

Exhibit D



NUSSBAUM GILLIS & DINNER, P.C.
ATTORNEYS AT LAW

PLAINTIFFS' MOTION FOR RECONSIDERATION
OF COURT'S GRANTING OF DEFENDANTS'
TWO NO EVIDENCE MOTIONS FOR SUMMARY
JUDGMENT AND ALTERNATIVE MOTION FOR
NEW TRIAL

Bruce Berg, et al. v. Halo Companies, Inc., et al.

Case No. 11-15415

Presented by: David Lunn, Esq. | Nussbaum Gillis & Dinner, P.C.
February 27, 2014



RESPONSE TO FIRST NO EVIDENCE MOTION CITATIONS TO TRANSCRIPTS

- Citations to Chron and Thompson in Response to Rough Transcripts Because Certified Not Available
- Court Reporter Sent Two Rough Transcripts of Thompson Testimony
- Citations in Brief to First Version (275 pages in length)
- Second Version of Rough Transcript Inadvertently Included at Appendix B-4 (292 page in length)
- After Leave of Court Given to Lodge Certified Transcripts, Amended Response Filed



RESPONSE TO FIRST NO EVIDENCE MOTION CITATIONS TO APPENDIX "C"

- Footnote 21 of the brief refers to a NASDAQ 5 year Report (which was to be attached as Appendix C-7).

²¹ NASDAQ 5 year Report (attached at Appendix C-7).
²² December 21, 2010 email for Mr. Thompson to Mr. Temme (attached at Appendix C-8).
²³ December 8, 2010 email from Thompson to Temme (attached at Appendix C-9).
²⁴ January 20, 2011 email chain (attached at Appendix C-10).

- However, when the exhibits in Appendix C were compiled, the NASDAQ 5 year Report was inadvertently omitted (see Index to Appendix C)

Exhibit C-6: Securities and Exchange Commission Form 8-K report dated 12/13/2010

Exhibit C-7: E-mail from Cade Thompson to Jay Temme dated 12/21/2010 re: Halo Companies, Inc.'s worth



PLAINTIFFS' BURDEN OF PROOF

A no-evidence summary judgment is improper if the respondent presents more than a scintilla of probative evidence to raise a genuine issue of material fact. TEX.R. CIV. P. 166a(i); *Kastner v. Jenkins & Gilchrist, P.C.*, 231 S.W.3d 571, 576 (Tex. App. Dallas 2007). The plaintiff need not marshal his proof, the response need only point out evidence that raises a genuine issue of material fact. *San Saba Energy, L.P. v. Crawford*, 171 S.W.3d 323, 330 (Tex. App. Houston [14th Dist.] 2005).



TEMMME WAS DEFENDANTS' AGENT

It is well-settled that, “[a]n agency relationship may be implied from the conduct of the parties.” *See Jarvis v. K&E Re One, LLC*, 390 S.W.3d 631, 641 (Tex.App.-Dallas 2012). Both “the agency and the extent of the agent’s authority may be proved by circumstantial evidence.” *Id.*



TEMME WAS DEFENDANTS' AGENT

- **Appendix C-15** (Thompson Email to Temme) – “Reif and I whipped up a new PPM for the new fund (Stewardship Philanthropy Fund, LP).”
- Attached to email - Confidential Offering Memorandum – Stewardship Philanthropy Fund, LP
- Halo Asset Management Genpar I, LLC – General Partner owned by Defendant Halo Asset Management – p. 11
- Managers – Temme, Defendants Thompson, Williams, Tony Chron & Reif Chron – p. 12
- DAIS Partners, Berg, Cartner, Skelton Lake, Haydock and Leh collectively invested **\$1,243,003** in that fund (see Third Amended Petition ¶ 94; Appendices A-8, A-10, A-11, A-13, A-15 and A-17).



TEMME WAS DEFENDANTS' AGENT

- **Appendix C-26** – General Partner - Halo Asset Management Genpar I, LLC which is owned by Defendant Halo Asset Management – p. 11.
Managers – Temme, Defendants Thompson, Williams, Tony Chron & Reif Chron – p. 12
- **Exhibit 3-33** – Confidential Offering Memorandum, Presented by Halo Asset Management, LLC – Investors instructed to contact – Thompson – cthompson@haloco.com, Jay Temme – itemme@haloco.com
- **Appendix C-9** – (Thompson email chain) Defendants providing Temme with his own Halo Asset Management business cards, office number, fax number and itemme@haloco.com email account.



