



**IT IS ORDERED as set forth below:**

**Date: May 22, 2008**

*James E. Massey*

James E. Massey  
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

\_\_\_\_\_  
IN RE:

CASE Nos. 07-71810 and 07-71813 (Jointly  
Administered under Case No. 07-71810)

CEP Holdings, Inc. and Colon End Parenthesis  
Trust, LLC,

CHAPTER 11

Debtors.

JUDGE MASSEY

\_\_\_\_\_  
CEP Holdings, Inc. and Colon End Parenthesis  
Trust, LLC,

Plaintiffs,

v.

All Defendants in the Adversary Proceedings  
Listed Below  
\_\_\_\_\_

**Defendants and Adversary Proceeding Numbers**  
**(All Defendants in Each Adversary Proceeding Are Included in this Order)**

<b>Defendant(s)</b>	<b>A.P. Number</b>
Kimbrell et al.	07-06382
SureInvest et al.	07-06390
Strittmatter et al.	07-06417
Lagares	07-06418
Anderson, Pamela	07-06419
Usenbor	07-06420
Wrenn	07-06421
Hall	07-06423
Petrelli	07-06424
Nugent	07-06425
Fennell	07-06426
Owatoye	07-06427
Schreier	07-06428
Holcombe	07-06430
Winters	07-06431
Greek	07-06432
Hockenbroch	07-06433
Black	07-06434
Gonzalez	07-06435
Foss	07-06436
E-Business et al.	07-06437
Karls	07-06438
Johnson et al.	07-06439
Higgins, Denise	07-06440
Phillips	07-06442

Pratt	07-06443
Wingard	07-06444
Bumgarner	07-06447
Collier	07-06448
May	07-06449
Cobb	07-06450
Boxerdog IT Group, Inc. et al.	07-06451
Leonhard	07-06482
Anderson et al.	07-06483
Atkinson	07-06484
Berglund	07-06485
Brown, Fred	07-06486
Darrow et al.	07-06488
Dukett et al.	07-06489
Gilbert	07-06490
Godzich	07-06491
Guarnieri	07-06492
Hardwick	07-06493
Kawazoe	07-06494
Begley et al.	07-06495
Mazzoti	07-06496
McDanel	07-06497
Montano	07-06499
Oliveira	07-06500
Williams	07-06501

Walters	07-06502
Romanoff	07-06503
Laufer	07-06513
Anderson, Jean	07-6714
Auld	07-6715
Beauchamp, Keith	07-6716
Beauchamp, Kelly	07-6717
Boyd	07-6718
Anderson, Joshua	07-6720
Brown	07-6721
Fernandez	07-6724
Harbin	07-6726
Henryson	07-6727
Higgins	07-6728
Holder	07-6729
Hurd	07-6730
Kantor	07-6731
McDonald	07-6732
Pattie	07-6733
Stansel	07-6739
Stiltz	07-6740
Stucke	07-6741
Rodriguez	07-6742
Prosch	07-6743

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On July 9, 2007, the Securities and Exchange Commission (the “SEC”) filed a lawsuit against CEP Holdings, Inc., d/b/a colonendparenthesis.net, Trevor Reed, Clayton Kimbrell and Colon End Parenthesis Trust, LLC, in the U.S. District Court for the Eastern District of North Carolina, alleging that those defendants were engaged in a fraudulent and unregistered offering of securities sold via the Internet and seeking injunctive and other relief. On the following day, July 10, 2007, the District Court entered an order, to which the defendants consented, appointing William F. Perkins as Receiver for CEP Holdings, Inc. (“CEP Holdings”) and Colon End Parenthesis Trust, LLC (“CEP Trust, LLC”) and freezing their assets. Mr. Perkins as Receiver shut down the businesses operated by those corporate defendants and has since investigated the Debtors’ financial affairs and controlled their assets. As authorized by the July 10, 2007 Consent Order, Mr. Perkins caused CEP Holdings and CEP Trust, LLC (collectively, the “Debtors”) to file voluntary petitions under chapter 11 of the United States Bankruptcy Code on July 27, 2007 (the “Petition Date”) in this District. No trustee has been appointed.<sup>1</sup>

