider

[1] Capitalized terms used herein but not otherwise defined shall have the meaning ascribed in the Receivership Order or the Objection, as applicable.

[2] The factors in the *Wencke* test were originally used in *Wencke I* and were referred to as the *Superior Motels* factors in *Wencke II*. *SEC v. Wencke* ("*Wencke I*"), 622 F.2d 1363, 1374 (9th Cir. 1980); *Wencke II*, 742 F.2d at 1231. The factors in both cases are identical, and courts that use the factors refer to them simply as the "*Wencke*" test.

to determine whether an exception should be made to a stay of proceedings in a case: (1) whether refusing to lift the stay genuinely preserves the status quo or whether the moving party will suffer substantial injury if not permitted to proceed; (2) the time in the course of the receivership at which the motion for relief from the stay is made; and (3) the merit of the moving party's underlying claim. *Wencke II*, 742 F.2d at 1231.

Fifth Circuit Authority

3. The Fifth Circuit and other courts "have recognized the importance of preserving a receivership court's ability to issue orders preventing interference with its administration of the receivership property." *Schauss v. Metals Depository Corp.*, 757 F.2d 649, 654 (5th Cir. 1985); *see SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372–73 (5th Cir. 1982). District courts have broad authority to issue blanket stays of litigation to preserve property placed in receivership, and an "anti-litigation injunction is simply one of the tools available to courts to help further the goals of the receivership." *SEC v. Kaleta*, No. 4:09-3674, 2012 U.S. Dist. LEXIS 14880, *9 (S.D. Tex. Feb. 7, 2012) (quoting *SEC v. Byers*, 609 F.3d 87, 92 (2d Cir. 2010)); *see SEC v. Stanford Int'l Bank Ltd.* ("Stanford I"), 424 Fed. App'x 338, 340–41 (5th Cir. 2011). Although the Fifth Circuit has not adopted the *Wencke* test, it has noted the factors "'are a useful set of considerations' in determining whether a stay should be modified or lifted." *Stanford II*, 465 Fed. App'x 316, 320 (5th Cir. 2012) (quoting *Stanford I*, 424 Fed. App'x at 341 (citing *Wencke II*, 742 F.2d at 1231)).

***Wencke* Factor I: Status Quo v. Injury**

4. For the "status quo versus injury" *Wencke* factor, the court essentially balances the plaintiff's interests with the interests of the receivership. *SEC v. Faulkner*, Civil No. 3:16-CV-1735-D, 2020 U.S. Dist. LEXIS 31595, *8 (N.D. Tex. Feb. 25, 2020) (citing *Stanford I*, 424 Fed. App'x at 341). Rogers's claim is nothing like that of the appellants' in *Wencke II*. There, the

appellants, who were two minority shareholders of Portsmouth Square, Inc. ("PSI"), had allegedly been defrauded out of stock in PSI by Walter Wencke and his company, RAMAPO. Six years into the receivership, the appellants moved the district court for relief from stay to permit suit against RAMAPO. *Wencke II*, 742 F.2d at 1231. The district court applied the factors laid out in *Wencke I* and denied the appellants' motion to lift the stay. *Wencke II*, 742 F.2d at 1232.

5. Shortly after the district court's decision to deny the appellants' motion to lift stay, the district court ordered RAMAPO to disgorge its PSI shares to the receivership for the benefit of the shareholders of two other corporations defrauded by Wencke. *Wencke II*, 742 F.2d at 1231. Further, the receiver had recently informed that court that he was prepared to distribute assets. *Wencke II*, 742 F.2d at 1231. On review, the Ninth Circuit found the appellants would be "irreparably injure[d]" as they would forever lose the ability to litigate their claim to the PSI stock once that stock was distributed. *Wencke II*, 742 F.2d at 1232.

6. The Receiver is aware that Rogers's claim is for funds to pay for medical assistance and is sympathetic to his situation; however, lifting the stay to proceed in the State Court Suit to liquidate his claim will not result in access to any funds for any medical treatment. Any distribution on account of any claim of Rogers must wait until this Court approves both a claims process and a distribution plan.

