

**10-6056**  
**IN THE UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

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**In Re:**  
**Marvin Lee Wilcox and Pamela Jean Wilcox,**  
*Debtors,*

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**OKLAHOMA DEPARTMENT OF SECURITIES**  
**Ex Rel. IRVING L. FAUGHT, Administrator,**  
*Plaintiff/Appellee,*

vs.

**MARVIN LEE WILCOX and PAMELA WILCOX,**  
*Defendants/Appellants.*

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**APPEAL FROM THE UNITED STATES DISTRICT COURT**  
**FOR THE WESTERN DISTRICT OF OKLAHOMA**  
**CASE NO.: CIV 09-186D**  
**The Honorable Timothy DeGiusti, District Judge**

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**APPELLEE'S BRIEF IN SUPPORT OF APPELLATE JURISDICTION**

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Amanda Cornmesser (OBA # 20044)  
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*Oklahoma Department of Securities*

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Plaintiff/Appellee, Oklahoma Department of Securities *ex rel.* Irving L. Faight, Administrator (Department), herein responds to the Court's request for a brief addressing why this appeal should not be dismissed for lack of a present case or controversy.

### **BACKGROUND**

This appeal arises from an order entered by the United States District Court for the Western District of Oklahoma (Western District Court Order) affirming the summary judgment entered by the United States Bankruptcy Court for the Western District of Oklahoma (Bankruptcy Court Judgment) in favor of the Department against Defendants/Appellants Marvin Lee Wilcox and Pamela Jean Wilcox (Debtors). The Western District Court Order determined that the debt at issue was non-dischargeable under 11 U.S.C. §523(a)(19) based in part upon a judgment entered in Oklahoma County District Court, finding Debtors liable for disgorgement of money they received from an individual who violated the securities laws (State Court Judgment). Debtors appealed the State Court Judgment. Subsequent to the Western District Court Order at issue in this appeal, the Oklahoma Supreme Court reversed and remanded the State Court Judgment to the Oklahoma County District Court for reconsideration of the amount of Debtors' liability

under a new standard for recovery of funds in Ponzi scheme cases. *Oklahoma Dept. of Sec. ex rel. Faught v. Blair*, 2010 OK 16, 231 P.3d 645, as corrected (Apr. 6, 2010), reh'g denied (Apr. 12, 2010).

The Department, on remand, diligently pursued its case against Debtors, and on, October 18, 2010, the Oklahoma County District Court entered a journal entry of judgment against Debtors wherein that court determined that Debtors were not innocent investors in the Ponzi scheme, that the standard for recovery established in *Blair* is not applicable to Debtors, and that Debtors are liable for all moneys netted from their participation in the Ponzi scheme and check kiting scheme (State Court Judgment #2). The Oklahoma County District Court ordered that the amount of liability would be set at a later trial. (The Department moves that the Court take judicial notice of State Court Judgment #2, attached as Exhibit 1).

On October 22, 2010, a Pretrial Conference Order was entered in the Oklahoma County District Court, scheduling a hearing on December 17, 2010, to consider the Department's motion for summary judgment on the amount of liability, and setting a trial on January 4, 2011, to determine the amount of liability in the event the matter is not resolved by summary

judgment. (The Department moves that the Court take judicial notice of the Pretrial Conference Order attached as Exhibit 2).

### **ARGUMENT AND AUTHORITIES**

#### **The Parties Have a Legally Cognizable Interest in the Outcome of This Appeal for Which This Court Can Grant Effective Relief**

The Western District Court Order appealed from herein held that Debtors were not entitled to a discharge of the debt embodied by the State Court Judgment under Section 523(a)(19) of the Bankruptcy Code. Section 523(a)(19) provides, in pertinent part, for the non-dischargeability of a debt that is for the violation of the securities laws and:

(B) results, before, on, or after the date on which the petition was filed, from

(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

(ii) any settlement agreement entered into by the debtor; or

(iii) any court or administrative order for damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor.

Because the State Court Judgment was reversed and remanded by the *Blair* case for reconsideration by the Oklahoma County District Court, this Court has questioned whether it still has the constitutional authority to

determine the issue on appeal. The Department asserts that the controversy before this Court remains live and directly relevant to the parties on appeal and that a determination of this appeal will provide effective relief.

