UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff, CASE NO.: 8:09-cv-0087-T-33CPT

v.

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.,

Defendants.

SCOOP REAL ESTATE, L.P.,
VALHALLA INVESTMENT PARTNERS, L.P.,
VALHALLA MANAGEMENT, INC.,
VICTORY IRA FUND, LTD,
VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT, LLC.

Relief Defendants.
_______________________________________/

RECEIVER'S MOTION TO CLOSE THE RECEIVERSHIP OF QUEST ENERGY MANAGEMENT GROUP, INC.

Burton W. Wiand (the "**Receiver**"), as Receiver for Quest Energy Management Group, Inc. ("**Quest**"), moves the Court for an order granting

various relief necessary to close this receivership as to Quest.[1] Specifically, the Receiver moves the Court for an order:

- Authorizing the Receiver to abandon or destroy, as appropriate, all remaining Quest assets and liabilities, including unneeded documents (*see infra* § IV);
- Approving the waiver of certain fees and costs incurred by the Receiver and Guerra King P.A. ("**GK**")[2] and the satisfaction of other approved but unpaid administrative fees from specified, subrogated sources (*see infra* § VI);
- Closing the Quest Receivership and discharging the Receiver and his professionals and agents upon the Receiver's filing of a closing declaration (*see infra* § VII); and
- Directing all persons or entities that might still have claims against Quest, its affiliates, employees, managers, and/or owners to pursue those claims, if otherwise appropriate under pertinent contracts or governing law, against Quest or its principals[3] (*see infra* § I-III).

A proposed order containing the foregoing relief is attached as **Exhibit 1**.[4] Importantly, the Securities and Exchange Commission ("**SEC**") does not oppose this motion, which will resolve the Quest Receivership after more than seven years.

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[1] The Receiver will also file a similar but independent motion directed at the broader "**Nadel Receivership**" as soon as possible in 2021.

[2] GK was formerly known as Wiand Guerra King P.A. ("**WGK**") and may occasionally be referred to as such, especially in previous fillings.

[3] Paul Downey, the company's former Chief Executive Officer and his son Jeff Downey, its former Chief Operating Officer.

[4] The Receiver recognizes that recent changes to the Local Rules prohibit the submission of proposed orders without leave of Court, but because receivership matters are idiosyncratic, and this motion is intended to resolve numerous issues pending over many years, the Receiver simultaneously seeks leave to submit the proposed order.

BACKGROUND

On January 21, 2009, the SEC initiated this action to prevent the defendants from further defrauding investors in hedge funds the defendants operated. That same day, the Court entered an order appointing Burton W. Wiand as Receiver for defendants Scoop Capital, LLC, and Scoop Management, Inc., and relief defendants Scoop Real Estate, L.P.; Valhalla Investment Partners, L.P.; Valhalla Management, Inc.; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; Viking IRA Fund, LLC; Viking Fund, LLC; and Viking Management, LLC. Doc. 8. The Court subsequently granted several motions to expand the scope of the Receivership to include other entities owned or controlled by Arthur Nadel ("**Nadel**"). *See generally* Docs. 17, 44, 68, 81, 153, 172, 454, 911, 916, 1024. All entities in receivership are collectively referred to as the "**Receivership Entities**." The Court directed the Receiver to, among other things, administer and manage the business affairs, funds, assets, and any other property of the Receivership Entities. *See, e.g.,* Doc. 8.

Quest And Its Assets

Quest is an oil and gas exploration and production company based in Texas. Paul Downey was its Chief Executive Officer, and his son Jeff Downey was its Chief Operating Officer (collectively, the "**Downeys**"). Viking Oil & Gas, LLC ("**Viking Oil**") is a Florida limited liability company formed in January 2006 by Neil and Christopher Moody (the "**Moodys**") to make

investments in Quest. The Moodys funded Viking Oil with proceeds from Nadel's scheme, and as a result, the Court expanded the Receivership to include Viking Oil on July 15, 2009. Doc. 153. Between February 2006 and April 2007, through Viking Oil, the Moodys invested at least $4 million in Quest. As a result, the Receiver filed a motion to expand the Receivership to include Quest (Doc. 993), and the Court granted that motion on May 24, 2013 (Doc. 1024). Although Quest is one of the Receivership Entities, the Receiver has administered Quest independently, as directed by the Hon. Richard A. Lazzara (the "**Quest Receivership**" and the "**Quest Estate**").

Steps Taken To Implement The Order Appointing The Receiver

The work of the Receiver and the professionals he retained has been documented in the Receiver's interim reports, status reports, and other filings with this Court. *See, e.g.,* Docs. 1054, 1117, 1145, 1372, 1413, 1432, 1434, 1436. The Receiver's efforts, however, were complicated by the fact that the Downeys were engaged in an investment fraud, initially unknown to the Receiver, thorough their operation of Quest. *See, e.g., S.E.C. v. P. Downey et al.*, Case No. 1:14-cv-185 (N.D. Tex.).[5]

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[5] The SEC asserted claims against the Downeys for their violations of the anti-fraud provisions of the federal securities laws in connection with their activities on behalf of Quest. On July 25, 2016, the court presiding over the enforcement action entered an order granting summary judgment in favor of the SEC on its claims against the Downeys. On September 29, 2016, the court granted the SEC's motion for remedies and entered final judgments as to all defendants. In addition to entering final judgments, the court also made specific findings as to the defendants, including that Jeff and Paul Downey (1) "raised $4.9 million from 17 investors in a fraudulent offering of securities"; (2) "acted with a high level of scienter,

Nevertheless, since his appointment, the Receiver has, among other things, accomplished the following:

- Generated approximately $4.6 million in operating income, which was primarily used to fund operations, including by paying employees and royalty owners, maintaining appropriate insurance, repairing and reworking oil and gas wells, complying with regulatory requirements and additional activities;

- Established and conducted a claims procedure whereby all investors and other possible creditors could assert a claim;

- Received and reviewed 93 claims seeking a total of approximately $15,804,250.21;

- Prepared the Receiver's Motion to (1) Approve Determinations and Priority of Claims, (2) Pool Receivership Assets and Liabilities, (3) Approve Plan of Distribution, and (4) Establish Objection Procedure which was filed on March 7, 2019 (Doc. 1383) (the "**Claims Determination Motion**") and included the Receiver's recommended determination of each of the submitted claims;

- Obtained Court approval of the Claims Determination Motion (Doc. 1384) and resolved all objections to the Receiver's claim determinations, primarily through settlements (*see* Docs. 1386, 1387, 1402, 1404, 1405, 1406);

- Engaged in significant attempts to monetize Quest and/or its assets by retaining a business broker, negotiating with interested parties, facilitating those parties' due diligence efforts, and even exploring auction opportunities;

- Sold (or otherwise disposed for value) substantial real and personal property, totaling more than $100,000, including an office building,

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knowingly deceiving investors about virtually every aspect of the investment"; (3) concealed the Receiver's appointment from Quest's investors; and (4) exhibited "misconduct [that] was extremely egregious." *S.E.C. v. P. Downey et al.*, Case No. 1:14-cv-185, order granting SEC's motion for summary judgment, Doc. 117 at 2-3 (N.D. Tex. Sept. 29, 2016). The court ordered the Downeys to disgorge $4.9 million plus $1.1 million in interest and to pay a civil penalty of $178,156 each. As far as the Receiver is aware, the Downeys have not paid anything toward the disgorgement or penalty.

cars, trucks, pumping equipment, unused pipelines, and even scrap metal (*see, e.g.,* Docs. 1438, 1439, 1440, 1441, 1444, 1445, 1446, 1447);

- Cooperated with and provided information to the SEC, which through a separate enforcement action in Texas, obtained an order imposing disgorgement and civil penalties in excess of $6 million against the Downeys (*see infra* fn. 5);

- Resolved the claims of all secured creditors (Class 1 and Class 2) through settlements or other transactions approved by the Court (*see, e.g.,* Docs. 1438, 1439, 1440, 1441, 1444, 1445, 1446, 1447);

- Maintained an informational website for claimants and other interested parties and fielded numerous calls and correspondence from claimants seeking information regarding the Quest Receivership; and

- Notified in October 2020 all mineral rights owners that Quest would conduct no further activities or business, was without assets, and ceased all operations.

The Receiver has completed the investigation of the affairs of Quest, undertaken all possible legal actions that were in the best interests of Quest, and collected all possible funds. The Receiver is now prepared to terminate the Quest Receivership.

<u>The Receiver's Fulfillment Of His Mandate And Prior Sales Efforts</u>

Since the inception of the Quest Receivership in May 2013, the Receiver has managed and operated Quest, including its oil and gas leases. The company generated revenue by selling its production, but that revenue varied sharply with oil and gas prices. After his appointment, the Receiver learned that Quest itself was part of a fraudulent scheme perpetrated by the Downeys and that its operations and finances were in disarray. The company was also

insolvent. The Receiver evaluated its operations and determined to use some of the limited funds to "work over" (*i.e.*, refurbish and/or repair) certain of the Quest wells to enhance production and revenue, which at the time did not exceed the company's operating costs. These efforts were successful in allowing the business of Quest to continue but were generally insufficient to support the administrative costs of the Receivership. Due to the attention paid to the production of the Quest wells by the Receiver, however, revenues were increased to cover operating costs, and it was hoped that the assets of Quest could be sold and thereby benefit the creditors and possibly the victims of the Quest fraud. The Receiver thus sought to sell Quest to monetize its assets for the Quest Estate and eventual distribution to creditors.