7. Further, Rogers does not point to any injury that is "irreparable" or substantial enough to warrant lifting of the stay to merely allow liquidation of his claim. Unlike in *Wencke II*, keeping the stay in place in this Case will not potentially prevent Rogers from having any legal recourse—he is not seeking to recover a specific asset (like the PSI stock) but rather seeks solely to recover monetary damages.

8. Rogers appears to argue that because he continues to suffer physically from his injuries and cannot at this moment bring his claim, that he satisfies the "status quo versus injury" factor. Movant's Brief, p. 5–6. This is not enough on its own to lift the stay to proceed in the State Court Suit. In *SEC v. Kaleta*, the movants argued that because they could not immediately litigate their claims, "harm to them continues," and therefore the stay should be lifted. *SEC v. Kaleta*, No. 4:09-3674, 2012 U.S. Dist. LEXIS 92232, *9 (S.D. Tex., Jul. 13, 2012). The court rejected this argument and found this factor in favor of the receiver since the movants would need to litigate or negotiate to recover on a claim, a process "requiring significant time and largely duplicative efforts of the [r]eceiver." *Kaleta*, 2012 U.S. Dist. LEXIS 92232, at *9.

9. As to his physical injuries, the harm to Rogers occurred three years ago. Rogers's pre-Receivership injuries will continue regardless if his claim remains under control of the Receivership or is brought before another court in the State Court Suit. This Court has made it clear that there will not be a distribution to any creditors, investors, or other stakeholders in this Case at this time. This, coupled with the fact Rogers presents no evidence he will collect faster outside the Receivership, shows his most efficient path to collecting is through the Receivership in this Court.

10. Rogers additionally argues that the Court cannot consider the money and time lost by the Receiver to defend the lawsuit in evaluating the "status quo versus injury" factor, relying on *In re Todd Shipyards*, 92 B.R. 600, 603 (Bankr. D. N.J. 1988). Movant's Brief, p. 7. The Ninth Circuit—the very court that created the *Wencke* test—considers this a crucial reason to keep the stay in place. The Ninth Circuit in *SEC v. Universal Financial*, found the receiver being required to intervene/be joined in future court action resulting in "multiplicity of actions in different forums" and "increase litigation costs" to the detriment of the estate, which is a persuasive reason

to keep the stay in place here. *SEC v. Universal Fin.*, 760 F.2d 1034, 1038 (9th Cir. 1985). More importantly, the Fifth Circuit in *Stanford I* noted the "[r]eceiver's ongoing duty to monitor and possibly intervene in ancillary actions" that would cost the estate "money and efficiency" a crucial reason the interests of the receivership outweighed the interests of the appellants in evaluating the "status quo versus injury" factor. *Stanford I*, 424 Fed. App'x at 341.

11. Furthermore, the facts in *In re Todd Shipyards* are distinguishable from this Case. That court ruled the stay should be lifted to allow the California lawsuit to proceed because the debtor's counsel and management "[would] not be diverted by the personal injury suit to the point of interfering with their efforts to reorganize the debtor." *Todd Shipyards*, 92 B.R. at 603. Here, the Receiver would be forced to divert her efforts if the stay was lifted to proceed in the State Court Suit. The Receiver would be required to divert her attention away from the recovery of Receivership Assets and pursuit of claims of the Receivership Estates to instead engage counsel and participate in discovery and, potentially, mediation and/or a trial in the State Court Suit to the detriment of all Receivership Parties' creditors and stakeholders.

***Wencke* Factor II: Timing**

12. Under the "timing" factor of the *Wencke* test, the court is to determine "when during the course of a receivership a stay should be lifted and claims allowed to proceed, not whether the stay should be lifted at all." *Wencke II*, 742 F.2d at 1231. The Ninth Circuit in *Wencke I* stated:

> where the motion for relief from the stay is made soon after the receiver has assumed control over the estate, the receiver's need to organize and understand the entities under his control may weigh more heavily than the merits of the party's claim. As the receivership progresses, however, it may become less plausible for the receiver to contend that he needs more time to explore the affairs of the entities. The merits of the moving party's claim may then loom larger in the balance.