TEMME WAS DEFENDANTS' AGENT

- **Amended Appendix B-4** (Thompson Deposition) at 73:17-23:
“Mr. Temme and I were there to explain how the business plan worked, how the investment worked, track record, what we intended to do, what Halo intended to do with the – the capital as acquiring the assets.”
- **Amended Appendix B-4** (Thompson Deposition) at 49:15-18:
“[i]t was our understanding, yes, that Mr. Temme would assist Halo and its subsidiaries in the process of raising funds to acquire assets.”



TEMME WAS DEFENDANTS' AGENT

- **Based on the Halo Defendants' Written and Oral Representations, Each Plaintiff Reasonably Understood that Temme was an Authorized Representative/Agent of the Halo Defendants.**
- **Appendix B-5** (Tim Weber Deposition) at 29:10-13: “[i]t was clear to me that Stewardship and Halo were in business together to invest – invest monies in mortgages and to handle that in a certain way, and that did not happen.”
- **Appendix B-5** at 30:16-20: “— but I do know that – it was purported to me that they were partners. And having looked at evidence of SEC filings of Halo, that Stewardship [Temme] and Halo were, in fact, partners at the time the funding agreement was signed.”



TEMME WAS DEFENDANTS' AGENT

- **Appendix B-5** at 33:22-25:
 - Q. Okay. That's what I needed to know. So for the record, Wildcat Lake Partners and you view Halo and Stewardship [Temme] as one and the same, correct?
 - A. They were business partners.
- **Appendix A-8** - Cartner Affidavit (**lost \$816,500**) at ¶¶ 6-10: After conversations with Defendants Thompson, Reif Chron and Williams, and after reviewing Halo investment documentation and the limited partnership agreements, Cartner understood that Temme and Halo had a joint business relationship akin to a partnership.
 - Cartner's investments were all predicated on Temme's and Halo's business relationship. A-8 at ¶ 9.



TEMME WAS DEFENDANTS' AGENT

- **Appendix B-6** (Tony Weber Deposition – **lost \$734,003**) at 20:13-17:

A: I don't recall. I've always assumed throughout my entire experience with this that Halo and Stewardship and Jay Temme were all the same.

Q: And who gave you that impression?

A: The documents I read said it very directly.

- **Appendix A-17** (Berg Affidavit – **lost \$595,000**) at ¶¶ 6-9: Mr. Berg believed that based on his discussions with Defendant Thompson, and on his review of the Halo Defendants' published investment materials and limited partnership agreements, that Temme was an authorized agent of Halo.



PLAINTIFFS' CLAIMS

- (1) Negligent Misrepresentation
- (2) Breach of Fiduciary Duty
- (3) Negligence
- (4) Breach of Contract
- (5) Violation of Texas Securities Act, and
- (6) Accounting.



NEGLIGENT MISREPRESENTATION

A. Defendants in the course of business or a transaction in which they had an interest.

Based on the Halo Defendants' Written and Oral Representations, Each Plaintiff Understood and Believed that Temme was an Authorized Representative/Agent of the Halo Defendants. (See Appendix B-5 at 29:8-13; 30:12-20; Appendix B-3 at 10:2-24; See Appendix A-8 at ¶¶ 3, 5, 6, 7, 8, 9 and 10; A-9 at ¶¶ 3-7; A-10 at ¶¶ 3-7; A-11 at ¶¶ 3-6; A-12 at ¶¶ 3-7; A-13 at ¶¶ 3-6; A-14 at ¶¶ 3-7; A-15 at ¶¶ 3-6; A-16 at ¶¶ 3-7; A-17 at ¶¶ 3-9; and A-18 at ¶¶ 3-7; See Appendix B-6 at 20:13-15; 20:17; 21:5-8; 68:15-16; See also, Exhibits 1-1 at ¶ 6; 1-2 at ¶ 6; 1-3 at ¶¶ 14, 15; 1-4 at ¶¶ 11, 12; 1-5 at ¶ 6; 1-6 at ¶¶ 8-10; 1-7 at ¶¶ 8-10; 1-8 at ¶¶ 6-13; 1-9 at ¶¶ 4, 12, 14; 1-10 at ¶¶ 9-11; and 1-11 at ¶¶ 5, 9).