The Receiver's marketing efforts began with communications with various individuals with ties to the oil and gas exploration industry to generate referrals of interested buyers and through communications with potential buyers familiar with Quest. The Receiver sought advice from various individuals with knowledge of the oil and gas exploration industry to determine the best way to market Quest for sale. As a result of those efforts, two marketing firms submitted proposals to the Receiver. After careful consideration, the Receiver determined that selling Quest through a private

sale with the assistance of WhiteHorse Partners, LLC ("**WhiteHorse**")[6] was in the best interests of the Quest Estate, as he believed it would provide the best opportunity to market Quest to the widest audience for the most value. WhiteHorse's marketing strategy for Quest included:

- A complete review of the documentation related to Quest's current and past operations including its current and past accounting databases so consolidated financial statements could be prepared;
- A determination of Quest's market value;
- The development of a marketing plan aimed at locating qualified purchasers;
- The preparation of a marketing memorandum which outlined relevant details about Quest;
- The execution of a marketing initiative;
- The qualification of potential buyers to ensure their financial ability to conclude a transaction to buy Quest and a review of their prior transactions and experience with entities such as Quest;
- Conducting tours of Quest's properties and speaking with personnel;
- The analysis of all offers;
- Assisting with the negotiation of a letter of intent or purchase offer; and
- Working on closing the sale transaction, including due diligence.

[6] WhiteHorse is a boutique advisory firm based in Nashville, Tennessee familiar with the oil and gas industry. It has marketed and sold (or is currently marketing and in the process of selling) companies like Quest. On October 28, 2014, the Receiver filed a renewed motion for leave to retain WhiteHorse. Doc. 1144. On November 12, 2014, the Court granted the Receiver's motion. Doc. 1148.

Efforts by WhiteHorse and the Receiver led to multiple inquiries and offers from potential purchasers. Indeed, the Receiver entered into contracts to sell Quest on several occasions, but for various reasons (due diligence, market conditions, oil price fluctuation, the potential purchaser's inability to obtain financing, *etc.*), the sales fell through before the Court's approval was acquired.[7]

The Disposition Of Quest's Assets

In his May 15, 2020 report (Doc. 1434), the Receiver advised the Court regarding Quest's uncertain status: "Given these developments, the Receiver continues to manage Quest and its employees. The company has historically generated enough revenue from oil and gas production to fund its daily operations but, given world events and the impact of the Covid-19 virus, that is no longer possible. Current oil and gas prices will not support continued operations, especially considering regulatory maintenance requirements."

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[7] For example, in mid-2019, the Receiver entered into an asset purchase agreement with an entity he believed would purchase substantially all of Quest's assets for $1 million. While prior negotiations with potential purchasers contemplated greater purchase amounts, oil and gas prices subsequently declined, substantially decreasing the value of Quest's assets. On July 24, 2019, the Receiver filed his Verified Motion For Approval Of Private Sale Of Assets Of Quest Energy Management Group, Inc. Doc. 1403. With full knowledge that the Receiver had complied with pertinent statutory requirements and that the motion was pending before the Court, the purchaser cancelled the transaction shortly before the Court granted the motion approving the sale. Doc. 1407. Brief litigation ensued regarding the Receiver's ability to retain the purchaser's $100,000 earnest money deposit, but the Court ultimately ruled that the purchaser was entitled to the funds, which the Receiver returned in accordance with the Court's order. *See* Docs. 1419, 1423, 1424, 1425, 1426, 1427, 1428. On December 10, 2019, to clarify the record regarding the ownership and operation of Quest, the Court granted the Receiver's motion to vacate the order approving the sale. *See* Docs. 1429, 1430.

Doc. 1434 at 3. These events also caused the Receiver to conclude that any sale of Quest's assets was unlikely. The Receiver warned that he might have to abandon Quest but was nevertheless communicating with its secured creditors in the hope of reaching an "agreement between those creditors" that might avoid abandonment. *Id.* at 4. As explained below and in previous filings, the Receiver was, in fact, able to arrange transactions sufficient to avoid that outcome. In addition to those (now completed) transactions, the Receiver believes the relief requested in this motion will terminate the Quest Receivership in the most efficient way possible.[8]

FINAL RELIEF REQUIRED TO CLOSE THE QUEST RECEIVERSHIP

Quest's primary assets were its oil and gas leases, which for purposes of this motion, can be divided into three general categories: (1) the "**Hatchett Lease**;" (2) the "**Musselman Caddo Unit**" or "**MCU**;" and (3) the "**Kilgore Lease**." A list of the pertinent leases and/or wells is attached as **Exhibit 2**. Quest also owned certain equipment used to operate these leases. As explained below and in previous filings, the Receiver has sold or otherwise disposed of those assets, generally with the Court's express approval (but also using the

[8] During the last two years of the Quest Receivership, it became apparent to the Receiver and GK that a liquidation of Quest's assets would be insufficient to satisfy the administrative expenses that had been incurred due to the Receiver's and GK's then-ongoing efforts to bring funds into the Receivership to benefit creditors. The Receiver and GK nevertheless continued to work on the Receivership knowing that those efforts would not be compensated. The total amount of those billed and unbilled fees and costs is more than $270,000.

Receiver's delegated discretion for smaller transactions). As such, any inquiries regarding Quest should now be directed to the Downeys as its former owners and as the personal guarantors of many of its contracts or, if appropriate, the new operators of the pertinent leases.

I. Divestiture Of The Hatchett Lease

On June 1, 2017, certain individuals representing the landowners of the Hatchet Lease moved the Court to reclaim the lease from Quest, asserting that the lease had lapsed due to lack of production. After brief litigation, the Court granted the lessors' motion. *See* Docs. 1272, 1290. As a result, Quest has not been responsible for the Hatchett Lease for several years.[9] Indeed, the landowners of the Hatchett Ranch prohibited Quest personnel form entering the formerly leased property. Consistent with the Court's order, any inquiries regarding the Hatchett Lease should be directed to the current lessors/landowners:

Byron Hatchett
c/o Deep Creek Exploration LLC
P.O. 3374, Abilene, Texas 79604

[9] On August 13, 2020, the Receiver moved the Court to approve an agreement with Hatchett Land and Cattle Co. LLC (the "**Hatchett Company**"), which conveyed approximately four miles of unused pipeline from Quest to the Hatchett Company for $5,000. Doc. 1438. There could be no other potential purchaser for this pipeline because it was located wholly within the Hatchett Ranch. However, since Quest still held a permit for the pipeline, the landowners agreed to purchase such interest as Quest had in the pipeline, and Quest agreed to the transfer of the pipeline permit. The Court granted the motion on August 28, 2020. Doc. 1440. The Receiver used the funds to keep Quest operational pending disposition of its other assets. The Receiver is not aware of any other Quest property on the Hatchett Lease and should any equipment remain by the terms of the expired lease, it is the property of the landowners.

John H. Carney & Associates
10541 Berry Knoll Dr.
Dallas, Texas 75230
214-549-0555
Fax 214-890-1155
jhcblue@gmail.com

This motion asks the Court to formally discharge the Receiver and his professionals from any further responsibility for the Hatchett Lease to the extent that was not accomplished by the Hon. Judge Richard A. Lazzara's prior order (Doc. 1290). A copy of that order is attached as **Exhibit 3**.

II. Sale Of The MCU And Resolution Of Class 1 & 2 Claims

On August 21, 2020, the Receiver filed a motion to approve the sale of the MCU to West Central Texas Petroleum Partners – MCU, LLC (the "**MCU Partners**"). Doc. 1439. The Court granted the motion on September 11, 2020 (Doc. 1445), and the transaction closed on or about September 16, 2020. As explained in the motion, the transaction with the MCU Partners generated cash to settle Class 1 claims brought by several Texas-based taxing authorities.[10] It also resolved a Class 2 claim submitted by Van Operating, Ltd. ("**Van Operating**")[11] and arranged for the payment of certain royalties to

[10] Specifically, the taxing authorities agreed to accept $50,000 in full settlement of their Class 1 claims and Quest's tax liability through 2019. The new operators of Quest's leases will be responsible for 2020 and future taxes.

[11] Van Operating submitted a claim for $795,201.59 based on a loan Quest assumed in 2007. *See* Claim No. 6. The Receiver recommended that Van Operating's claim be allowed but only in the amount of the outstanding principal balance of the Renewal Note at the time of the Receiver's appointment – *i.e.*, $496,614.52. *See* Doc. 1383; Ex. C. Van Operating did not

landowners.[12] Consistent with the Court's order approving these transactions, any inquiries regarding the MCU should be directed to new operator:

West Central Texas Petroleum Partners – MCU, LLC
c/o Momentum Operating Co., Inc.
P.O. Box 2439
224 S. Main Street
Albany, Texas 76430
325.762.2366
Attn: Mike Parsons
Email: mike@momentumoperating.com

To finalize matters, this motion asks the Court to formally discharge the Receiver and his professionals from any further responsibility for the MCU.

III. Abandonment Of The Kilgore Leases

The Kilgore Leases were operated to a limited extent until August of 2020. At that time and due to the dramatic crash of oil prices, the Receiver was unable to continue operation of the leases. Significant efforts were made to sell or assign the leases, but due to economic events and the fact that the Downeys had not maintained production on a large portion of the leased lands, there was a significant title problem regarding the transfer of lease rights and the current landowners refused to cooperate. Effective September 1, 2020, the Receiver notified all Kilgore mineral rights owners, as well as the mineral

object to the Receiver's determination. The MCU Partners assumed Quest's obligation, pursuant to a revised promissory note, which resolved Van Operating's Class 2 claim. The Receiver has also resolved the only other Class 2 secured claim. *See* Doc. 1406.

[12] Quest has historically paid these royalties as ordinary operating expenses, but its ability to make payments diminished with its revenues, resulting in past-due amounts.

rights owners of all existing and former Quest leases, that the Receivership was unable to continue operations and would proceed to abandon all leases other that those that were transferred. A copy of the Receiver's letter is attached as **Exhibit 4**. The Receiver advised the mineral rights owners that Quest was without any significant assets and could not continue. Efforts were made to remove equipment from the leased lands and were in large part successful. Any inquiries regarding the Kilgore Leases should be directed to the Downeys, as the pre-Receivership operators of the leases at their last known addresses:

Paul Downey
71 N Old Cedar Circle
The Woodlands, TX 77382

Jeff Downey
3525 Cerrmar Street
Abilene, TX 79606

To finalize matters, this motion asks the Court to formally discharge the Receiver and his professionals from any further responsibility for the Kilgore Leases.