Beginning in July 2007, the Debtors in Possession (“Plaintiffs”), which are controlled by Mr. Perkins in his capacity as Receiver, filed more than eighty adversary proceedings, alleging that certain transfers made prior to the Petition Date by Debtors to the defendants in those proceedings were avoidable and recoverable as preferences or fraudulent transfers under the Bankruptcy Code. See 11 U.S.C. §§ 547, 548 and 550. Among those adversary proceedings are the fifty-nine proceedings set out in the caption above (the “Subject Adversary Proceedings”). This Court has jurisdiction over these adversary proceedings pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(F), (H) and (O). Venue of these adversary proceedings is proper in this District pursuant to 28 U.S.C. § 1409.

The parties represented by counsel requested that the Court first conduct a consolidated trial limited to the issues of whether the Debtors had operated a fraudulent scheme, including but not limited to a Ponzi scheme, and whether the Debtors were insolvent during the period in which

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<sup>1</sup> In a Chapter 11 case, if no trustee is appointed, the debtor continues in possession of the property of the estate. 11 U.S.C. § 1107. A debtor in possession has most but not all of the duties of a trustee and has the powers of a trustee. *Id.* Among the powers of a trustee are those set forth in 11 U.S.C. §§ 547, 548 and 550 to avoid and recover preferences and fraudulent transfers made by the debtor prior to the filing of petition.

they operated the allegedly fraudulent scheme. The Court granted this request in an Order entered in these adversary proceedings on February 26, 2008, which set a trial date of April 1, 2008 and required the submission of a proposed pretrial order. Those defendants represented by counsel submitted a proposed Consolidated Pre-Trial Order, which the Court entered on April 1, 2008 in each proceeding. On the same date the Court conducted a trial on the designated issues.

Of the Defendants listed in the above caption, the only ones who failed to appear in person or through an attorney at trial were: Maurice Usenbor (AP No. 07-6420); Thomas Hall (AP No. 07-6423); Andrew Hockenbroch (AP No. 6433); Boxerdog IT Group, Inc., Edward D. Guttman, Loette A. Guttman, and Michael E. Guttman (AP No. 07-06451); and Keinesha Hardwick (AP No. 07-6493).

The only witness at the trial was Mr. Perkins. He testified in detail about the Debtors' operations and his investigation of their financial affairs. Plaintiffs offered numerous exhibits concerning Debtors' operations and financial affairs that were admitted into evidence. Defendants cross-examined Mr. Perkins but offered no separate or additional evidence. Defendants contend that Plaintiffs failed to carry their burden of proof on the issues tried.

#### **A. The Websites.**

From May 2006 to early July 2007, Debtor CEP Holdings operated three websites: colonendparenthesis.com ("CEP.com")<sup>2</sup>, coastin88.com, and CEPcoast.com (together, the "Websites"). The Websites invited the public to participate in three different programs in which participants would earn a return on deposits or on purchases of so-called "Ad-Packs." CEP Trust LLC operated the CEP Trust website ("CEP Trust"), an online payment processor for participants with respect to the Websites. Initially, participants could take part using any of a number of online payment processors, such as PayPal or E-Gold; but, beginning October 2006, all participants were required to use accounts at CEP Trust. Although none of the Websites labeled itself an "investment," all three promised high rates of return on monies paid by participants to join the sponsored programs. At trial, Defendants did not dispute Plaintiffs' characterization of

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<sup>2</sup> Exhibit 2 refers to this website as CEP.net, but the last line on Exhibit 5 shows the site to have been named "colonendparenthesis.com," and Mr. Perkins referred to the site as CEP.com.

the Websites as “investment programs.” Debtors’ principal, Trevor Reed, discussed and promoted the Websites at online forums and websites devoted to so-called High Yield Investment Programs. (Plaintiffs’ Exhibits 20, 22, 24-29). The Websites themselves described the programs as money-making opportunities for participants. (Plaintiffs’ Exhibits 5, 6, 8).