The jurisdiction of this Court depends upon the existence of a live case or controversy as set forth in the United States Constitution. U.S. Const., art. III, § 2, cl. 1. “[A] case is moot when the issues presented are no longer live or the parties no longer have a legally cognizable interest in the outcome.” *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979). However, if the court can fashion “effective relief” that “will have some effect in the real world,” the case is not moot and the court may address the merits of the appeal. *Kansas Judicial Review v. Stout*, 562 F.3d 1240, 1245-1246 (10<sup>th</sup> Cir. 2009); *Citizens for Responsible Government State Political Action Committee v. Davidson*, 236 F.3d 1174, 1181-1182 (10<sup>th</sup> Cir. 2000); *Southwestern Bell Telephone Company v. Long Shot Drilling, Inc. (In re Long Shot Drilling)*, 224 B.R. 473, 477-478 (10<sup>th</sup> Cir. BAP 1998).

Although the State Court Judgment was reversed, the parties continue to have a stake in the outcome of this appeal. At no time has the Department disclaimed its interest in pursuing another judgment against Debtors. In fact, the Department promptly pursued its claims against Debtors and has already obtained a judgment ordering that all net proceeds received by Debtors from

the Ponzi scheme and check kiting scheme constitute unjust enrichment for which they are liable (See Exhibit 1, State Court Judgment #2).

The only substantive difference between the State Court Judgment and State Court Judgment #2 is that the Oklahoma County District Court determined that these Debtors were not innocent investors because of their direct involvement in the Ponzi scheme and the associated check kiting scheme. Certainly, this additional finding places these Debtors in a different category from innocent investors who merely receive profits from a Ponzi scheme. However, to determine the issue currently on appeal, it is not necessary for this Court to consider the scope or degree of Debtors' involvement in the fraud. The issue on appeal to this Court is whether a disgorgement judgment of any amount is excepted from discharge regardless of whether the debtors are innocent investors. Therefore, any determination on the merits of this appeal would be inclusive of the facts of this controversy even as applicable to State Court Judgment #2.

Furthermore, it is irrelevant that the amount of Debtor's liability has not yet been reduced to judgment. That these Debtors are not innocent investors means that any net profits they received from the Ponzi scheme constitutes an unjust enrichment to them. Debtors, in their response to the motion for summary judgment underlying State Court Judgment #2,

acknowledged having received an “overpayment” of at least One Hundred Thirty-Three Thousand Dollars (\$133,000) from the Ponzi scheme. While the Department maintains that Debtors received Five Hundred Nine Thousand Five Hundred Five Dollars (\$509,505.00), it is clear that the Oklahoma County District Court will award some amount of disgorgement. Regardless of the amount of Debtors’ liability, this Court can grant effective relief that will directly effect the Department and the Debtors by determining whether the disgorgement ordered is non-dischargeable under Section 523(a)(19).

**CONCLUSION**

The Department respectfully requests that this Court find that the debt owed by Debtors is non-dischargeable under 11 U.S.C. §523(a)(19).

Submitted by:

s/ Gerri Kavanaugh  
Gerri Kavanaugh, OBA #16732  
Amanda Cornmesser, OBA # 20044  
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*Counsel for Plaintiff/Appellee,  
Oklahoma Department of Securities*

CERTIFICATE OF SERVICE

I hereby certify that on the 1st of November, 2010, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Robert N. Sheets  
Robert J. Haupt  
Phillips Murrah P.C.  
Corporate Tower  
101 N. Robinson, Thirteenth Floor  
Oklahoma City, OK 73102  
*Attorneys for Defendants/Appellants*

I further certify that on the 1st of November, 2010, seven true and correct copies of the foregoing Brief of Appellee were dispatched to the U.S. Postal Service for delivery within 2 business days to:

Ms. Elisabeth A. Shumaker  
Clerk of the Court  
United States Court of Appeals for the Tenth Circuit  
Byron White United States Courthouse  
1823 Stout Street  
Denver, Colorado 80257