IV. Abandonment Or Disposition Of Documents And Other Miscellaneous Property

Through prior orders (Docs. 97, 1302, 1304, 1438, 1440), the Court authorized the Receiver to liquidate or otherwise dispose of certain specified equipment and any unspecified remnants. This equipment consisted of various

vehicles, oil field equipment, trailers, *etc.* – all over a decade old and well-worn. To that end, the Receiver sold to a number of third parties five non-operating trucks, several trailers that were in poor condition, a backhoe and a "skid-steer loader" that were over 15 years old and not operating as well as several "water trucks" and a "line truck" that were essentially scrap. Finally, the Receiver sold an array of old oil field equipment that was maintained in a storage yard for $5,000. This equipment consisted of pump jacks, tanks, water separators, and other miscellaneous items. As mentioned, this equipment was decades old, and several potential purchasers withdrew from negotiation because the cost of hauling the scrap exceeded its value.

The Receiver moves the Court to abandon all of Quest's remaining assets and liabilities. The Receiver has satisfied or will satisfy all valid, known trade creditors, and the sole assets of the Receivership are the cash generated from the sale of vehicles and equipment and a $50,000 certificate of deposit that secures a $50,000 letter of credit to the Texas Railroad Commission as security for Quest's obligations under the state's regulatory scheme. In addition, the Receiver has accumulated documents and other materials that are in the Receiver's office and the offices of the professionals he has retained to assist him in this matter. Records that provide historical and geological data on the leases will be delivered to the new operators, as appropriate. The Receiver may also be in possession of outdated computer equipment and data storage

devices. The Receiver has been advised that the equipment and other devices have no resale value. Accordingly, the Receiver requests the authority to destroy, or otherwise dispose of, all documents and other items relating to the Quest Receivership, in the Receiver's discretion and when he deems proper if the SEC does not take custody of such records or items within thirty days after written notice from the Receiver.

V. Final Accounting And Acknowledgement Of No Distribution To Class 3 Creditors

Attached as **Exhibit 5** is a cash accounting report from May 24, 2013 (the "**Final Accounting**"). This Final Accounting reflects the cash receipts and expenditures for the term of the Quest Receivership from the Receiver's appointment through March 1, 2021. Other than the transactions described in this motion, there are no outstanding amounts to be collected, and there are no assets to be liquidated beyond limited funds.[13] At present, the Receivership accounts hold a total of $27,746.34. The Receiver is currently using that money to negotiate and pay remaining vendor invoices, including approximately $7,000 owed to various trucking, storage, utility, and supply companies.

While the Receiver has resolved all outstanding Class 1 and Class 2 claims (at significant discounts to the pertinent creditors), there will be no

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[13] The Receiver might be able to obtain approximately $1,000 from certain scrap vehicles if he is able to provide clean title to the potential buyer. The vehicles are subject to certain liens, and they were purchased more than 10 years ago. As such, it is not clear whether any sale will be possible.

material cash available to make a distribution to Class 3 creditors. As explained more fully in the Claims Determination Motion and its exhibits, there are approximately 50 allowed or "allowed in part" Class 3 claims totaling approximately $7.5 million. Given the number and size of those claims, there is no practical way to distribute any remaining funds, which will likely be less than $20,000. The Receiver thus submits that any such funds should be paid to GK in partial compensation of its substantial approved-yet-unpaid invoices, as detailed more fully in the next section of this motion. The Receiver anticipates that Quest will have no cash after making the payments described herein and closing the Quest Receivership. As noted above, the Receiver has warned of this unfortunate situation for some time.

VI. Waiver Of Unbilled Fees And Costs Incurred By The Receiver And His Professionals

The Receiver has prioritized the payment of Quest's operating expenses (employee salaries, insurance, regulatory payments, equipment maintenance and repairs, *etc.*). The Receiver and his counsel have not been paid for work performed during parts of 2017 through the present and, in fact, have not received compensation previously authorized by the Court in order to avoid depleting Quest's necessary working capital. Specifically, the Receiver is owed $11,915.00 in approved-but-unpaid fees. GK is owed $98,690.36 in fees, which have also been approved but not paid. In addition, since that 2018 fee

application, the Receiver has incurred $15,221.05 in unbilled fees, and GK has incurred at least $144,234.48 in unbilled fees and costs. To facilitate the termination of the Quest Receivership, the Receiver and GK will not assert any administrative claim to the unbilled costs and fees – *i.e.*, approximately $159,455.53. Collectively, these unpaid amounts total more than $270,000.

Given Quest's limited financial resources, the Receiver and GK do not anticipate the payment of a material portion of the approved-but-unpaid amounts from the 2018 fee application. As mentioned in the previous section, the Receiver proposes that any remaining cash in the Receivership or to be collected be paid to GK to, in small part, compensate the Receiver and his professionals for the substantial losses incurred as costs in the administration of the Receivership. Administrative fees are typically given priority in distribution plans, but again, the Receiver and GK have waived their claims to the unbilled fees and essentially subrogated their claims to the approved-but-unpaid fees to facilitate the transactions necessary to close the Quest Receivership.

The Receiver also proposes that the Receiver pay to the Texas Railroad Commission $50,000 from the certificate of deposit to satisfy the obligation of the letter of credit to the Texas Railroad Commission, and any interest that has been earned on the certificate of deposit (approximately $1,584.86) and any funds released or otherwise unclaimed by the Texas Railroad Commission be

paid to the Receiver and his professionals as an additional offset to the uncollected administrative expenses.

VII. Close The Quest Receivership And Discharge The Receiver

The Receiver has seized and liquidated all known, material Quest assets. All litigation involving the Quest Receivership has been resolved. Aside from the waived fees and costs owed to the Receiver and his professionals and the claims of Class 3 creditors, the Receiver is not aware of any remaining unpaid or uncollected judgments. All material assets of the Quest Receivership have been disbursed. As such, the Receiver has completed his responsibilities and respectfully requests that the Court enter an order, in substantially the form of the proposed order attached as Exhibit 1, that closes the Quest Receivership and discharges the Receiver without further order from this Court, effective upon the Receiver filing a closing declaration in which he attests that he has completed any distributions and transactions specified herein and filed the final necessary tax returns. The Receiver requests that the Court's order discharge him and his agents, employees, members, officers, independent contractors, attorneys, and representatives and relieve the Receiver, his agents, employees, members, officers, independent contractors, attorneys, and representatives of all duties, liabilities, and responsibilities pertaining to the Quest Receivership.

MEMORANDUM IN SUPPORT

The relief requested in this motion will promote the orderly and prompt resolution of the Quest Receivership in an expeditious manner. As explained below, the Court should close the Quest Receivership by granting the additional requested relief.

I. THE COURT SHOULD GRANT THE ADDITIONAL RELIEF NECESSARY TO CLOSE THE RECEIVERSHIP

The relief sought is customary and appropriate in closing a receivership estate. The Court's power over an equity receivership and to determine appropriate procedures for administering a receivership is "extremely broad." *S.E.C. v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986); *see S.E.C. v. Basic Energy*, 273 F.3d 657, 668 (6th Cir. 2001); *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). The primary purpose of an equity receivership is to promote the orderly and efficient administration of the estate for the benefit of the creditors. *See Hardy*, 803 F.2d at 1038.

The Court has wide latitude when it exercises its inherent equitable power in approving a plan of distribution of receivership funds. *S.E.C. v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001) (affirming District Court's approval of plan of distribution because court used its discretion in "a logical

way to divide the money"); *Quilling v. Trade Partners, Inc.*, 2007 WL 107669, *1 (W.D. Mich. 2007) ("In ruling on a plan of distribution, the standard is simply that the district court must use its discretion in a logical way to divide the money" (internal quotations omitted)). In approving a plan of distribution in a receivership, "the district court, acting as a court of equity, is afforded the discretion to determine the most equitable remedy." *Forex*, 242 F.3d at 332. The Court may adopt any plan of distribution that is logical, fair, and reasonable. *S.E.C. v. Wang*, 944 F.2d 80, 83-84 (2d Cir. 1991); *Basic Energy*, 273 F.3d at 671; *Quilling*, 2007 WL 107669 at *1. Any action taken by a district court in the exercise of its discretion is subject to great deference by appellate courts. *See United States v. Branch Coal*, 390 F. 2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a receiver's appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to creditors. *See Safety Fin. Serv.*, 674 F.2d at 372 (court overseeing equity receivership enjoys "wide discretionary power" related to its "concern for orderly administration") (citations omitted).

The Court has previously approved the Receiver's plan of distribution and, given Quest's historical challenges due to the Downeys' fraud, the Receiver has satisfied as many claims as possible – specifically, Class 1 and Class 2 claims. Unfortunately, the Receiver will not be able to make a

distribution to Class 3 creditors. That outcome was determined by prevailing economic conditions but also by the Downey's fraudulent operation and promotion of Quest: the company was never able to fulfill the Downey's misleading promises.

As noted above, the Receiver has liquidated or otherwise disposed of all assets with material value. He thus seeks to abandon all remaining assets and liabilities because they have no material value to the Quest Estate and will not result in any further distributions to creditors. *See, e.g.,* Docs. 1266, 1267 (authorizing abandonment of storage unit and contents); Doc. 1406 (authorizing abandonment of real property as part of settlement agreement with claimant); *S.E.C. v. Kirkland*, 2008 WL 4144424, at *3 (M.D. Fla. Sept. 5, 2008) (noting "[t]he Receiver has subsequently been granted leave to abandon several assets"); *S.E.C. v. Hyatt*, 2016 WL 2766285, at *4 (N.D. Ill. May 13, 2016) ("Hyatt's other two homes … were both in foreclosure and would have no equity after the mortgages were paid; as a result, the [r]eceiver obtained court authorization to abandon these properties."); *S.E.C. v. Ryan*, 2013 WL 12141502, at *1 (N.D.N.Y. 2013) (permitting receiver to abandon remaining assets because the real estate was of little value). Given the need to bring finality to this matter, the Receiver believes the relief requested in this motion is logical, fair, and reasonable.

