

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA

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U.S. COMMODITY FUTURES )  
TRADING COMMISSION and )  
OKLAHOMA DEPARTMENT OF )  
SECURITIES *ex rel.* IRVING L. )  
FAUGHT, )

Plaintiffs, )

v. )

PRESTIGE VENTURES CORP., a )  
Panamanian corporation, FEDERATED )  
MANAGEMENT GROUP, INC., a Texas )  
corporation, KENNETH WAYNE LEE, )  
an individual, and SIMON YANG (a/k/a )  
XIAO YANG a/k/a SIMON CHEN), an )  
individual, )

Defendants; and )

SHEILA M. LEE, an individual, DAVID )  
A. LEE, an individual, and DARREN )  
LEE, an individual, )

Relief Defendants. )

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Case No. 09-cv-1284 (DLR)

Plaintiffs U.S. Commodity Futures  
Trading Commission and Oklahoma  
Department of Securities *ex rel.*  
Irving L. Faught's Reply to Answer  
of Darren A. Lee to Motion in [sic]  
Brief in Support to Amend the Ex  
Parte Statutory Restraining Order  
(Docket No. 63)

Plaintiffs U.S. Commodity Futures Trading Commission (“Commission”) and Oklahoma Department of Securities *ex rel.* Irving L. Faught (“ODS”) (together, “Plaintiffs”) respectfully submit this reply to the Answer of Darren A. Lee to Motion in [sic] Brief in Support to Amend the *Ex Parte* Statutory Restraining Order (Docket No. 63) (“Darren Lee’s Response”).<sup>1</sup>

Darren Lee’s Response is partly a restatement of Defendants (sic) Motion to Stay Receivership of any Property Owned by Kenneth Wayne Lee, Sheila Marjorie Lee, Darren Alexander Lee and David Armstrong Lee and Allow Defendant Lee to Trade for the Account of Investors for Purposes of Repayment (Docket No. 48) (“Kenneth Lee’s Motion to Stay”), filed on March 9, 2010. Plaintiffs filed an opposition to Kenneth Lee’s Motion to Stay (Docket No. 50) (“Plaintiffs’ Opposition to Kenneth Lee’s Motion to Stay”) on March 18, 2010. To the extent Darren Lee’s Response is a restatement of Kenneth Lee’s Motion to Stay, Plaintiffs respectively refer the Court to Plaintiffs’ Opposition to Kenneth Lee’s Motion to Stay and hereby incorporate by reference Plaintiffs’ Opposition to Kenneth Lee’s Motion to Stay.

Darren Lee’s Response also contains several arguments that Kenneth Lee’s Motion to Stay does not. For the reasons below, the Court should reject those arguments.

**Darren Lee Has No Legitimate Interest in the Prestige Enterprise’s Ill-Gotten Gains**

As the Commission explained in its Motion and Brief in Support to Amend the *Ex Parte* Statutory Restraining Order (Docket No. 34 at pp. 5-6), Darren Lee has no

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<sup>1</sup> Darren Lee’s Response references a Declaration of Darren Lee. There is no document with that name on the Court docket or in any papers provided to the Plaintiffs.

legitimate interest in the ill-gotten pool participant funds he received (i.e., the money, real estate, boat and other goods he received from Prestige). Darren Lee offers no evidence to rebut that fact. In his Response, Darren Lee does argue that he is entitled to the funds he received from Prestige because he “contributed countless hours to PVC” watching trades (Darren Lee’s Response at p. 5).

While Darren Lee does not explain what he means by watching trades, he admits that during his “countless nights” of watching, he was watching his own trades and not the Prestige Enterprise trades (Darren Lee’s Response at p. 5). He also admits that he never considered himself to be an employee of Prestige, had “no knowledge of any pool participants or their funds” (Darren Lee’s Response at p. 5), “knew nothing about any accounts with Prestige” (Darren Lee’s Response at p. 5), “has never invested or traded any money but his own” (Darren Lee’s Response at p. 4), and “was completely confused [during his deposition] with any questions about any other account, other than Darren Lee’s” (Darren Lee’s Response at p. 4).

All of these admissions support the fact that Darren Lee did not provide any legitimate services to the Prestige Enterprise; any services he may have provided were for himself and not for the Prestige Enterprise. Thus, Darren Lee does not have a legitimate interest in the Prestige Enterprise funds he received.