Certifications Under ECF Procedures

The undersigned certifies, pursuant to the Court's ECF procedures adopted in General Order 95-01 as follows:

1. All required privacy redactions have been made;
2. The hard copy of the foregoing document submitted to the Clerk of Court is an exact copy of the ECF submission;
3. The ECF submission of this document was scanned for viruses with the most recent version of a commercial virus scanning program (the Symantec Enterprise edition of Norton Antivirus, updated daily) and, according to the program, is free of viruses.

s/ Gerri Kavanaugh

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

OCT 18 2010

OKLAHOMA DEPARTMENT OF SECURITIES )  
*ex rel.* IRVING L. FAUGHT, Administrator, et al., )

PATRICIA PRESLEY, COURT CLERK  
by \_\_\_\_\_  
DEPUTY

Plaintiffs, )

v. )

Case No. CJ-2005-3796

ROBERT W. MATHEWS, et al., )

Defendants. )

JOURNAL ENTRY OF JUDGMENT

NOW on the 1<sup>st</sup> day of October, 2010, the Plaintiffs' *Motion for Summary Judgment* relative to Marvin and Pamela Wilcox (Defendants Wilcox), came on for hearing. The Department appeared by and through its attorneys, Amanda Cornmesser and Gerri Kavanaugh. The Plaintiff Receiver appeared by and through his attorney, Bradley Davenport. Defendants Wilcox appeared by and through their attorney, Julie Brower.

Based on the briefs filed, the arguments of counsel, and being fully advised in the premises, this Court finds as follows:

1. There is no genuine issue of material fact pertaining to the liability of Defendants Wilcox pursuant to Plaintiffs' unjust enrichment cause of action;
2. By virtue of their participation in the Schubert check kiting scheme, the Defendants Wilcox are not innocent investors and therefore the standard for recovery from investors in Ponzi scheme cases set forth in *Oklahoma Department of Securities, et al. v. Blair, et al.*, 2010 OK 16, does not apply.

EXHIBIT  
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3. Defendants Wilcox were unjustly enriched by all moneys netted from their association with the Marsha Schubert and Schubert and Associates Ponzi scheme and check kiting scheme.

4. There is a genuine issue of material fact pertaining to the amount of money Defendants Wilcox netted from their association with Marsha Schubert and Schubert and Associates by which Defendants Wilcox were unjustly enriched

5. Plaintiffs' *Motion for Summary Judgment* against Defendants Wilcox should be and hereby is granted in part and denied in part.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that Plaintiffs' *Motion for Summary Judgment* relative to Defendants Wilcox is granted on the issue of liability relative to Plaintiffs' cause of action for unjust enrichment.

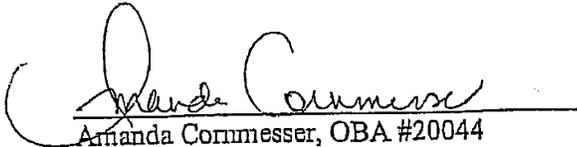
IT IS FURTHER ORDERED that Plaintiffs' *Motion for Summary Judgment* relative to Defendants Wilcox is denied on this issue of damages or the amount Defendants Wilcox must disgorge as a result of their unjust enrichment from Schubert's operation of a Ponzi scheme and check kiting scheme.

IT IS FURTHER ORDERED that Defendants Wilcox shall advise the Court no later than ten (10) days following the filing of this Journal Entry of Judgment whether the trial to determine the amount of disgorgement, or damages, should be set on the jury or non-jury trial docket.

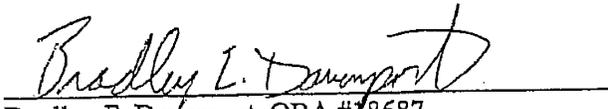
**PATRICIA G. PARRISH**

Honorable Patricia G. Parrish 10/15/10  
Judge of the District Court

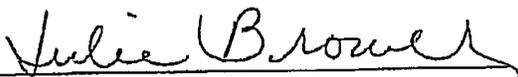
Approved as to Form:



Amanda Commesser, OBA #20044  
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Attorneys for Defendants, Marvin and Pamela Wilcox

FILED IN THE DISTRICT COURT  
OKLAHOMA COUNTY, OKLA.

