

4/15/15

CAUSE NO. D-1-GV-10-000454

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| STATE OF TEXAS, | § | IN THE DISTRICT COURT OF |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | TRAVIS COUNTY, TEXAS |
| | § | |
| RETIREMENT VALUE, LLC, <i>ET AL.</i> | § | |
| | § | |
| Defendants, | § | 126TH JUDICIAL DISTRICT |

**FIRST AMENDED MOTION TO ENFORCE SETTLEMENT AGREEMENT,
DISGORGEMENT OF SETTLEMENT FUNDS AND
REQUEST FOR EVIDENTIARY HEARING**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, WENDY ROGERS, (“Rogers”) and in support of this amended motion, shows as follows:

1. In early 2010, the State of Texas, (“the State”) at the request of John Morgan, the Commissioner of the Texas State Securities Board, brought an action against Rogers, claiming, inter alia, that she sold an unregistered security and committed securities fraud¹.
2. In the same action, the State requested that the court appoint a receiver for Retirement Value, LLC, (“RV”), on the grounds that RV was selling an unregistered security.

¹ Rogers requests that the Court take judicial notice of all pleadings on file in this case.

3. Although a receiver was appointed in early 2010, at least in part on the basis that RV was selling an unregistered security, the State did not seek an actual ruling from the Court on that issue until a year and a half later.
4. Nevertheless, the Court, found that the RV product was in fact a security on December 7th, 2011, in a ruling on a motion for summary judgment against Rogers.
5. Rogers, timely appealed the ruling to the 3rd Court of Appeals in Austin, Texas.
6. Before the appellate court rendered a decision on that issue, the State settled with Rogers in August of 2012, not long after this Court denied a motion for summary judgment, filed by the State, claiming that Rogers committed securities fraud. *See Settlement Agreement attached as Exhibit A*².
7. Part of the settlement required Rogers to dismiss her appeal on the securities issue. Rogers complied with that requirement and dismissed her appeal. *See Settlement Agreement at Paragraph 22.*
8. Unbeknownst to Rogers, the State was keeping an eye on a bigger prize, to wit, an eventual indictment of Rogers for, inter alia, securities fraud.
9. In fact, on February 26, 2015, Rogers was indicted in Collin County, Texas, for securities fraud. *See Indictments attached as Exhibit B*³.
10. At all times, the State had planned to pursue a criminal case against Rogers, but wanted to insure that she would first dismiss her appeal of the core issue alleged therein.

² The Settlement Agreement included as a Party, the State of Texas, the Texas State Securities boards ("TSSB") and was signed by Jack Hohengarten on behalf of the State of Texas.

³ The indictments seem to have been obtained at the request of the TSSB, through their employee Letha Sparks, and

^{1st} Amended Motion to Enforce Settlement Agreement, Disgorgement of Settlement Funds and Request for Evidentiary Hearing

11. The State's plan worked.
12. The question, however, is whether the State should be allowed to succeed in its plan.

THE ANSWER HAS TO BE A RESOUNDING NO. Certainly, since this Court was asked to approve the settlement, it should not allow itself to be complicit in this devious plan.

13. The terms of the settlement agreement specifically provide that the State **may no longer pursue a finding that Rogers sold a security or committed securities fraud.** See Settlement Agreement at paragraph 17.

"Release by the State. The State does hereby forever agree to RELEASE, ACQUIT, FOREVER DISCHARGE AND HOLD HARMLESS Wendy Rogers and her attorneys, insurers, representatives, successors and assigns, and all persons or entities in privity therewith, from any and all civil claims, demands damages, actions, causes of action, and suits at law or in equity, of any kind or nature, whether arising under statute or common law, whether known or unknown, that have been brought, should have been brought, or could have been brought in the Pending Case. The State does not release or waive its right to demand additional enforcement of the laws and regulations of the State of Texas or the United States, except with regard to those claims and causes of action, whether statutory, legal or equitable, which were, or should have been, or could have been, asserted in the Pending Case, regarding Retirement Value or Hill Country Funding, and which occurred prior to this Settlement. This release does not affect the claims of any other party. Nor does this release include the Emergency Cease and Desist Order entered by the Texas Securities Commissioner on March 29, 2010. By this release, the State does not intend to release any other person including without limitation Wells Fargo Bank, N.A., Wells Fargo Advisors, LLC, Wells Fargo Investments, LLC, Whitney Giles, Ronald James, Donald James, James Settlement Services, LLC, Mike Beste, or any licensee of Retirement Value."

14. This Court retained jurisdiction over the parties to the settlement agreement and therefore, has the authority to hear this motion. Venue for any matters related to the

not through any complaint by any investor in Retirement Value.

Settlement Agreement lies in the Courts of Travis County, Texas. *See* Settlement Agreement at Paragraph 24(b).

“Choice of Law. The rights and liabilities of the Parties under this Agreement shall be governed as to validity, interpretation, enforcement, effect and damages by the laws of the State of Texas, without regard to any rules, statutes, or case law regarding conflicts of law. Venue for any matters related hereto lies in the Courts of Travis County, Texas.”

15. Rogers respectfully requests that the Court hold an evidentiary hearing to determine, *inter alia*, the following:

- a. Whether the letter and spirit of the provisions of the settlement agreement have been breached by the State and specifically the TSSB as the complaining party to the indictments; and
- b. Whether the breach was intentional; and
- c. Whether Rogers’ due process rights have been violated by the State, when she was asked to give up legal rights, without being informed or warned that a criminal complaint(s) were being contemplated against her; and
- d. Whether justice requires that the settlement agreement be enforced and the State ordered to take all action necessary to comply with its terms, including, but not limited to, withdrawing any and all complaints upon which the indictments were premised; and
- e. Whether justice requires that the State pay back to Rogers the settlement funds; and

- f. Whether justice requires that Rogers recover her reasonable and necessary attorney fees incurred in enforcing the terms of the settlement agreement.

WHEREFORE, WENDY ROGERS, prays that, after hearing, she be granted the relief sought herein, and such other and further relief to which she may show herself justly entitled.

Respectfully submitted,

RENTEA & ASSOCIATES

/s/ Bogdan Rentea

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COUNSEL FOR WENDY ROGERS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record herein by:

Electronic Service

on this the 15th day of April, 2015.

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