CONCLUSION

For the reasons explained above, the Receiver respectfully requests the Court to enter an order:

1. Authorizing the abandonment of all remaining assets or liabilities of Quest and authorizing the Receiver to destroy, or otherwise dispose of, all books, records, computer equipment, other computer related-devices, and other items related to the Quest Receivership in the Receiver's discretion if the SEC does not take custody of such records and other items within thirty days after written notice from the Receiver;

2. Approving the Receiver's Final Accounting;

3. Approving (a) the waiver of unbilled fees and costs incurred by the Receiver and his counsel in the total amount of at least $159,455.53 and (b) the satisfaction of approved-but-unpaid administrative fees and costs from any remaining proceeds;

4. Authorizing the Receiver to retain the books and records necessary to support the tax returns filed by the Receiver for a period of four (4) years and thereafter destroy those books and records;

5. Discharging the Receiver and his agents, employees, members, officers, independent contractors, attorneys, representatives, predecessors, successors, and assignees, and relieving the Receiver and his agents, employees, members, officers, independent contractors, attorneys,

representatives, predecessors, successors, and assignees of all duties, liabilities and responsibilities pertaining to the Quest Receivership previously established in this action effective upon the Receiver filing a closing declaration in which he attests that he has completed the transactions specified herein and filed the necessary tax returns;

6. Directing all entities or individuals with inquiries about Quest or its leases to the current operator of those leases or to the Downeys, as appropriate;

7. Enjoining all persons from commencing or prosecuting, without leave of this Court, any action against the Receiver or his agents in connection with or arising out of the Receiver's or his agents' services to this Court in the Quest Receivership;

8. Retaining jurisdiction for the purpose of enforcing the above injunctive relief;

9. Closing the Quest Receivership without further order of this Court effective upon the Receiver filing the closing declaration; and

10. Granting any other relief as may be reasonable or appropriate in connection with the closure of the Quest Receivership.

LOCAL RULE 3.01(G) CERTIFICATION

The undersigned counsel for the Receiver has conferred with counsel for the SEC and is authorized to represent to the Court that the SEC has no objection to the relief sought herein.

s/Jared J. Perez
Jared J. Perez, FBN 0085192
jperez@guerraking.com
GUERRA KING P.A.
5505 West Gray Street
Tampa, FL 33609
Tel.: (813) 347-5100
Fax: (813) 347-5198

Attorney for Burton W. Wiand, as Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of March 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I have also provided the following non-CM/ECF participants with a true and correct copy of the foregoing by electronic mail and US mail:

David W. Cooney
Texas Railroad Commission
P.O. Box 12967
Austin, TX 78711-2967
David.Cooney@RRC.Texas.Gov

s/Jared J. Perez
Jared J. Perez, FBN 0085192

EXHIBIT 1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff, CASE NO.: 8:09-cv-0087-T-33CPT

v.

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.,

Defendants.

SCOOP REAL ESTATE, L.P.,
VALHALLA INVESTMENT PARTNERS, L.P.,
VALHALLA MANAGEMENT, INC.,
VICTORY IRA FUND, LTD,
VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT, LLC.

Relief Defendants.
_____________________________________/

ORDER

Before the Court is the Receiver's Motion to Close the Receivership of Quest Energy Management Group, Inc. (the "Motion") (Dkt. ______). Upon due consideration of the Receiver's powers as set forth in the Order Appointing Receiver (Dkts. 8, 153), the Orders Reappointing Receiver (Dkts. 140, 316, 493,

935, and 984), and applicable law, it is ORDERED AND ADJUDGED that the Motion is GRANTED. The Court hereby:

1. Authorizes the abandonment of all remaining assets or liabilities of Quest and authorizes the Receiver to destroy, or otherwise dispose of, all books, records, computer equipment, other computer related-devices, and other items related to the Quest Receivership in the Receiver's discretion if the SEC does not take custody of such records and other items within thirty days after written notice from the Receiver;

2. Approves the Receiver's Final Accounting;

3. Approves (a) the waiver of unbilled fees and costs incurred by the Receiver and his counsel in the total amount of at least $159,455.53 and (b) the satisfaction of approved-but-unpaid administrative fees and costs from any remaining proceeds;

4. Authorizes the Receiver to retain the books and records necessary to support the tax returns filed by the Receiver for a period of four (4) years and thereafter destroy those books and records;

5. Discharges the Receiver and his agents, employees, members, officers, independent contractors, attorneys, representatives, predecessors, successors, and assignees, and relieves the Receiver and his agents, employees, members, officers, independent contractors, attorneys, representatives, predecessors, successors, and assignees of all duties, liabilities and

responsibilities pertaining to the Quest Receivership previously established in this action effective upon the Receiver filing a closing declaration in which he attests that he has completed the transactions specified herein and filed the necessary tax returns;

6. Directs all entities or individuals with inquiries about Quest or its leases to the current operator of those leases or to the Downeys, as appropriate and as indicated in the Motion;

7. Enjoins all persons from commencing or prosecuting, without leave of this Court, any action against the Receiver or his agents in connection with or arising out of the Receiver's or his agents' services to this Court in the Quest Receivership;

8. Retains jurisdiction for the purpose of enforcing the above injunctive relief; and

9. Closes the Quest Receivership without further order of this Court effective upon the Receiver filing the closing declaration.

DONE and **ORDERED** in chambers in Tampa, Florida this ____ day of ______, 2021.

____
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record

EXHIBIT 2

Leases and Wells

Conveyed to West Central Texas Petroleum Partners – MCU, LLC

LEASES: All oil, gas and mineral leases described in Section I and/or covering lands described in Section II of Exhibit A to Assignment and Bill of Sale dated January 1, 2007, from Musselman Petroleum and Land Company to Quest Energy Management Group, Inc., recorded at Volume 517, Page 717, Official Public Records, Shackelford County, Texas.

WELLS: API# WELL LEASE FIELD

- 41739256 251H MUSSELMAN CADDO UNIT MUSSELMAN CADDO
- 41736736 251 MUSSELMAN CADDO UNIT MUSSELMAN CADDO
- 41735559 260 MUSSELMAN CADDO UNIT MUSSELMAN CADDO
- 41735202 280 MUSSELMAN CADDO UNIT MUSSELMAN CADDO
- 41735201 282 MUSSELMAN CADDO UNIT MUSSELMAN CADDO
- 41735185 274 MUSSELMAN CADDO UNIT MUSSELMAN CADDO
- 41734879 273 MUSSELMAN CADDO UNIT MUSSELMAN CADDO
- 41734834 272 MUSSELMAN CADDO UNIT MUSSELMAN CADDO
- 41733443 290 MUSSELMAN CADDO UNIT MUSSELMAN CADDO
- 41733405 271 MUSSELMAN CADDO UNIT MUSSELMAN CADDO
- 41700947 250 MUSSELMAN CADDO UNIT MUSSELMAN CADDO
- 41780017 281 MUSSELMAN CADDO UNIT MUSSELMAN CADDO
- 41732413 291J MUSSELMAN “29” SHACKELFORD CO REGULAR

(END)

LIST OF INACTIVE WELLS BY OPERATOR

ORGANIZATION REPORT (P5) RENEWAL DUE BY JANUARY 1 2021

OPERATOR > QUEST EMG, INC. # 684615

API NUMBER O/G DIST LEASE	LOCATION WELL NO.	COST CALC	SHUT-IN DATE LEASE NAME	FORM W3C REQUIRED	INACTIVITY AS OF P5 RENEWAL DATE
049 30722 OIL 7B 25003	LAND 01AW	$ 37,946	06/2004 KILGORE, J. C. "A"		16YRS 07MOS **
049 31218 OIL 7B 00222	LAND 12	$ 13,930	01/1998 KILGORE, E. P.		23YRS 00MOS **
049 31456 OIL 7B 00222	LAND 13	$ 14,200	01/2000 KILGORE, E. P.		21YRS 00MOS **
049 31624 OIL 7B 00222	LAND 9	$ 14,155	06/2009 KILGORE, E. P.		11YRS 07MOS **
049 32020 OIL 7B 00292	LAND 13	$ 35,546	06/2004 HENRY, MACK		16YRS 07MOS **
049 32182 OIL 7B 00222	LAND 17	$ 14,200	07/2013 KILGORE, E. P.		7YRS 06MOS *
049 32713 OIL 7B 00222	LAND 16	$ 14,099	06/2009 KILGORE, E. P.		11YRS 07MOS **
049 33543 OIL 7B 27628	LAND 1	$ 39,445	07/2000 K & Y "A"		20YRS 06MOS **
049 33747 OIL 7B 18449	LAND 5	$ 14,144	01/1998 KILGORE "B"		23YRS 00MOS **
049 34224 OIL 7B 26252	LAND 6	$ 41,710	01/1998 KILGORE, E.		23YRS 00MOS **
049 35384 OIL 7B 28136	LAND 7	$ 24,343	06/2016 KILGORE, E.P. K-100		4YRS 07MOS
049 35438 OIL 7B 18449	LAND W 1	$ 14,088	01/1998 KILGORE "B"		23YRS 00MOS **
049 35457 OIL 7B 26752	LAND 1	$ 14,144	01/1998 KILGORE "G"		23YRS 00MOS **
049 35573 OIL 7B 21979	LAND 10	$ 14,268	01/1998 SHULTS, HOLLIS "B"		23YRS 00MOS **