OCT 22 2010

PATRICIA PRESLEY, COURT CLERK  
by ~~DEPUTY~~

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

OKLAHOMA DEPARTMENT OF SECURITIES	)
<i>ex rel.</i> IRVING L. FAUGHT, Administrator,	)
et al.,	)
	)
Plaintiffs,	)
v.	)
	)
ROBERT W. MATHEWS, et al.,	)
	)
Defendants.	)

Case No. CJ-2005-3796

**PRETRIAL CONFERENCE ORDER**

**Appearances:**

For Plaintiff/Receiver: Bradley E. Davenport, OBA #18687  
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For Defendants Wilcox: G. David Bryant, OBA #1264  
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**EXHIBIT**  
**2**

1. **General Statement of Facts:**

a. **Plaintiffs' Statement of Facts:** Marsha Schubert operated a Ponzi scheme through her investment business, Schubert and Associates, from January 2000 through October 14, 2004. Plaintiffs, Douglas L. Jackson, in his capacity as court-appointed receiver for the benefit of claimants and creditors of Marsha Schubert and Schubert and Associates, and the Oklahoma Department of Securities, have filed the instant lawsuit to recover fictitious profits that Schubert and Associates paid out to the Marvin and Pamela Wilcox (Defendants Wilcox) as part of the Ponzi scheme. Defendants Wilcox did not provide reasonably equivalent value in return for the funds Marsha Schubert and Schubert and Associates paid to them. In addition, there were no actual investments made through or by Schubert and Associates on behalf of Defendants Wilcox. Rather, the funds Marsha Schubert and Schubert and Associates paid to these Defendants were simply other investors' money. On October 1, 2010, this Court held that the Defendants Wilcox were not innocent investors by virtue of their participation in the Schubert check kiting scheme and therefore the standard for recovery from investors in Ponzi scheme cases set forth in *Oklahoma Department of Securities, et al. v. Blair, et al.*, 2010 OK 16, does not apply. As such, Defendants should be required to repay, or disgorge, the fictitious profits they received from Schubert and Associates in the amount of \$509,505 plus pre-judgment and post-judgment interest.

b. **Defendants' Statement of Facts:** The Defendants, Marvin and Pamela Wilcox, maintain that the net proceeds they received from Schubert & Associates is \$133,945.00, not \$509,505.

2. **Plaintiffs' Contentions:**

A. Grounds for Recovery	Applicable Statute, Ordinance, Common Law Rule
Unjust Enrichment	Common law; Oklahoma Department of Securities et al. v. Blair, et al., 2010 OK 16; 71 O.S. § 1-603

3. **Defendants' Contentions:**

A. Affirmative Defenses	Applicable Statute, Ordinance, Common Law Rule

4. **Defendants' Claim for Relief:** None.

5. Miscellaneous:

- A. Is Jury Waived? Yes X No ~~\_\_\_~~
- B. Is Additional Discovery Requested? Yes. Marvin Wilcox must submit to a deposition by Plaintiffs, and Defendants Wilcox must produce the front and back sides of 2 checks representing the \$95,000 that appears on Pamela Wilcox's summary of financial transactions (Summary) and the 5 checks representing the \$285,000 that appears on the Summary. *Mr. Wilcox to be deposed by 12/31/10.*
- C. A Trial Brief is not required by the Court.
- D. Other Matters: None. *MSJ as to damages to be filed 11/18/10. Hearing set 12/17/10 @ 8:30 AM.*