NEGLIGENT MISREPRESENTATION

- **Based on Halo's written and oral representations, Halo and Temme and his related entity Stewardship were viewed by Plaintiffs as one and the same.** (See Appendix B-5 at 33:17-25; Appendix B-3 at 66:8-10; See Appendix A-8 at ¶¶ 3, 5, 6, 7, 8, 9 and 10; A-9 at ¶¶ 3-7; A-10 at ¶¶ 3-7; A-11 at ¶¶ 3-6; A-12 at ¶¶ 3-7; A-13 at ¶¶ 3-6; A-14 at ¶¶ 3-7; A-15 at ¶¶ 3-6; A-16 at ¶¶ 3-7; A-17 at ¶¶ 3-9; and A-18 at ¶¶ 3-7 ; See Appendix B-6 at 20:13-15; 20:17; 21:5-8; 68:15-16; See also, Exhibits 1-1 at ¶ 6; 1-2 at ¶ 6; 1-3 at ¶¶ 14, 15; 1-4 at ¶¶ 11, 12; 1-5 at ¶ 6; 1-6 at ¶¶ 8-10; 1-7 at ¶¶ 8-10; 1-8 at ¶¶ 6-13; 1-9 at ¶¶ 4, 12, 14; 1-10 at ¶¶ 9-11; and 1-11 at ¶¶ 5, 9).



NEGLIGENT MISREPRESENTATION

B. Defendants Supplied false information for the guidance of others.

When attempting to persuade Plaintiffs to invest, Defendants represented orally and in writing that Temme was an authorized representative and/or agent of the Halo Defendants.

Defendants Now Deny that to be True:

Amended Appendix B-4 (Thompson Deposition) at 100:8-15:

Q: Yeah. But when you're meeting with Mr. Cartner, Mr. Weber and Mr. Berg –

A. Yeah.

Q: -- in March of 2011, you were certainly telling them that this was what we're doing, this is our plan?

A: What's "this"?

Q: That we're [Halo and Temme] joining together?

A: No. I never said that.



NEGLIGENT MISREPRESENTATION

- Amended Appendix B-4 at 208:21-209:10:

Q: And that's consistent with the representations you made to Tim Weber and to Bruce – or Bruce Berg and Stu Cartner that the Stewardship employees were going to become Halo employees?

A: Well, we would not have been able to represent this to anyone because this was confidential, because we're a public entity. So I would have never represented that to Tim Weber or Bruce Cartner – or Stuart Cartner or Bruce Berg. So I don't know where that came from.

Q: So if Stu Cartner, Bruce Berg and Tim Weber has testified that you made those representations to them, they wouldn't be telling the truth. Is that what you're telling me?

A: That's exactly what I'm telling you.

NEGLIGENT MISREPRESENTATION

- **Defendants falsely represented in documentation provided to Plaintiffs how the investments were going to be managed.** (See Plaintiffs' Affidavits, Appendix A-8 at ¶¶ 3, 5, 6, 7, 8, 9 and 10; A-9 at ¶¶ 3-7; A-10 at ¶¶ 3-7; A-11 at ¶¶ 3-6; A-12 at ¶¶ 3-7; A-13 at ¶¶ 3-6; A-14 at ¶¶ 3-7; A-15 at ¶¶ 3-6; A-16 at ¶¶ 3-7; A-17 at ¶¶ 3-9; and A-18 at ¶¶ 3-7; See also, Exhibits 1-1 through 1-11; see LP Agreement at Appendix C-13, see pitch deck at Appendix C-14, see also Appendices C-26, C-29 and C-30; See Amended Appendix B-4 at 73:19-23 (Thompson and Temme met with Weber, Cartner, and Berg to "explain how the business plan worked, how the investment worked, the track record, what we intended to do, what Halo intended to do with the capital as acquiring the assets.")).