* SHUT-IN FOR MORE THAN 5 YEARS
** SHUT-IN FOR MORE THAN 10 YEARS

LIST OF INACTIVE WELLS BY OPERATOR

ORGANIZATION REPORT (P5) RENEWAL DUE BY JANUARY 1 2021

OPERATOR > QUEST EMG, INC. # 684615

API NUMBER	O/G	DIST	LEASE	WELL NO.	LOCATION	COST CALC	SHUT-IN DATE	LEASE NAME	FORM W3C REQUIRED	INACTIVITY AS OF P5 RENEWAL DATE
049 35583	OIL	7B	28567	5	LAND	$ 33,844	07/2013	K & Y -A-		7YRS 06MOS *
049 35586	OIL	7B	28567	2	LAND	$ 33,810	10/2010	K & Y -A-	Y	10YRS 03MOS **
049 35598	OIL	7B	26752	3	LAND	$ 14,166	01/1998	KILGORE "G"		23YRS 00MOS **
049 35723	OIL	7B	00222	20	LAND	$ 14,369	07/2013	KILGORE, E. P.		7YRS 06MOS *
049 36030	OIL	7B	25003	2Q	LAND	$ 14,538	05/2011	KILGORE, J. C. "A"		9YRS 08MOS *
049 36032	OIL	7B	25003	1Q	LAND	$ 14,538	05/2011	KILGORE, J. C. "A"		9YRS 08MOS *
049 80484	OIL	7B	00222	10	LAND	$ 13,918	02/2013	KILGORE, E. P.		7YRS 11MOS *
049 80560	OIL	7B	28136	2	LAND	$ 27,104	03/2002	KILGORE, E.P. K-100		18YRS 10MOS **
059 30806	GAS	7B	245550	5	LAND	$ 47,334	07/2010	HATCHETT RANCH		10YRS 06MOS **
059 30839	OIL	7B	11653	6	LAND	$ 43,964	02/2013	MAIN HATCHETT RANCH		7YRS 11MOS *
059 30918	OIL	7B	11653	2	LAND	$ 43,266	07/2011	MAIN HATCHETT RANCH		9YRS 06MOS *
059 31333	GAS	7B	106873 R	1	LAND	$ 47,920	01/2013	HATCHETT RANCH		8YRS 00MOS *
059 31381	GAS	7B	109043	2	LAND	$ 44,911	07/2010	HATCHETT RANCH		10YRS 06MOS **
059 33135	GAS	7B	096944 R	2	LAND	$ 47,661	07/2010	HATCHETT RANCH		10YRS 06MOS **

* SHUT-IN FOR MORE THAN 5 YEARS
** SHUT-IN FOR MORE THAN 10 YEARS

LIST OF INACTIVE WELLS BY OPERATOR

ORGANIZATION REPORT (P5) RENEWAL DUE BY JANUARY 1 2021

OPERATOR > QUEST EMG, INC. # 684615

API NUMBER O/G DIST	LOCATION LEASE	WELL NO.	COST CALC	SHUT-IN DATE LEASE NAME	FORM W3C REQUIRED	INACTIVITY AS OF P5 RENEWAL DATE
059 36672 OIL 7B	LAND 29782	1	$ 29,911	08/2006 SNYDER RANCH		14YRS 05MOS **
059 36943 OIL 7B	LAND 32271	9Q	$ 4,485	08/2016 HATCHETT RANCH		4YRS 05MOS
059 81973 GAS 7B	LAND 245555	1	$ 46,579	07/2010 HATCHETT RANCH		10YRS 06MOS **

* SHUT-IN FOR MORE THAN 5 YEARS
** SHUT-IN FOR MORE THAN 10 YEARS

LIST OF INACTIVE WELLS BY OPERATOR

ORGANIZATION REPORT (P5) RENEWAL DUE BY JANUARY 1 2020

OPERATOR > QUEST EMG, INC. # 684615

API NUMBER / O/G DIST LEASE	LOCATION / WELL NO.	COST CALC	SHUT-IN DATE / LEASE NAME	FORM W3C REQUIRED	INACTIVITY AS OF P5 RENEWAL DATE
049 30722 / OIL 7B 25003	LAND / 01AW	$ 24,209	06/2004 / KILGORE, J. C. "A"		15YRS 07MOS **
049 31218 / OIL 7B 00222	LAND / 12	$ 8,887	01/1998 / KILGORE, E. P.		22YRS 00MOS **
049 31456 / OIL 7B 00222	LAND / 13	$ 9,059	01/2000 / KILGORE, E. P.		20YRS 00MOS **
049 31624 / OIL 7B 00222	LAND / 9	$ 9,031	06/2009 / KILGORE, E. P.		10YRS 07MOS **
049 32020 / OIL 7B 00292	LAND / 13	$ 22,677	06/2004 / HENRY, MACK		15YRS 07MOS **
049 32182 / OIL 7B 00222	LAND / 17	$ 9,059	07/2013 / KILGORE, E. P.		6YRS 06MOS *
049 32713 / OIL 7B 00222	LAND / 16	$ 8,995	06/2009 / KILGORE, E. P.	Y	10YRS 07MOS **
049 33202 / OIL 7B 18449	LAND / 2	$ 9,038	04/2008 / KILGORE "B"		11YRS 09MOS **
049 33543 / OIL 7B 27628	LAND / 1	$ 25,165	07/2000 / K & Y "A"		19YRS 06MOS **
049 33747 / OIL 7B 18449	LAND / 5	$ 9,023	01/1998 / KILGORE "B"		22YRS 00MOS **
049 34224 / OIL 7B 26252	LAND / 6	$ 26,610	01/1998 / KILGORE, E.		22YRS 00MOS **
049 35384 / OIL 7B 28136	LAND / 7	$ 15,530	06/2016 / KILGORE, E.P. K-100		3YRS 07MOS
049 35438 / OIL 7B 18449	LAND / W 1	$ 8,988	01/1998 / KILGORE "B"		22YRS 00MOS **
049 35457 / OIL 7B 26752	LAND / 1	$ 9,023	01/1998 / KILGORE "G"		22YRS 00MOS **

* SHUT-IN FOR MORE THAN 5 YEARS

** SHUT-IN FOR MORE THAN 10 YEARS

LIST OF INACTIVE WELLS BY OPERATOR

ORGANIZATION REPORT (P5) RENEWAL DUE BY JANUARY 1 2020

OPERATOR > QUEST EMG, INC. # 684615

API NUMBER O/G	LOCATION DIST	LEASE	WELL NO.	COST CALC	SHUT-IN DATE	LEASE NAME	FORM W3C REQUIRED	INACTIVITY AS OF P5 RENEWAL DATE
049 35573 OIL	LAND 7B	21979	10	$ 9,103	01/1998	SHULTS, HOLLIS "B"		22YRS 00MOS **
049 35574 OIL	LAND 7B	18449	9	$ 8,988	09/2007	KILGORE "B"		12YRS 04MOS **
049 35583 OIL	LAND 7B	28567	5	$ 21,592	07/2013	K & Y -A-		6YRS 06MOS *
049 35586 OIL	LAND 7B	28567	2	$ 21,570	10/2010	K & Y -A-		9YRS 03MOS *
049 35597 OIL	LAND 7B	26752	4	$ 8,988	01/1998	KILGORE "G"		22YRS 00MOS **
049 35598 OIL	LAND 7B	26752	3	$ 9,038	01/1998	KILGORE "G"		22YRS 00MOS **
049 35674 OIL	LAND 7B	26581	15	$ 9,167	01/2011	ARMSTRONG, ROY		9YRS 00MOS *
049 35708 OIL	LAND 7B	26390	3A	$ 8,988	07/2001	KILGORE, E. P. "F"		18YRS 06MOS **
049 35723 OIL	LAND 7B	00222	20	$ 9,167	07/2013	KILGORE, E. P.		6YRS 06MOS *
049 36030 OIL	LAND 7B	25003	2Q	$ 9,275	05/2011	KILGORE, J. C. "A"		8YRS 08MOS *
049 36032 OIL	LAND 7B	25003	1Q	$ 9,275	05/2011	KILGORE, J. C. "A"		8YRS 08MOS *
049 80484 OIL	LAND 7B	00222	10	$ 8,880	02/2013	KILGORE, E. P.		6YRS 11MOS *
049 80560 OIL	LAND 7B	28136	2	$ 17,292	03/2002	KILGORE, E.P. K-100		17YRS 10MOS **
059 30806 GAS	LAND 7B	245550	5	$ 30,198	07/2010	HATCHETT RANCH		9YRS 06MOS *

Must resolve Field Operations H-15 delinquency preventing 14b2 approval.

* SHUT-IN FOR MORE THAN 5 YEARS
** SHUT-IN FOR MORE THAN 10 YEARS

LIST OF INACTIVE WELLS BY OPERATOR
ORGANIZATION REPORT (P5) RENEWAL DUE BY JANUARY 1 2020

OPERATOR > QUEST EMG, INC. # 684615

API NUMBER	LOCATION	COST CALC	SHUT-IN DATE	FORM W3C	INACTIVITY AS OF
O/G DIST LEASE	WELL NO.	LEASE NAME		REQUIRED	P5 RENEWAL DATE
059 30839	LAND	$ 28,048	02/2013		6YRS 11MOS *
OIL 7B 11653	6	MAIN HATCHETT RANCH			
059 30918	LAND	$ 27,602	07/2011		8YRS 06MOS *
OIL 7B 11653	2	MAIN HATCHETT RANCH			
Must resolve Field Operations H-15 delinquency preventing 14b2 approval.					
059 31333	LAND	$ 30,572	01/2013		7YRS 00MOS *
GAS 7B 106873 R	1	HATCHETT RANCH			
Must resolve Field Operations H-15 delinquency preventing 14b2 approval.					
059 31381	LAND	$ 28,652	07/2010		9YRS 06MOS *
GAS 7B 109043	2	HATCHETT RANCH			
Must resolve Field Operations H-15 delinquency preventing 14b2 approval.					
059 33135	LAND	$ 30,407	07/2010		9YRS 06MOS *
GAS 7B 096944 R	2	HATCHETT RANCH			
Must resolve Field Operations H-15 delinquency preventing 14b2 approval.					
059 36672	LAND	$ 19,082	08/2006		13YRS 05MOS **
OIL 7B 29782	1	SNYDER RANCH			
059 36943	LAND	$ 2,862	08/2016		3YRS 05MOS
OIL 7B 32271	9Q	HATCHETT RANCH			
059 81973	LAND	$ 29,716	07/2010		9YRS 06MOS *
GAS 7B 245555	1	HATCHETT RANCH			
Must resolve Field Operations H-15 delinquency preventing 14b2 approval.					
417 32413	LAND	$ 31,622	05/2008		11YRS 08MOS **
GAS 7B 241787	291J	MUSSELMAN "29"			
417 33405	LAND	$ 31,586	09/2013		6YRS 04MOS *
OIL 7B 22957	271	MUSSELMAN CADDO UNIT			
417 33443	LAND	$ 31,492	09/2008		11YRS 04MOS **
OIL 7B 22957	290	MUSSELMAN CADDO UNIT			
417 34879	LAND	$ 31,492	09/2001		18YRS 04MOS **
OIL 7B 22957	273	MUSSELMAN CADDO UNIT			
417 35201	LAND	$ 31,751	01/1998		22YRS 00MOS **
OIL 7B 22957	282	MUSSELMAN CADDO UNIT			