6. Plaintiffs' Exhibits:

No.	Description	Objection	Authority
1.	Pleadings, orders and other documents filed in <i>Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator v. Marsha Schubert, et al.</i> , in District Court of Logan County case CJ 2004-256, including the Department's Petition, Motion for Temporary Restraining Order and Appointment of Receiver, the Court's Order granting the Temporary Restraining Order and Appointing the Receiver, the Consent Agreement with Marsha Schubert and Schubert and Associates, the Orders Amending Authority of Receiver, hearing transcripts and the BKD accounting.		
2.	Pleadings, orders and other documents filed in <i>Oklahoma Department of Securities ex rel. Irving L. Faught, Administrator, et al. v. Mathews, et al.</i> in District Court of Oklahoma County case CJ-2005-3796		
3.	Pleadings, orders and other documents filed in <i>Oklahoma Department of Securities v. Marvin Lee Wilcox</i> , Case No. 07-10610-BH/Adv. No. 07-1226-BH, United States Bankruptcy Court for the Western District of Oklahoma		
4.	Marsha Schubert's Federal Plea Agreement and Conviction <i>United States of America v. Marsha Kay Schubert</i> , CR 05-078, United States District Court for the Western District of Oklahoma:		
5.	Marsha Schubert's State Guilty Plea and		

*Its & As exhibits are preadmitted.*

	<p>Conviction  <i>State of Oklahoma v. Marsha Kay Schubert</i>,                  No. CF-2004-391, District Court of Logan                  County</p>		
6.	A timeline depicting course of Marsha Schubert's Ponzi scheme		
7.	<p>Bank statements and supporting documentation, <i>i.e.</i> cancelled checks, deposit slips, deposit items, cashier's checks, and wire transfers, for the bank accounts used, owned or controlled by Marsha Schubert including:</p> <ul style="list-style-type: none"> <li>a. Farmers &amp; Merchants Bank, Account No. 34-7477, from January 2000 until October 2004.</li> <li>b. Farmers &amp; Merchants Bank, Account No. 36-4282, from January 2002 to September 2004.</li> <li>c. Farmers &amp; Merchants Bank, Account No. 35-9424, from January 2000 through September 2004.</li> <li>d. Farmers &amp; Merchants Bank, Account No. 34-0901, from January 2002 until September 2004.</li> <li>e. Farmers &amp; Merchants Bank, Account No. 36-7044, from November 2002 to July 2004</li> <li>f. Farmers &amp; Merchants Bank, Account No. 36-8229, from 05/2003 to 06/2004</li> <li>g. BancFirst, N.A., Account No. 0460778881, from 01/2000 to 10/2004</li> <li>h. BancFirst, N.A., Account No. 0462012573, from 01/2002 to 09/2004.</li> </ul>		
8.	<p>Bank statements and supporting documentation, <i>i.e.</i> cancelled checks, deposit slips, deposit items, cashier's checks, and wire transfers, for the bank accounts used, owned or controlled by Defendants Wilcox including:</p> <ul style="list-style-type: none"> <li>a. NBANC, Account No. 1258931, from January 2001 until May 2007.</li> <li>b. NBANC, Account No. 1258680, from January 2001 until September 2004.</li> <li>c. NBANC, Account No. 1258915, from December 2000 until May 2007.</li> <li>d. NBANC, Account No. 1258729, from December 2003 until June 2007.</li> <li>e. NBANC, Account No. 1278665, from</li> </ul>		

	October 2004 until December 2004. f. Farmers and Merchants Bank, Account No. 369373, from November 2003 until February 2005.		
9.	BKD Summary/Key to Financial Analysis		
10.	BKD Exhibit of Short Participants		
11.	BKD Exhibit of Long Participants		
12.	Accountant's Compilation Report prepared by BKD for Marvin and Pamela Wilcox and supporting documentation including checks, deposits and wire transfer forms.		
13.	Marvin Wilcox letter to AXA dated 7-7-04.		
14.	Summary of AXA and Wilbanks brokerage activity for the account of Marvin and Pamela Wilcox prepared by Carol Gruis and supporting account statements and records.		
15.	Summary of AXA and Wilbanks brokerage activity for the account of Marvin Wilcox IRA and supporting account statements and records.		
16.	Original transcript(s) of deposition testimony of Marvin Wilcox.		
17.	Original transcript(s) of deposition testimony of Pamela Wilcox.		
18.	Transcript of tape-recorded phone conversation between Pamela Wilcox and Aaron Wilbanks.		
19.	Marvin and Pamela Wilcox's Response to Plaintiffs' Requests for Admission in CJ-2005-3796.		
20.	Verified answers to Interrogatories contained in Marvin and Pamela Wilcox's Response to Plaintiffs' First Set of Discovery Requests in CJ-2005-3796.		
21.	Marvin and Pamela Wilcox's joint tax returns, and accompanying schedules: (a) 2001 Federal Tax Return (b) 2002 Federal Tax Return (c) 2003 Federal Tax Return (d) 2004 Federal Tax Return		
22.	Marvin and Pamela Wilcox's brokerage statements and supporting documentation, including: a. AXA Account number 64A-016811. b. AXA Account number 64B-023022.		
23.	A timeline and/or other similar chart depicting the monies deposited to and disbursed from Marvin and Pamela Wilcox's bank account(s) by or		