**During the Relevant Period, Darren Lee Had No Personal Trading Accounts**

Besides arguing that he has a legitimate interest in the Prestige Enterprise’s ill-gotten gains, Darren Lee argues that he is entitled to those gains because they were the fruits of profitable trading in “his own trading account under Prestige” (Darren Lee’s

Response at p. 2). Darren Lee provides no evidence to support that he had his own trading account. He did testify to having a personal trading account at a Futures Commission Merchant named Alaron Trading Corporation (Transcript of Deposition of Darren Lee at 16:5-19:8).<sup>2</sup> But, Alaron's records indicate that from January 1, 2003 through April 8, 2010 they have never had an account in the name of Darren Lee (Third Declaration of Kara L. Mucha ¶ 16).

Darren Lee did, at one time, have trading authority over a trading account at R.J. O'Brien in the name of Prestige Ventures Corp. (Third Declaration of Kara L. Mucha ¶ 14). However, that account was only active from June 2008 to January 2009, had total deposits of \$65,000, and had net losses of \$61,218 (Third Declaration of Kara L. Mucha ¶ 14). Records for a trading account at Rosenthal Collins Group in the name of Federated Management Group (Exhibit 3 to Third Declaration of Kara L. Mucha) list Darren Lee as a signatory on the account. But, trading authority for this account was assigned to Thomas J. Reavis for a system called Trend Reflection (Third Declaration of Kara L. Mucha at FN4).

### **Darren Lee's December 9, 2009 Deposition Was Proper**

Darren Lee makes several arguments in support of his contention that his December 9, 2009 deposition was improper and should not be admissible as evidence against him. He cites to Federal Rule of Civil Procedure ("Rule") 28(c) -- Persons Before

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<sup>2</sup> Relevant portions of the Transcript of Deposition of Darren A. Lee, dated December 9, 2009, are attached here as Exhibit 1.

Whom Depositions May Be Taken (Darren Lee's Response at pp. 2-3).<sup>3</sup> Rule 28(c) is inapposite here. Darren Lee's deposition in this case was taken before Lynda A. Bousquet, Professional Court Reporter and Notary Public. Ms. Bousquet is not any party's relative, employee, or attorney, employed by any of the parties' attorneys, or financially interested in the action. Thus, Darren Lee's deposition did not violate Rule 28(c).

Darren Lee also argues that Plaintiffs deposed him in violation of Rule 32(a)(5)(A) -- Deposition Taken on Short Notice (Darren Lee's Response at p. 3).<sup>4</sup> Rule 32(a)(5)(A) also is inapposite here.

Darren Lee's argument regarding Rule 32 is three-fold. He argues, first, that he was provided only seven days advance notice of his deposition, which is shy of the 14 days mentioned in Rule 32 (Darren Lee's Response at p. 3). He argues, second, that he did not know he could request an extension (Darren Lee's Response at p. 3). Lastly, Darren Lee claims that he was "unofficially" notified by Federal Express (Darren Lee's Response at p. 3).

Rule 32 does not support any viable argument by Darren Lee that his deposition was improper. The Commission subpoenaed Darren Lee for his December 9, 2009 deposition on November 26, 2009, pursuant to Section VII of the Court's Order Granting

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<sup>3</sup> Rule 28(c) states, "[a] deposition may not be taken before a person who is any party's relative, employee, or attorney; who is related to or employed by any party's attorney; or who is financially interested in the action."

<sup>4</sup> Rule 32(a)(5)(A) states, "[a] deposition must not be used against a party who, having received less than 14 days' notice of the deposition, promptly moved for a protective order under Rule 26(c)(1)(B) requesting that it not be taken or be taken at a different time or place—and this motion was still pending when the deposition was taken."

Plaintiff Commission's Ex Parte Statutory Restraining Order, Appointment of Temporary Receiver, Expedited Discovery, Accounting, Order to Show Cause Re Preliminary Injunction and Other Equitable Relief (Docket No. 9) ("SRO"). Section VII of the SRO allows the Commission and Receiver to take depositions of non-parties with just two calendar days notice (SRO at Section VII ¶ 33) by personal notice, facsimile or electronic mail. The Commission provided Darren Lee with 13 calendar days notice – more than the minimum of two days required by the SRO. The Commission also explained to Darren Lee on the record that his deposition was being taken pursuant to the SRO and confirmed that Darren Lee understood this (Transcript of Deposition of Darren Lee at 13:10-14:5). Thus, there was nothing improper about Darren Lee's deposition.