* SHUT-IN FOR MORE THAN 5 YEARS
** SHUT-IN FOR MORE THAN 10 YEARS

LIST OF INACTIVE WELLS BY OPERATOR

ORGANIZATION REPORT (P5) RENEWAL DUE BY JANUARY 1 2020

OPERATOR > QUEST EMG, INC. # 684615

API NUMBER / O/G	DIST	LOCATION / LEASE	WELL NO.	COST CALC	SHUT-IN DATE / LEASE NAME	FORM W3C REQUIRED	INACTIVITY AS OF P5 RENEWAL DATE
417 35202		LAND		$ 32,305	01/1998		22YRS 00MOS **
OIL	7B	22957	280		MUSSELMAN CADDO UNIT		
417 36736		LAND		$ 27,322	09/2015		4YRS 04MOS
OIL	7B	22957	251		MUSSELMAN CADDO UNIT		
417 39256		LAND		$ 25,690	07/2017	Y	2YRS 06MOS
OIL	7B	22957	0251H		MUSSELMAN CADDO UNIT		
417 80017		LAND		$ 26,028	06/2007		12YRS 07MOS **
GAS	7B	017788	281		MUSSELMAN CADDO UNIT		

* SHUT-IN FOR MORE THAN 5 YEARS

** SHUT-IN FOR MORE THAN 10 YEARS

EXHIBIT 3

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v. CASE NO: 8:09-cv-87-T-26TBM

ARTHUR NADEL; SCOOP CAPITAL, LLC;
and SCOOP MANAGEMENT, INC.,

Defendants,

SCOOP REAL ESTATE, L.P.;
VALHALLA INVESTMENT PARTNERS, L.P.;
VALHALLA MANAGEMENT, INC.;
VICTORY IRA FUND, LTD.; VICTORY FUND, LTD.;
VIKING IRA FUND, LLC; VIKING FUND, LLC;
and VIKING MANAGEMENT, LLC,

Relief Defendants.
____/

O R D E R

BEFORE THE COURT is the matter concerning "The Hatchett Lease" as referenced in the Order entered March 22, 2017, after an evidentiary hearing held that same day (Dkt. 1272). As part of that order, the proceedings before the Texas Railroad Commission relating to Quest Energy Management Group, Inc., were enjoined, and the parties were directed to file memoranda of law addressing whether "The Hatchett Lease"

expired on April 15, 2016. The following submissions are before the Court: (1) The Receiver's Memorandum on the Hatchett Lease (Dkt. 1285) and the Declaration of Jeffrey C. Rizzo with attachments (Dkt. 1286); (2) the Brief filed by Byron W. Hatchett (Dkt. 1287); and (3) the Brief on the Status of the Hatchett Lease Post Primary Term and Whether the Receiver has any Claim to the Lease or Lease Equipment in his Capacity as Receiver for Quest Energy Management Group, Inc., filed by John Hatchett Carney (Dkt. 1288).[1] After careful consideration of the evidence and testimony presented on March 22, 2017, the supplemental memoranda of the parties and additional submissions, and the applicable law, the Court concludes that the lease has expired.

PERTINENT FACTS

In these receivership proceedings, Quest Energy Management Group, Inc. (Quest) holds three leases under the receiver's care.[2] The motion at hand involves one oil and gas lease which covers land in Callahan County, Texas, consisting of twenty-seven tracts with 4,346.63 mineral acres as part of the Hatchett Ranch (the Hatchett lease). While there are numerous lessors to the Hatchett lease, only two have appeared in these particular proceedings: John Hatchett Carney and Byron Hatchett who inherited the lease. Pursuant to its terms, Quest maintains eleven out of ninety wells on three fields. Quest executed

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[1] Both Byron Hatchett and John Carney appear *pro se.*

[2] See docket 1285-1, page 8.

Case 8:09-cv-00087-RAL-TBM Document 1290 Filed 06/01/17 Page 3 of 19 PageID 27342

the paid-up five-year lease on April 15, 2011, and became a part of this receivership on May 24, 2013.[3] The habendum clause of the lease provides:

> 3. This is a paid up lease and subject to the other provisions herein contained, this lease shall be for a term of 5 years from this date (called "primary term") and as long thereafter as oil and/or gas is produced from said land thereunder, and royalties are fully and timely paid as required herein.[4]

Depending on whether gas is or is not being produced at the close of the primary term of the lease, the following clause sets forth under what circumstances the lease will continue:

> 5. If at the expiration of the primary term, oil or gas is not being produced on said land, but Lessee is then engaged in drilling or reworking operations thereon, or shall have completed a dry hole thereon within 60 days prior to the end of the primary term, the lease shall remain in force so long as operations on said well or for drilling or reworking of any additional wells are prosecuted with no cessation of more than 60 consecutive days, and if they result in the production of oil or gas, so long thereafter as oil or gas is produced from said land. If, after the expiration of the primary term of this lease and after oil or gas is produced from said land, the production thereof should cease from any cause, this lease shall not terminate if Lessee commences operations for drilling or reworking within 60 days after the cessation of such production, but shall remain in force and effect so long as such operations are prosecuted with no cessation of more than 60 consecutive days, and if they result in the production of oil

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[3] See docket 1024 (order expanding scope of receivership to include Quest).

[4] See docket 1286-9. The primary term is thus defined as five years from April 15, 2011.

> or gas, so long thereafter as oil or gas is produced from said land. . . .[5]

The default clause reads as follows:

> 7. In the event of a breach or default by Lessee of any provision of this Lease, and such breach or default is not cured within 60 days of written notice to Lessee, this Lease shall terminate as to all lands covered hereby.[6]

The provision applicable to removal of surface equipment after termination of the lease provides:

> 18. Lessee shall, within 120 days from the date of termination of this lease, remove all surface equipment an facilities or, after said 120 day period at the option of the surface owner, such equipment and facilities shall be considered abandoned and become owned by surface owner. It is specifically understood that wellhead and subsurface casing pipe and equipment shall remain the property of the Lessee.[7]

Over time, wells have been closed on the property since long before the receiver took control in 2013. During the primary term of the lease, in 2015 and 2016, there were discussions among the receiver and Quest employees relating to the drilling of new wells on the Hatchett Ranch.[8] Although approximately forty barrels of oil had been flowing into a tank beginning in October 2015, the flow stopped in January 2016 according to

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[5] See docket 1286-9.

[6] See docket 1286-9.

[7] See docket 1286-9.

[8] See docket 1285-1, pages 26-27 (transcript of hearing held March 22, 2017).

Chad Gray, who was the overseer of the property for Quest and then for the receiver.[9] In February 2016, he obtained another rig to perform a workover of the well.[10] After that particular well did not flow successfully again, in March or April 2016, Gray began the preliminary tasks for drilling a well.[11] On April 8, 2016, H-15 testing was performed on various wells under the Hatchett Lease.[12] The receiver was actively engaged in attempting to drill a new well as evidenced by a survey, geological report, discussions with drillers and staking a location.[13] On September 26, 2016, he obtained a permit to drill a new well.[14]

At the hearing, Gray testified that, to the best of his recollection, at some point in July, August, or September 2016, he stopped all activities on the land and ceased checking on the land per instructions from the receiver.[15] On October 6, 2016, pursuant to the terms of the Hatchett lease, the receiver tendered a check on behalf of Quest for $1,500 to begin drilling the new well.[16] On October 14, 2016, John Carney sent a letter to

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9 See docket 1285-1, pages 22-23.

10 See docket 1285-1, pages 23-24.

11 See docket 1285-1, pages 78-79.

12 See docket 1286, page 3.

13 See docket 1285-1, pages 53-56.

14 See docket 1285-1, page 24; and docket 1286-7, pages 3-4.

15 See docket 1285-1, pages 25-26.

16 See docket 1286-7.

the receiver on the letterhead of Hatchett Land & Development Co. LLC, and signed as manager.[17] The letter terminated the lease and stated in relevant part:

> YOU ARE ADVISED THAT ANY ENTRY BY YOU OR ANY ONE PURPORTING TO BE ACTING ON YOUR BEHALF ONTO THE HATCHETT RANCH IS TRESPASSING. YOU HAVE FORFEITED ANY AND ALL RIGHTS TO SALVAGE ANY EQUIPMENT OR PIPELINE.

In compliance with the letter, the receiver told Quest not to enter the property.[18] Gray testified that when he was told to stop visiting the property, the rig was going to be brought to the property in the next two weeks to begin drilling a new well.[19] Gray testified that the receiver never intended to leave the land idle.[20]

Although Gray testified that seventy barrels of oil were in the holding tanks at the time Quest was prohibited from coming on the property, the receiver has submitted a sworn statement from his office stating that Quest currently holds ninety barrels of oil on the premises.[21] The receiver also stated in the Verified Emergency Motion to Enjoin/Stay Texas Railroad Commission Administrative Proceeding, which led to these proceedings, that 200 barrels of oil had been produced and a total of ninety barrels of oil were on hand ready for

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[17] See docket 1286-8.

[18] See docket 1285-1, page 25.

[19] See docket 1285-1, page 26.

[20] See docket 1285-1, page 28.