	through Marsha Schubert and/or Schubert and Associates during the years 2000 through 2004.		
24.	All exhibits and demonstrative aids prepared by or on behalf of Plaintiff's expert witnesses.		
25.	All exhibits listed by Defendants to which Plaintiffs have no objection or that are admitted over Plaintiffs' objection		

**7. Defendants' Exhibits:**

No.	Description	Objection	Authority
1.	Check numbers 1814 and 4933 from NBC account		
2.	Check numbers 6067, 6073, 6069, 6060 and 6063 from NBC account		
3.	A timeline and/or other similar chart depicting the monies deposited to and disbursed from Marvin and Pamela Wilcox's bank account(s) by or through Marsha Schubert and/or Schubert and Associates during the years 2000 through 2004.		
4.	All exhibits and demonstrative aids prepared by or on behalf of Plaintiff's expert witnesses.		
5.	All exhibits listed by Defendants to which Plaintiffs have no objection or that are admitted over Plaintiffs' objection		

**8. Plaintiffs' Witnesses:**

No.	Name and Address (if known)	Substance of Testimony
1.	Dan Clarke, Supervisory Investigator, CFE c/o Okla. Dept. of Securities 120 N. Robinson, Suite 860 Oklahoma City, OK 73102 (405) 280-7700	Will testify about his investigation, and the conclusions reached, of Marsha Schubert, Schubert and Associates, the existence of a Ponzi scheme, and the financial transactions between Schubert and the individuals that were unjustly enriched or victimized by the fraudulent scheme.
2.	Douglas L. Jackson, Receiver P.O. Box 1549 Enid, OK 73702-1549 (580) 234-0436	Will testify about the information he gathered in his role as Receiver of Marsha Schubert's estate and his claim against Marvin and Pamela Wilcox.
3.	Designated Representative(s) of BKD, LLP 205 W Maple, Suite 200 Enid, OK 73702 (580) 237-3300	Will testify about the financial analysis conducted of Marsha Schubert, Schubert and Associates, and Schubert's transactions individuals that were unjustly enriched or victimized by the fraudulent scheme.

4.	Duane R. Stock, PhD OU Price College of Business Division of Finance 307 W. Brooks, Suite 205A Norman, OK 73019	Will testify as to the fictitious profits or "rate of return" received by each of the Defendants in the context of the standard created by the Oklahoma Supreme Court in <i>Oklahoma Department of Securities, et al. v. Blair, et al.</i> , 2010 OK 16.
5.	Carol Gruis, Director of Examinations Okla. Dept. of Securities 120 N. Robinson, Suite 860 Oklahoma City, OK 73102 (405) 280-7700	Will testify about her review and analysis of Defendants' individual account statements with AXA Advisors, LLC and Wilbanks Securities, Inc., as well as the fact that these investment accounts were not involved in or affected by Schubert's fraudulent investment scheme.
6.	Marvin Wilcox, Defendant c/o Kline, Kline, Elliott & Bryant, P.C. 720 N.E. 63 <sup>rd</sup> Street Oklahoma City, OK 73105	Deposed.
7.	Pamela Wilcox, Defendant c/o Kline, Kline, Elliott & Bryant, P.C. 720 N.E. 63 <sup>rd</sup> Street Oklahoma City, OK 73105	Deposed.
8.	Marsha Schubert FPC Bryan Federal Prison Camp P.O. Box 2149 Bryan, Texas 77805	Will testify about her fraudulent securities scheme and the role others played in the scheme.
9.	Jeffrey C. Trent 915 West Main Yukon, OK 73099 (405) 354-4879	Will testify regarding the information received from Marvin and Pam Wilcox in connection with the preparation of their tax returns and the content of such returns.
10.	Designated representative(s) of Farmers & Merchants Bank, N.A.	Identification and authentication of records.
11.	Designated representative(s) of National Bank of Commerce.	Identification and authentication of records.
12.	Designated representative(s) of AXA Advisors, LLC, c/o Judy Morse, Crowe & Dunlevy, 20 North Broadway, Suite 1800, Oklahoma City, Oklahoma 73102.	Identification and authentication of records.
13.	Richard Reynolds P.O. Box 553 Kingfisher, OK 73750	Will testify how he and his wife were harmed financially and otherwise by the investment scheme and Defendant Marvin Wilcox's role in his investment