Participants in the CEP.com program transferred funds to CEP.com that were treated as a non-refundable membership fees. In return a participant was promised daily “earnings” of 2% (or 60 % per month) on the deposited funds for a period of six or twelve months at the election of the participant. “Earnings” would be credited monthly to the participant’s online payment processor account or rolled over and thereby compounded in the participant’s CEP.com account. The Home Page for CEP.com exhorted potential participants to “Make the % of an autosurf without surfing! :)” and stated that “The first and main purpose of this site is to help you make money,” that “This will not be a ponzi (sic) scheme (or pyramid scheme),” and “[Trevor Reed] will not be counting on future upgrades in order to payout! [Reed has] learned where to invest monies to make a profit, and thats [sic] where the monies with which you trust Colon End Parenthesis will go.” (Plaintiffs’ Exhibit 5).

The sites coastin88.com (“Coastin88”) and cepcoast.com (“CEPCoast”) purported to enable participants to earn money by looking at other websites. Websites referred to as “autosurf” sites display automatically advertised websites in the participant’s web browser, and participants earn credit for sites viewed. In order for an autosurf site to be able to pay participants, the site obviously must receive compensation from the owners of the websites viewed by participants if the owner of the site has no other source of funds to pay the participants.

Coastin88 and CEPCoast were not autosurf sites but rather required participants to manually “rate” each site viewed. Instead of earning income from advertising businesses and paying money only to consumers who viewed and rated advertisers’ websites, a theoretically viable business model, Coastin88 and CEPCoast called all participants “Advertisers.” Participants submitted a website for rotation, their own or someone else’s. A participant joined the program by setting up an account with CEP Trust, deciding which program to participate in, submitting a website, and purchasing one or more “Ad-Packs” for \$5.00 each. All active participants were entitled to a portion of the program’s profits, based on how much money the program brought in daily and how many Ad-Packs each participant owned. Participants in either program were

required to view and rate 15 websites each day in order to qualify for their daily share of the “profits.” For the same number of websites surfed each day, more Ad-Pack purchases entitled participants to more shares of the daily “profits.” Mr. Perkins testified at trial that a negligible minority of participants in these programs used the programs solely for advertising. The vast majority of participants in the programs were surfing daily in order to “earn” more than 100% of their investments. There were no “profits” because Debtors and these two websites earned no money on a net basis from the owners of the websites that participants were “rating” and had no source of significant income other than future purchases of “Ad-Packs.”

Participants in CEPCoast could “surf” 15 websites each day and be credited over time with up to 130% of the cost of the Ad-Packs they had purchased. According to the terms of the program, this was not an “investment.” The purchase price of the Ad-Pack was not returned because, according to the Websites, the Ad-Pack was a product and the profit-share system was an incentive for customers to look at advertising. This program began operating on October 10, 2006, and distributed a pro rata share of 90% of its daily income to all eligible participants in accordance with the Terms of Service. (Plaintiffs’ Exhibit 6). The CEPCoast program generally credited an active participant each day with 2% of the aggregate cost of Ad-Packs purchased by that participant. At 2% each day, it would take 65 days of active surfing for a participant to reach the cap of 130% of the cost value of his or her total Ad-Packs. Participants could withdraw funds from their CEP Trust accounts to their own bank accounts or could purchase additional Ad-Packs with amounts credited in their CEP Trust accounts. According to Mr. Perkins’s analysis of the CEPCoast Terms of Service, the annual percentage return for this program was over 170%. (Plaintiffs’ Exhibit 2).