[21] See docket 1285-1, page 27 (Gray) and docket 1286, page 4 (paralegal Rizzo).

sale, as well as 11,000 MCF of natural gas was produced and sold.[22] The testimony of Gray clarified that the 200 barrels of oil were produced before the receiver took over operations in 2013.[23] Gray testified that when the receiver was in control, 170 to 176 barrels were sold, but no oil was produced other than from the injection well.[24]

DISCUSSION

<u>Receiver's Position</u>

The receiver argues that the lease did not expire on April 16, 2016, because Quest was actively engaged in reworking operations at that time, notice of breach or default was not given pursuant to the clear terms of the Hatchett lease, and the receiver was never given the opportunity to cure any default or recover the equipment per the terms of the lease. The receiver claims the simultaneous notice of termination and ousting are tantamount to wrongful repudiation under the law of Texas. The receiver argues that the termination letter of October 14 did not constitute notice of breach under paragraph 7 of the Hatchett lease. Even if it did, by denying access to the land, Carney effectively prevented the receiver from attempting to cure the breach. Finally, the receiver invokes equitable estoppel to prohibit the Hatchetts from claiming the lease terminated in April 2016. Not only will the Hatchetts, as general creditors, receive wrongful priority over the

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[22] <u>See</u> docket 1261, page 6.

[23] <u>See</u> docket 1285-1, pages 34-35 and 38.

[24] <u>See</u> docket 1285-1, pages 36-37.

defrauded victims of the Ponzi scheme, but they will be rewarded for maintaining their silence and inaction while the receiver continued activities on the property past April 16 for six additional months only to have Carney refuse access to the Hatchett Ranch.

Carney's Position

John Carney argues that the Hatchett lease expired by operation of law on April 16 with no production in paying quantities at that time. He claims the receiver breached his duties under the Hatchett lease from May 2013, when he took control of the operations, through the expiration of the lease. The breaches include causing an oil spill from negligently maintained and designed oil waste pits, failing to maintain roads, failing to close wells, failing to pay royalties, failing to account for sales made, and refusing to file a release of claim as to the lease. He claims that the receiver "shut-in" the last two of twelve producing wells and erroneously applied for an extension to plug an inactive well on April 18.[25] In his words, "not on[e] drop of oil prosecuted from a permitted oil and/or gas well, and flow back from a salt water injection well does not constitute production, let alone production in paying quantities."[26] In short, he makes it abundantly clear that he believes the receiver caused all of the problems on the property and merely attempted to workover a single well.

Hatchett's Position

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[25] See docket 1288, pages 3-4.

[26] See docket 1288, pages 3-4.

Hatchett correctly frames the issue as whether the receiver met the requirements to extend the primary term of the habendum clause into the secondary term to perpetuate the lease. He contends that the undisputed evidence at the hearing showed that the wells covered by the Hatchett lease were shut in, or closed, some time in 2013. Because there was no production or commencement of operations to obtain production during the time the receiver was in control, he argues, the lease expired April 16. Quest's failure to pay the royalties for the sale of 11,000 MCF of natural gas that occurred before the receiver took over operations constitutes a further breach of the habendum clause. He argues that the planning, discussing, consulting of a geologist and drilling companies, obtaining a permit, and staking a location does not satisfy commencement of operations per the terms of the lease or case law. See Ridge Oil Co, Inc. v. Guinn Invs., Inc., 148 S.W.3d 143 (Tex. 2004).

Extending per the terms of the Hatchett Lease

The habendum clause in an oil and gas lease determines the duration of the lease. PEC Minerals, Inc. v. Chevron U.S.A., Inc., 439 F. App'x 413, 416 (5th Cir. 2011) (unpublished order). Under Texas law, the "primary term" is a fixed period determined by the habendum clause of the lease, which is followed by a "secondary term," an indefinite period of time per the terms of the lease, usually as long after the primary term as gas is produced. In re Energytec, Inc., 2009 WL 5101765 (Bankr. E.D. Tex. Dec. 17, 2009) (citing Anadarko Petroleum Corp. v. Thompson, 94 S.W.3d 550, 554 (Tex. 2002)).

The habendum clause is often modified by a "continuous drilling or continuous operations" clause which acts to prevent the lease from expiring at the end of the primary term. Sutton v. SM Energy Co., 421 S.W.3d 153, 158 (Tex. App. 2013). Unless the lessee has met the requirements of the continuous operations clause or other savings clause, the lease will typically "automatically terminate[] if actual production permanently ceases during the secondary term." Anadarko, 94 S.W.3d at 554.[27]

The habendum clause, which is paragraph 2 in the Hatchett lease, states that the lease will continue past the primary term "so long thereafter as oil and/or gas is produced" and royalties paid. "Produced" means "production in paying quantities." In re Energytec, Inc., 2009 WL 5101765, at *4 (citing Anadarko Petroleum, 94 S.W.3d at 554); BP Am. Prod. Co. v. Red Deer Resources, Inc., 2017 WL 1553112, at *3 (Tex. April 28, 2017) (not yet final) (reiterating under Texas law that word "produce" in a habendum clause "is synonymous with the phrase 'producing in paying quantities'" and citing Hydrocarbon Mgmt., Inc. v. Tracker Expl., Inc., 861 S.W.2d 427, 432 n.4 (Tex. App. 1993)). The "continuous drilling or operations" clause of Paragraph 5 is a savings clause that modifies under certain circumstances the duration of the lease described in paragraph 2.

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[27] See also Cobb v. Natural Gas Pipeline Co., 897 F.2d 1307, 1309 (5th Cir. 1990) ("The rule in Texas in that upon permanent cessation of production after the primary term, a mineral lease automatically terminates."). "If the lease's primary term expires when there is non-production and the lessee fails to comply with any savings clause in the lease, the lease and the lessee's determinable fee interest 'automatically terminates' . . . and the fee interest reverts to the lessor without the lessor taking any legal action." BP Am. Prod. Co. v. Marshall, 228 S. W. 3d 430, 451 (Tex. App. 2008) (citing W.T. Waggoner Estate v. Sigler Oil Co., 118 Tex. 509, 19 S.W.2d 27, 30 (1929)), reversed on other grounds, 342 S.W.3d 59 (Tex. 2011).

The continuous operations clause contemplates that the lease would continue at the expiration of the primary term, if oil *is not* being produced but the lessee is engaged in "drilling or reworking operations" within 60 days prior to the end of the primary term "so long as operations on said well or for drilling or reworking of any additional wells are prosecuted with no cessation of more than 60 consecutive days" and the drilling or reworking results in the production of oil. If this scenario results in the production of oil, then Quest may hold the lease until the cessation of production for any reason, unless Quest "commences operations for drilling or reworking within 60 days from cessation." The lease defines what constitutes temporary, as opposed to permanent, cessation of production for the extended lease. See Cobb v. Natural Gas Pipeline Co., 897 F.2d 1307, 1309 (5th Cir. 1990). Thus, if the cessation of production is for more than sixty consecutive days after extension of the lease, it is not regarded as temporary under the express terms of the Hatchett lease. Woodson Oil Co. v. Pruett, 281 S.W.2d 159, 164-65 (Tex. Civ. App. 1955) ("If reworking or additional operations are not begun within the sixty-day period the lease terminates by its own provisions.").[28]

The Hatchett lease further defines "commencement of operations" for drilling a well in paragraph 20 as "having a rig capable of drilling to the proposed permitted depth

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[28] For a case interpreting almost the same continuous operations clause as in the Hatchett lease, see also Prize Energy Resources, L.P. v. Cliff Hoskins, Inc., 345 S.W.3d 537, 553 (Tex. App. 2011) ("[T]he life of the secondary term of the Leases was dependent on the continuation of operations with no interruption of more than sixty consecutive days [and therefore] . . . Leases automatically terminated according to their express language, without the need for any legal action by the lessors.").

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of a well on the well location, with all necessary equipment and pits in place, and with subsurface drilling operations ongoing as of the date the lease would otherwise terminate."[29] The lease defines "non-production of oil" as " production of less than 15 barrels during any 60 day period" after termination of the primary term.[30] Against this backdrop, the evidence must be examined in relation to the terms of the lease and Texas law to determine if or when the lease expired.

Evidence of Operations

First, the Court must find whether oil was being produced on April 16, the expiration date, and if not, whether drilling or reworking operations were ongoing within 60 days before the expiration of the primary term. As a preface, before the receiver took over, Quest had four active wells out of eleven total wells on the property.[31] All of those wells save one were shut in at some point before the receiver's time.[32] Given the complaints in this proceeding lodged by Carney, it is also well worth noting that as of October 2015, Quest was using a workover rig to repair some existing wells which thereafter began producing.[33] At some point thereafter, Quest began having problems

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[29] See docket 1286-9.

[30] See docket 1286-9.

[31] See docket 1285-1, page 33.

[32] See docket 1285-1, pages 33-34. A shut-in well is one that is capable of producing but is not presently producing. A well is plugged if it has been permanently closed or abandoned.

[33] See docket 1285-1, page 21.

with the injection well and, after repair, the injection well began producing oil.[34] The total production from mid-October through mid-February, four months, equaled forty barrels.[35]

Minimal production was coming out of the one well that was producing until mid-February of 2016.[36] Gray testified that in February he brought in a rig to perform workover operations on a well.[37] In any event, at that point in time the receiver began serious efforts to attempt to begin drilling a new well on the property.[38] Locations were identified, and surveys were obtained as well as geologist reports.[39] The location was staked, but the pit was never built.[40] A drilling permit was applied for from the Railroad Commission. The permit was granted on September 26.[41] On October 6, a check was sent to Carney in accord with the provisions of the lease to pay a pre-drilling fee, although

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[34] See docket 1285-1, page 22.

[35] See docket 1285-1, page 23. At this juncture in mid-February 2016, the injection well was "producing" as the forty-barrel quantity over 120 days does not fall within the lease definition of "non-production of oil."

[36] See docket 1285-1, pages 14 and 23.

[37] See docket 1285-1, pages 58-59.

[38] See docket 1285-1 pages 14 and 24. Although efforts began in earnest at this time, it had always been the receiver's intent to drill a new well. See docket 1285-1, pages 27-28.

[39] See docket 1285-1 pages 14, 24 and 54.

[40] See docket 1285-1, pages 39 and 54.

[41] See docket 1286-7.