14.	Dennis Themer Route 2, Box 81-T Kingfisher, OK 73750	Will testify about bank account activity and communications concerning Marsha Schubert, Robert Mathews, Lance Berry and Defendant Marvin Wilcox.
15.	Jim Talkington 8105 Northwest 128 <sup>th</sup> Place Oklahoma City, OK 73142	Will testify about bank account activity and communications concerning Marsha Schubert, Robert Mathews, Lance Berry and Defendant Marvin Wilcox.
16.	Jeff Wilcox 906 S. 14 <sup>th</sup> Kingfisher, OK 73750	Will testify about bank account activity and communications concerning Marsha Schubert, Robert Mathews, Lance Berry and Marvin Wilcox.
17.	Edward Stanton 13200 West Country Road Crescent, OK 73028	Will testify about bank account activity and communications concerning Marsha Schubert, Robert Mathews, Lance Berry and Defendant Marvin Wilcox.
18.	Chad Johnson 606 S. Pine Crescent, OK 73028	Will testify about bank account activity and communications concerning Marsha Schubert, Robert Mathews, Lance Berry and Defendant Marvin Wilcox.
19.	Lance Berry 3904 Hunters Creek Road Edmond, OK 73003	Will testify about his association, interactions and communications with Marsha Schubert, Robert Mathews and Defendant Marvin Wilcox.
20.	Julie Hanks 123 N. Oak Crescent, OK 73028	Will testify regarding her association, interactions and communications with and knowledge of persons contacting Marsha Schubert's office, to include Defendants Wilcox.
21.	Robert Mathews c/o Jeffrey Trent 915 West Main Yukon, OK 73099	Will testify about his association, interactions and communications with Marsha Schubert, Lance Berry and Defendant Marvin Wilcox.
22.	All witnesses identified by the Defendants to whom Plaintiffs have no objection or that are permitted to testify over Plaintiff's objection.	

**Defendants' Witnesses**

No.	Name and Address (if Known)	Substance of Testimony
1.	Marvin Wilcox, Defendant c/o Kline, Kline, Elliott & Bryant, P.C. 720 N.E. 63 <sup>rd</sup> Street Oklahoma City, OK 73105	Will testify about amounts received by Schubert & Associates.

2.	Pamela Wilcox, Defendant c/o Kline, Kline, Elliott & Bryant, P.C. 720 N.E. 63 <sup>rd</sup> Street Oklahoma City, OK 73105	Will testify about amounts received by Schubert & Associates.
3.	All witnesses identified by the Defendants to whom Plaintiffs have no objection or that are permitted to testify over Plaintiff's objection.	

10. Requested Jury Instructions Due By: NA

11. Estimated Trial Time: 3 Days

12. Stipulations:

13. Settlement: Has the possibility of settlement been explored?  
Yes  No

14. TRIAL DATE SET FOR 1/4/11 @ 9:00AM

Dated: October 21, 2010

  
Honorable Patricia G. Parrish  
JUDGE OF THE DISTRICT COURT

I, PATRICIA PRESLEY, Court Clerk for Oklahoma  
County, Okla., hereby certify that the foregoing is a  
true, correct and complete copy of the instrument  
herewith set out as appears of record in the District  
Court Clerk's Office of Oklahoma County, Okla.,  
this 22 day of Oct, 2010  
PATRICIA PRESLEY, Court Clerk  
Deputy

APPROVED:



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