Coastin88, which began operating on December 10, 2006, distributed 88% of its daily income. The daily credit was capped at 8% of the value of Ad-Packs purchased, and the total credit was capped at 115%. This program credited participants 8% for the first 60 days, then averaged 5% daily for the next 90 days, and then fell to less than 1% daily. To reach the cap of 115% took 23 days active surfing. According to Mr. Perkins’s analysis, the annual percentage return for this program was over 200%. (Id.)

Both the CEPCoast and Coastin88 sites described in detail the purported disposition of income. For CEPCoast, the 10% of daily income not distributed to participants was allocated 5%

to administrative costs, 4% to a cash reserve, and 1% to pay referral bonuses to participants who brought in new participants. (Plaintiffs' Exhibit 6). For Coastin88, the 12% of daily income not distributed to participants was allocated 5% to administrative costs, 4% to a cash reserve, and 3% to pay referral bonuses. (Plaintiffs' Exhibit 8).

At the Frequently Asked Questions ("FAQ") pages for CEPCoast and Coastin88, the cash reserves were described as "a wall of stability around the program" that would be used if "people all of a sudden stop purchasing advertising from [the program]...." (Plaintiffs' Exhibits 7, 9). Furthermore, the FAQ for CEPCoast stated that "should this fail, then we shall reimburse from our other programs. No one is in danger of losing money in this surf!" (Plaintiffs' Exhibit 7). The Coastin88 FAQ had nearly identical language, but ended "No one is in danger of losing money in this advertising program!" (Plaintiffs' Exhibit 7). In fact, there was no reserve fund for either website, and all participants' funds derived from all three Websites were commingled in one or the other of two bank accounts controlled by Debtors.

The CEPCoast and Coastin 88 sites displayed daily distribution percentages and daily Ad-Pack "purchases. " The reported purchases of Ad-Packs on these websites were fictitious because most of the purported purchases were nothing more than book entries made in the respective databases in the names of other websites owned by Debtors. CEPCoast reported to its participants \$49.6 million in Ad-Pack sales, of which 81% were in fact attributable to book entries in the name of other websites controlled by Debtors (including Coastin88) under assorted account names. (Exhibit C to Plaintiffs' Exhibit 2). Coastin88 reported approximately \$121 million in Ad-Pack sales, of which approximately 60% were in fact attributable to book entries in the name of other Websites controlled by Debtors (including CEPCoast). (Exhibit D to Plaintiffs' Exhibit 2). Debtors included the dollar value of these book entries in the daily calculation of profit-share credits, even though these intra-company "purchases," unlike purchases by participants, brought no new cash into the programs. The Court infers that the purpose of stating false sales figures was to make it appear that there were widespread investments by the public in these programs and thereby to encourage victims to invest in the fraudulent scheme.



## **B. Investigation by Mr. Perkins and the Results Thereof.**

Mr. Perkins is a forensic accountant with many years of experience; he is a principal in W. G. Hayes & Associates, LLC. His testimony at trial on April 1 was credible and highly persuasive.

Mr. Perkins and others employed by the W.G. Hayes firm conducted a thorough investigation of the financial affairs of the Debtors. Mr. Perkins' analysis of the financial structure and history of the Debtors and the Websites are summarized in his report (the "Summary Report," Plaintiffs' Exhibit 2). Mr. Perkins testified convincingly that he diligently pursued sources of information about Debtors and their financial history and was unable to discover or trace any significant assets, investments, or business income, other than as set forth in these Findings of Fact. He interviewed Debtors' principals, Messrs. Kimbrell and Reed, took a number of depositions of persons with knowledge of the Debtors' operations, and gathered information through discovery in these adversary proceedings. He reconciled transactions recorded in the databases of the Websites with the bank accounts used by the Debtors. Mr. Perkins also examined ten bank accounts of insiders and relatives of insiders in connection with review of transactions through a third-party payment processor known as E-Gold through which some participants invested in Website programs.