Wencke I, 622 F.2d at 1373–74.

13. The Ninth Circuit found that "in light of the time that has now elapsed" (which was seven years) the receiver had "ample opportunity to explore, organize, and understand the affairs of the entities under his control." *Wencke II*, 742 F.2d at 1232. Further, the receiver in *Wencke II* was prepared to distribute assets, making it a now or never moment for the appellants. This is not the situation in this Case.

14. The Receivership is in its fourteenth month. The Ninth Circuit in *Wencke I* affirmed a decision to not lift the stay after four years. *Wencke I*, 622 F.2d at 1373–74. In *Wencke II*, the court was concerned about the length of the receivership but primarily focused on lack the discovery of any new material facts in six years and the receiver's readiness to distribute assets. *Wencke II*, 742 F.2d at 1232. The Ninth Circuit refused to lift the stay in *Universal Financial*, even though the receivership was almost in its four year because "material facts continue[d] to come to light through discovery." *Universal Financial*, 760 F.2d at 1039.

15. In our Case, the Receiver is still locating Receivership Assets and pursuing claims of the Receivership Estates so that an equitable distribution can be made pursuant to a process approved by this Court. If Rogers were permitted to proceed in the State Court Suit at this time, then the Receiver would be forced to unwillingly expend Receivership Assets to the detriment of other claimants and stakeholders merely to liquidate Rogers's claim, which can be accomplished in this Case. *See Kaleta*, 2012 U.S. Dist. LEXIS 92232, at *10.

16. In recent hearings, this Court has asked the Receiver to pause on a claims distribution process, which reinforces the need to keep all Receivership Assets and Receivership Property under the control of the Receiver and under the exclusive jurisdiction of this Court. Further, as this Court has noted, the Receivership involves claims of over $100 million, a significant multiple of the current Receivership Assets. As a practical matter, Rogers can file a

claim in this Case and, depending on the estimated recovery for Rogers, the Receiver may elect to not expend additional funds challenging his claim.

***Wencke* Factor III: Merit**

17. The third *Wencke* factor requires the evaluation of evidence regarding the merits of Rogers's case. The court is to determine if the plaintiff has a colorable claim that entitles him to a trial on the merits. *Wencke II*, 742 F.2d at 1232.

18. At the February 9, 2023 hearing, Rogers elected to produce no witnesses or other evidence in support of his Motion. There is no evidence before this Court to back any of Rogers's allegations, much less to find that his claims have merit or are otherwise colorable. Mere statements by counsel are not sufficient. What is certain, as stated in the Receiver's Objection, is that Rogers will have the ability to file a claim in this Case against Arcooil and/or Barron for his alleged damages and have a prompt review of his claim once a claims process is approved by this Court. Objection, ¶ 16.

CONCLUSION

19. In applying the *Wencke* test, it is clear none of the factors weigh in Rogers's favor, and the stay should not be lifted in this Case to proceed in the State Court Suit. There is no irreparable or substantial injury that warrants Rogers's claim to have priority over the hundreds of other claimants and stakeholders by not allowing him to proceed with the State Court Suit. The Receivership is just over a year in existence, and the Receiver continues to pursue recovery of Receivership Assets and claims of the Receivership Estates. To require the Receiver to detract her focus from the Receivership and defend the Receivership Parties in the State Court Suit would harm the hundreds of investors who suffered devastating loss. Rogers has not presented any evidence that his claim holds any merit. Further, there is nothing in *Wencke I*, *Wencke II*, or any

relevant case law that holds Rogers's claim deserves special treatment over the other claimants and stakeholders. Therefore, Rogers's Motion should be denied.

WHEREFORE, the Receiver respectfully requests that this Court deny Rogers's Motion in its entirety, and grant the Receiver such other and further relief that this Court deems just and proper.

Dated: February 24, 2023

Respectfully submitted,

By: */s /Danielle Rushing Behrends*

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CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2023, the foregoing was served via CM/ECF and via email on counsel for Plaintiff, Securities and Exchange Commission and counsel for Movant, John Rogers.

/s/ Danielle Rushing Behrends
Danielle Rushing Behrends