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Carney denied having received it.[42] Arrangements had been made to bring a rig onto the property.[43] On October 14, Carney threatened trespass if Quest entered the property again.[44] Actual drilling had not begun as of April 16 or as of the date of the hearing. No barrels of oil produced under the receiver's control were sold; however, 176 barrels of oil produced before the receiver came on board were sold by the receiver.[45]

Distilling the evidence in terms of the lease, there was no producing well on April 16. During the sixty days before April 16, efforts were made to attempt to drill a new well. Geologists reports and surveys were obtained, and locations were identified and one location staked. Arrangements were made for a rig, but the rig was not to arrive until two weeks after the surface damages check was sent to Carney on October 6. The evidence is unclear as to the precise date of the application for a drilling permit; however, the permit was not issued until September 26. The Court must look to applicable law to determine if the activities for the sixty-day period before April 16 satisfy the habendum clause and continuous operating clause to extend the lease beyond April 16.

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[42] See docket 1285-1, page 15, docket 1286-7 (correspondence enclosing check and copy of check), and docket 1286-9. Paragraph 12 provides that the lessee shall pay $1500 "as surface damage for each well location . . . the money to be paid before each well . . . location is commenced."

[43] See docket 1285-1, page 26. ("we had the drilling rig lined up to show up, I believe it was going to show up within the next two weeks to drill a well. I was told to just halt on that and not step on the property.").

[44] See docket 1285-1, pages 24-25.

[45] See docket 1285-1, page 38.

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Many cases have discussed and determined what constitutes sufficient "drilling or reworking operations" to perpetuate an oil and gas lease. See Quinn Invs., Inc., 148 S.W.3d at 158-160 (and cases cited therein). In Quinn, the Texas Supreme Court found that even assuming a stake had been driven into the well site, a drilling permit had been obtained, and surface damages had attempted to be paid, all during the crucial period, these three facts did not raise a question as to whether they amounted to operations sufficient to sustain the lease. 148 S.W.3d at 158. It is difficult to overlook or distinguish the evidence given regarding either workover or drilling operations during the sixty days prior to April 16 in this case. The Court finds that all of the preparations and negotiations for attempting to drill that occurred before April 16 did not satisfy the habendum clause to extend the lease. The evidence is unequivocal that the permit was not obtained until September 2016, and the surface damages were not delivered until October 6. Even applying the lease's definition of commencement of operations, the evidence does not show that pits were in place or subsurface drilling operation was ongoing at any time before Carney ordered Quest off the property.

Assuming the drilling or reworking operations were found to have extended the lease past April 16, the parties contemplated in the lease that such operations must not temporarily cease for longer than sixty days in a row or the lease would then expire. More than sixty days passed after April 16 without a drilling permit, surface damages

paid, or any bulldozing or the like occurring toward the production of oil. By the time the drilling permit was obtained and surface damages were tendered, the lease had expired.

While it is true that the lessors stood silent about the expiration of the lease until Carney sent the letter of October 14, except some lessors other than Carney and Byron Hatchett who continued negotiations with the receiver after April 16, equitable principles cannot breath life into the lease once it expired apart from the conduct of the lessors.[46] The Court is well aware that the lessors will be rewarded for maintaining their silence and inaction while the receiver continued activities on the property past April 16 for six additional months at which time Carney then refused to let them gain access to the Hatchett Ranch. There is no doubt that the receiver tried in earnest after the one well ceased production in mid-February to commence drilling or reworking operations before April 16 and before October 14.[47]

Although his efforts do not satisfy the case law's and lease's requirements to extend the lease, the Court further finds that the evidence presented regarding the oil spill is inconclusive at best. The root of the pollution allegedly arose from a workover pit that

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[46] In any event, the evidence did not affirmatively show that royalties had been paid in accordance with the habendum clause.

[47] The Court is well aware that the lessors as general creditors will be prioritized over the defrauded investors contrary to accepted principles. See, e.g., Quilling v. Trade Partners, Inc., 2006 WL 2694629, at *1 (W.D. Mich. 2006); see also docket 776 (order adopting priority of claims as set forth in motion) and docket 675 at page 19 (motion giving lowest priority to non-investor unsecured claims).

was "illegal" due to improper design.[48] Gray testified that oil was never left in the workover pits over his time maintaining the lease.[49] He testified that he never saw oil in the dirt pit, and any rain water in the dirt pit would have been drained.[50] His testimony was that there is no requirement to place a berm around a workover pit.[51]

H-15 testing was performed on some of the existing wells on April 8.[52] The receiver stated that Quest is not in violation of any plugging obligations.[53] Gray testified that there were no incidents of contamination or further disrepair of the roads on the property.[54] Testimony revealed that many others use the roads for hunting, four-wheeling,

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[48] See docket 1285-1, pages 28-29.

[49] See docket 1285-1, page 29.

[50] See docket 1285-1, pages 42-44.

[51] See docket 1285-1, page 56.

[52] See docket 1286, paragraph 9. According to the website for the Railroad Commission of Texas, "The H-15 test is required to establish that an inactive well over 25 years old does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil and gas." www.rrc.state.tx.us/about-us/resource-center

[53] See docket 1286-1, page 16.

[54] See docket 1285-1, pages 30-32. The following testimony was elicited from Gray:

> [Question:] What was the condition of the roads at the time you were told to no longer enter the Hatchett land?
> [Answer:] Some of the roads are gravel, harder gravel roads, some of the roads are just dirt, and if it rains you can sink that deep. I mean, I would say overall they're under good but not poor.
> [Question:] Are you familiar with any allegation – with any actual contamination that had happened because of any of the operations that you were engaged in on behalf of Quest?
> [Answer:] [I]f there was a contamination that had gotten into Possum Kingdom Lake, . . . The EPA would not – I mean, that's

and cattle ranching on the property.[55] The Court agrees with the receiver that the evidence shows no significant deterioration of the existing roads can be traced to the receiver's watch.[56] The evidence did not prove that the lands and waters on the property were polluted or that the roads had not been maintained, and the evidence shows no negligence or malfeasance on the part of the receiver.

Equipment on the Property

As of the time Quest was prohibited from entering the property, $200,000 to $225,000 worth of equipment remained.[57] Hatchett argues that the 120 days for removal of the equipment ran until August 15, 2016, at which time the equipment was considered abandoned. As is evident from the difficulty in determining the expiration date of the Hatchett lease, neither the receiver nor Carney and Hatchett unequivocally knew the lease had expired until this date. In October 2016, Carney abruptly foreclosed the receiver

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> just a no-no. It would have been on every news – they would have shut every road down in the way. I mean, that's a major water source, so I don't know how we determine – how anybody determined that pollution got in a lake 80 miles away.
>
> [Question:] During the time you were operating on behalf of Quest, did the Railroad Commission ever indicate to Quest or to you that there was any spillage or contamination issues? [Answer:] No, as far as I know we're not in any violation with Railroad Commission as far as contaminants.

[55] See docket 1286-1, pages 17 and 30.

[56] See docket 1286-1, page 17.

[57] See docket 1285-1, page 27.

from entering the property to remove the equipment before it could be deemed abandoned.

It is therefore **ORDERED AND ADJUDGED** that the Hatchett lease has expired and is no longer part of the Quest receivership. The receiver has **90 days** from this date to retrieve the equipment without interference.

DONE AND ORDERED at Tampa, Florida, on June 1, 2017.

s/*Richard A. Lazzara*
RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

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Counsel of Record

EXHIBIT 4

Important Notice
From
Quest Energy Management Group, Inc.

This notice is to advise that as of September 1, 2020, Quest Energy Management Group, Inc. has ceased operations. On May 24, 2013, the company was placed into Receivership by order of the United States District Court for the Middle District of Florida. The company has been in Receivership since that time and Burton W. Wiand of Clearwater, Florida was appointed Receiver over the company's operations. The company has continued to operate in Receivership. As a result of recent economic events and oil price challenges, the Receiver has determined that continued operation of the company is not feasible.

Leases of the "Musselman Caddo Unit" properties have been assigned to West Texas Central Partners-MCU LLC, which will continue the operations of those leases. The "Hatchett Ranch" leases were terminated by order of the United States District Court on June 1, 2017. The Receiver has been unsuccessful in locating a successor to continue operations of the other leases of Quest Energy Management Group, Inc., including the "Kilgore" leases, "Mack Henry" leases, and the "Roy Armstrong" leases. These and any other leases of the company are being abandoned.

The assets of Quest Energy Management Group, Inc. have been or are being liquidated, and all funds will be distributed to creditors. After administrative expenses, no assets of the company will remain. More information is available regarding the progress of the Quest Energy Management Group, Inc. Receivership at www.NadelReceivership.com.

Burton W. Wiand
Receiver
Burton W. Wiand PA.
114 Turner Street
Clearwater, Florida 33756
727-235-6769

EXHIBIT 5

Quest Energy Management Group, Inc.
Statement of Revenue and Expenses - Cash Basis
From Inception to March 1, 2021

Revenue		
Sales - Targa	2,414,530	
Sales - Trans Oil	2,205,486	
Total Revenue		4,620,016
Expenses		
Automobile Expense		200,823
Bank Service Charges		936
Fees		31,875
Gas Royalties		347,893
Insurance - Health		247,505
Insurance Expense		
Ins Exp. - Texas Mutual	7,654	
Ins. Exp - Bituminous	193,313	
Ins. Exp - Dearborn	1,022	
Insurance Expense - Other	48,875	
Total Insurance Expense		250,864
Lease and Well Expenses		1,042,652
Licenses		10,670
Misc. Expense		21,121
Office Expense		116,401
Payroll Expenses		46,131
Penalties		134
Professional Fees		
Burt Wiand, Receiver	98,130	
Guerra King P.A.	550,043	
Other Counsel	41,812	
Accountants	126,335	
Consultants/Others	54,175	
E-Hounds	14,017	
Total Professional Fees		884,511
Repairs and Maintenance		15,727
Employee Salary and Wages		1,094,117
Storage		
Storage - ACI Storage	6,352	
Storage - Double J Pipe	22,418	
Storage - Other	5,576	
Total Storage		34,346
Supplies		32,978
Taxes		119,412
Taxes - Payroll		61,202
Telephone Expense		5,975
Travel Expense		12,307
Utilities		119,295
Total Expense		4,696,874
Net Ordinary Income		-76,858
Other Income/Expense		
Other Income		
Interest Income		17,572
Miscellaneous Income		107,127
Total Other Income		124,699
Net Income		47,840