### **1. Financial Records, Databases and Bank Accounts.**

None of Debtors' business operations had financial statements or supporting ledgers and balance sheets that one would normally expect for a business. Information about individual participants' accounts was stored in databases on Debtors' servers, which were put under Mr. Perkins' control as Receiver pursuant to the District Court Order. As part of his investigation, Mr. Perkins and his associates undertook the task of reconciling the database information with the bank accounts in the name of CEP Trust at National City Bank ("NCB") and J P Morgan/Chase Bank ("Chase") (collectively, the "CEP Trust Bank Accounts"). NCB and Chase produced bank records and other documents related to the CEP Trust Bank Accounts. Mr. Clayton Kimbrell, one of the principals of Debtors, prepared a Quick-Books generated check register. Mr. Trevor Reed, another principal, and Kimbrell produced a schedule of investments and payment processors to the SEC, which schedule was reviewed by Mr. Perkins in his analysis of Debtors' financial activity.

Mr. Perkins also reviewed documents produced by E-Gold and by various defendants in the Subject Adversary Proceedings.

None of the Websites had separate bank accounts under their own names. The only records for the Websites were the database records of participant “purchases,” program credits to participants, and cash withdrawals by participants. Payments made by participants were deposited in one of the CEP Trust Bank Accounts, and transfers to participants in respect of “earnings” or “profits” came from those accounts.

The monthly statements for the CEP Trust Bank Accounts, summarized in Plaintiffs’ Exhibit 2, show that \$17,179,924 was deposited in those accounts between May 2006 and July 10, 2007. During the same period, Debtors’ principals transferred out these accounts by check and wire transfers and other debits and charges a total of \$17,102,177, leaving a balance of approximately \$77,746, which was turned over to the Trustee. Debtors had not reconciled bank accounts with the accounts of investments of participants maintained in the databases of each Website program. Participant accounts maintained in the databases were, however, reasonably accurate with respect to deposits, “earnings” and payouts.

The total net loss suffered by public participants in CEP programs is approximately \$9.7 million, of which \$3.2 million was paid to insiders.

## **2. Debtors’ Sources of Income.**

Before the Websites were shut down, there were public representations posted at the Websites regarding the sources of Debtors’ income and the sources of cash for pay-outs to participants in the programs, in particular stressing that Debtors did not rely on sales of Ad-Packs and upgrades within the programs in order to continue paying out the promised percentages. In addition to information at the “Terms of Service” and “frequently asked questions” sections of the Websites, Mr. Reed and other individuals connected to Debtors made public representations to participants about the Websites and Debtors’ outside sources of income through Debtor-controlled and third party online forums and internet-based “newscasts” on third-party Websites devoted to the autosurf industry and High Yield Investment Programs.

None of the public representations made by Debtors or their principals specifically identified sources of Debtors' income. The reason for this was that Debtors had no significant sources of income other than payments made to them by participants in the Websites' programs.

Mr. Perkins' investigation uncovered no real or personal property having any significant value in which Debtors had an interest other than the CEP Trust Bank Accounts and the computers on which the Websites and related databases were maintained.

Through his own investigations and his review of information divulged by individuals connected with Debtors in the SEC Action, Mr. Perkins identified some outside sources of income, but the amount of cash these sources brought in was minimal, inadequate for full capitalization of the Debtors, and far below the amounts that would have been required in order to pay out participants' percentages with that income alone. Two of these outside sources of income were interest earned in CEP Trust's interest-bearing bank account totaling \$3,000 to \$4,000 and online advertising revenue of approximately \$1,000 from Google.com.

Debtors, either in their names or the Websites' names, and insiders held accounts at the online payment processor E-Gold, which was dropped by Debtors as a payment processor for its own programs in 2006. Based on documents released by E-Gold to the SEC, Mr. Perkins determined that Debtors, their websites or insiders had used E-Gold accounts to invest \$140,546.41 from the CEP Trust Bank Accounts in twenty-six (26) different online investment programs (primarily autosurfs) for a net return of \$114,466.66 and a net loss of \$26,079.75. ("E-Gold Investments," Exhibit F to Plaintiffs' Exhibit 2).