Darren Lee also argues that Rule 32 has been violated because he did not realize he could ask to reschedule his deposition date and because the Subpoena was sent to him by Federal Express (Darren Lee's Response at p. 3).

It is not the Plaintiffs' obligation, nor is it reasonable to expect Plaintiffs to instruct other parties on the Federal Rules of Civil Procedure. Moreover, the second page of the Subpoena includes a statement of Rule 45, informing Darren Lee that he could have acted to quash or modify the Subpoena in a timely fashion (Exhibit 1 to Transcript of Deposition of Darren Lee at p. 2). Therefore, Darren Lee was aware that he should have made his objections to service of the Subpoena, if any, in a timely fashion. Here, a timely fashion would have been before the date of his deposition on December 9, 2009. Instead, Darren Lee appeared and testified on the date identified in the Subpoena, thereby mooting any objections to the Subpoena.

Darren Lee not only waived any objections to the method of service of the Subpoena by appearing pursuant to the same, he also cannot show any prejudice caused by service of the Subpoena pursuant to Federal Express. Expedited service is designed to provide effective notice, which it did here. During his testimony, Darren Lee acknowledged that he had received the Subpoena and of the SRO from the Commission by Federal Express (Transcript of Deposition of Darren Lee at 7:13-8:4).

Darren Lee also contends that the date, time and place of deposition required by Rule 30(a)(5)(A)(ii) were missing from the transcript record. As is standard practice, the court reporter recorded the date, time and place of the deposition at the beginning of the deposition transcript (Rule 30(a)(5)(A)(ii)) (Transcript of Deposition of Darren Lee at 1:17-22). Thus, Rule 30(a)(5)(A)(ii) was satisfied.

### **Conclusion**

Darren Lee received at least \$600,000 of ill-gotten Prestige Enterprise pool participant funds without having a legitimate interest in those funds. For the reasons stated above, and as set forth in Plaintiffs' Opposition to Kenneth Lee's Motion to Stay, Plaintiffs respectfully request that the Court uphold its Order Granting Plaintiff Commission's Motion to Amend the *Ex Parte* Statutory Restraining Order (Docket No. 36), reject Darren Lee's Response, and grant Plaintiffs' Motion for Contempt (Docket No. 35).

Dated: April 13, 2010

Respectfully Submitted,

ATTORNEYS FOR THE PLAINTIFF  
U.S. COMMODITY FUTURES TRADING  
COMMISSION

/s/ Katherine S. Driscoll

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**CERTIFICATE OF SERVICE**

I hereby certify that, on April 13, 2010, I caused one copy of **Plaintiffs U.S. Commodity Futures Trading Commission and Oklahoma Department of Securities *ex rel.* Irving L. Faught's Reply to Answer of Darren A. Lee to Motion in [sic] Brief in Support to Amend the Ex Parte Statutory Restraining Order (Docket No. 63)** to be served by certified U.S. mail return-receipt requested on the following, who are not registered participants of the ECF System:

Kenneth Wayne Lee  
1660 Jorrington Street  
Mt. Pleasant, SC 29466

Sheila Lee  
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David Lee  
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Darren Lee  
2676 Palmetto Hall Blvd  
Mt. Pleasant, SC 29466

I hereby certify that, on April 13, 2010, I caused one copy of **Plaintiffs U.S. Commodity Futures Trading Commission and Oklahoma Department of Securities *ex rel.* Irving L. Faught's Reply to Answer of Darren A. Lee to Motion in [sic] Brief in Support to Amend the Ex Parte Statutory Restraining Order (Docket No. 63)** to be served by email (by consent) on the following, who is not a registered participant of the ECF System:

Simon Yang  
[simonyang@cox.net](mailto:simonyang@cox.net)

I hereby certify that on April 13, 2010, I electronically transmitted the **Plaintiffs U.S. Commodity Futures Trading Commission and Oklahoma Department of Securities *ex rel.* Irving L. Faught's Reply to Answer of Darren A. Lee to Motion in [sic] Brief in Support to Amend the Ex Parte Statutory Restraining Order (Docket No. 63)** to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Patricia A. Labarthe

Terra S. Bonnell

Stephen J. Moriarty

Warren F. Bickford, IV

/s/ Katherine S. Driscoll  
Katherine S. Driscoll