At trial, Mr. Perkins conceded that he had not subpoenaed records from certain other payment processors with which Debtors and insiders had or may have had accounts. Defendants argued that Mr. Perkins had failed to investigate such other online payment processors sufficiently, asserting that those accounts might have cash from successful investments. Mr. Perkins had determined through his financial analysis, however, that the amounts of cash that might have been invested through those other payment processors were so small as to have a negligible impact on Debtors' finances. There is no evidence that either Debtor, any insider of Debtors or any other person contributed any equity capital to Debtors or that Debtors borrowed money from any conventional lending institution.

Debtors' owners and insiders, including Trevor Reed and Clayton Kimbrell, have declined to testify about funds paid out by Debtors, citing their Fifth Amendment right against self-incrimination under the U.S. Constitution, with some exceptions in the form of transcripts of depositions of individuals involved in Debtors' operations prior to the SEC Action.

In summary, Debtors had no legitimate business and no assets other than the ones described above. Debtors had no source of income (other than funds paid in by new participants), reserves or capital to pay the phantom earnings distributed to some participants in the Website programs.

### **3. Solvency.**

The Bankruptcy Code in section 101(32) defines the term "insolvent" with respect to entities other than partnerships and municipalities as follows:

(32) The term "insolvent" means--

(A) with reference to an entity other than a partnership and a municipality, financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of--

(I) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity's creditors; and

(ii) property that may be exempted from property of the estate under section 522 of this title[.]

11U.S.C. § 101(32).

The evidence of liabilities of the Debtors prior to October 2006 was skimpy and somewhat confusing, and for that reason, the Court will leave open the issue of solvency prior to October 31, 2006. Yet, from May 2006 until the Debtors' operations were shut down, Debtors had no source of significant income other than new deposits from participants and had no significant assets other than the computer servers on which the Websites were operated and the balances in the CEP Trust Bank Accounts. Almost all of the funds flowing into the CEP Trust Bank Accounts came from public investors, and those funds were paid out almost as fast as they came in.

As of the end of October 2006, investor "earnings" totaled \$1,563,309, but the balances in the CEP Trust Bank Accounts totaled only \$240,807, as shown on Exhibit G to Plaintiffs'

Exhibit 2. Thus, as of October 31, 2006, Debtors' liabilities to participants when computed with respect to "earnings" credited to them exceeded the value of Debtors' assets by at least \$1,000,000. By that date, Debtors had taken in deposits and credits of over \$500,000, the primary source of which were payments made by participants in the Website programs, which exceeded the month-end bank balances by over \$250,000. Hence, Debtors were insolvent on and after October 31, 2006 and may have been insolvent earlier.

Because Debtors were operating a Ponzi scheme, their liabilities to participants might be viewed as simply the total amount of payments made to them by participants in the Website programs, notwithstanding that the payments were supposedly "purchases" or "membership fees." Under that sort of analysis and as well as the analysis based on liabilities for "earnings," Debtors may have been insolvent by the end of July 2006, as Mr. Perkins testified. As indicated above, however, the issue of solvency prior to October 31, 2006 is reserved.

### **C. Legal Conclusions.**

Debtors represented to the public and to the participants in the programs sponsored on the Websites that the programs were money-making opportunities for participants, requiring no significant effort on the part of the participants. The Websites were investment programs that promised cash returns exceeding the amounts paid into the programs. Debtors did not, however, operate or own any underlying business or assets whose profits could fund the promised returns. Although Debtors did place a relatively small amount of money in similar ventures operated by others, the evidence shows they made no profit from those investments. Most importantly, Debtors paid investors with cash received from new investors.

The term [Ponzi scheme] generally describes a pyramid-type investment scheme where investors are paid profits from newly attracted investors promised large returns on their principal investments. Typically it is not supported by any underlying business venture. An investor that does receive money is not receiving income on his or her investment, but merely a return of his or her own principal, or that of another investor. More and more investors are solicited in order that the investors at the top of the pyramid can be compensated. Usually the pyramid collapses, the majority of investors never receive any profits, losing their principal investment as well.

*In re Financial Federated Title & Trust, Inc.*, 309 F.3d 1325, 1327n. 2 (11<sup>th</sup> Cir. 2002).

When the existence of a Ponzi scheme is proven by the evidence a presumption of actual fraudulent intent is applied. . . . Debtors are inferred to know from the very nature of Ponzi scheme activities, that investors will lose their money. . . . A debtor's knowledge that future investors will not be paid is sufficient to establish actual intent to defraud. . . . Debtor's intent to hinder, delay, or defraud creditors is present when a transfer is made in furtherance of a Ponzi scheme. . . . Insolvency of the debtor as required by [11 U.S.C. ] § 548(a)(1)(B) is established, when the Debtor is operating a Ponzi scheme. . . .

*In re Evergreen Security, Ltd.*, 319 B.R. 245, 253 (Bankr. M.D.Fla. 2003) (citations omitted).

Defendants argue that Mr. Perkins had no personal knowledge of the intent or actions of the Debtors' principals and that he had failed to fully investigate Debtors' assets. The intent of the insiders of Debtors and thus the intent of Debtors to defraud participants can be inferred from the facts proved by Plaintiffs. The fact that insiders, including Messrs. Reed and Kimbrell, their families and others providing customer support for the Websites withdrew approximately \$3.2 million from funds paid in by participants during the fourteen-month period that Debtors operated the Websites belies the notion that this was a legitimate business since Debtors had no source of significant income other than funds paid to Debtors by participants in the Websites' programs.

Defendants presented no evidence. They do not contend that Debtors in fact had significant assets, investments or legitimate business income not mentioned by Mr. Perkins in his Receiver's Report. Instead, they speculate that Debtors might have had a legitimate business that might undermine Plaintiffs' contention that Messrs. Reed and Kimbrell had engaged the Debtors in a Ponzi scheme, and they fault Mr. Perkins for not finding such a business.

The problem for Defendants is that the evidence presented by Plaintiffs proves convincingly that Debtors operated a Ponzi scheme through the Websites. In making out a prima facie case that Debtors operated a Ponzi scheme, Plaintiffs proved by a preponderance of the evidence that Debtors took in deposits of the participants in the Website programs; that Debtors

and the Websites had no legitimate business as represented to participants; that the purported businesses of the Websites produced no profits or income other than new funds deposited by participants; and that through the Website programs, Debtors paid “earnings” to some participants with funds obtained from other participants. *See In re Ramirez Rodriguez*, 209 B.R. 424, 431 (Bankr. S.D.Tex. 1997). Plaintiffs did not have to prove that there is no possibility that Debtors had any legitimate though hidden business, the existence of which might negate the proposition that Debtors were operating a Ponzi scheme.

Defendants have not shown that Mr. Perkins ignored any promising avenue of investigation likely to produce evidence of assets or other income of the Debtors during the relevant period. Their contention that Mr. Perkins failed to fully investigate Debtors’ financial affairs misses the point that he conducted a thorough investigation that shows that it is more likely than not that Debtors did not have during the relevant period any legitimate business. The burden of going forward with evidence of other assets shifted to Defendants, who offered no evidence on that point. Hence, the Court rejects the contention of Defendants that Plaintiffs failed to carry their burden of proof on the issues of fraud arising from a Ponzi scheme and solvency.

These Findings of Fact and Conclusions of Law are made pursuant to Fed. R. Civ. P. 52 made applicable by Fed. R. Bankr. P. 7052.

\*\*\*END OF FINDINGS OF FACT AND CONCLUSIONS OF LAW\*\*\*