NEGLIGENT MISREPRESENTATION

- C. Defendants falsely represented Temme as Halo's agent.**
- If Defendants are to be believed now, their representations to Plaintiffs in 2010 and 2011 regarding Halo's relationship with Temme were false. These representations included:
 - Halo Asset Management, LLC Confidential Offering Memorandum. (Appendix C-26). Defendants' due diligence materials and offering memorandum "holds [Temme] out as part of the management of the fund." (Amended Appendix B-1 at 143:2-6; Amended Appendix B-4 at 89:1-92:23, 107:24-109:24, see also Appendices C-29 and C-30).
 - Temme held out as President of a Halo entity in Halo created documents. (Amended Appendix B-4 at 245:4-19). Temme is held out as a manager of Halo entities. (Amended Appendix B-4 at 256:7-258:3).

NEGLIGENT MISREPRESENTATION

D. Without exercising reasonable care or competence in providing the information.

- **Temme was given materials to seek out potential investors on behalf of the Halo Defendants.** (Amended Appendix B-1 at 77:12-78:22; 85:5-87:10; Amended Appendix B-4 at 53:15-20, 68:1-6, 71:13-22, 73:19-23, 107:24-109:24, 110:17-109:24, 230:4-232:6).
- **Halo wanted Temme to act exclusively for Halo's benefit, but didn't pay attention to Temme's activities.** (Amended Appendix B-4 at 49:19-50:2, 110-111; Amended Appendix B-1 at 84:6-12).

NEGLIGENT MISREPRESENTATION

E. Plaintiffs justifiably relied on the information.

- **Cade Thompson admitted that he intended for investors to rely on representations in the documentation.** (Amended Appendix B-4 at 109:18-24):
- **Q:** (BY MR. LUNN) And when you created those documents, did you intend for investors to be able to rely on the representations made within those documents?
- **A:** I would assume so, yes.
- **Q:** You didn't put anything in those documents that you intended to be misleading?
- **A:** No, sure didn't.

NEGLIGENT MISREPRESENTATION

E. Plaintiffs justifiably relied on the information.

- **Plaintiffs actually, justifiably relied on the representations made verbally and in the written Halo documentation.** (See Appendix B-5 at 33:17-25; Appendix B-3 at 10:2-24; See Appendix A-8 at ¶¶ 3, 5-10; A-9 at ¶¶ 3-7; A-10 at ¶¶ 3-7; A-11 at ¶¶ 3-6; A-12 at ¶¶ 3-7; A-13 at ¶¶ 3-6; A-14 at ¶¶ 3-7; A-15 at ¶¶ 3-6; A-16 at ¶¶ 3-7; A-17 at ¶¶ 3-9; and A-18 at ¶¶ 3-7; See Appendix B-6 at 20:13-15; 20:17; 21:5-8; 68:15-16; See also, Exhibits 1-1 at ¶ 6; 1-2 at ¶ 6; 1-3 at ¶¶ 14, 15; 1-4 at ¶¶ 11, 12; 1-5 at ¶ 6; 1-6 at ¶¶ 8-10; 1-7 at ¶¶ 8-10; 1-8 at ¶¶ 6-13; 1-9 at ¶¶ 4, 12, 14; 1-10 at ¶¶ 9-11; and 1-11 at ¶¶ 5, 9).

NEGLIGENT MISREPRESENTATION

- **F. Proximately causing the injury.**
- **Plaintiffs would not have invested but for the representations made regarding Halo and Temme’s business relationship and the structure of the investments being managed by Halo using its proprietary software.** (See Appendix B-5 at 33:17-25; Appendix B-3 at 10:2-24; See Appendix A-8 at ¶¶ 3, 5-10; A-9 at ¶¶ 3-7; A-10 at ¶¶ 3-7; A-11 at ¶¶ 3-6; A-12 at ¶¶ 3-7; A-13 at ¶¶ 3-6; A-14 at ¶¶ 3-7; A-15 at ¶¶ 3-6; A-16 at ¶¶ 3-7; A-17 at ¶¶ 3-9; and A-18 at ¶¶ 3-7 ; See Appendix B-6 at 20:13-15; 20:17; 21:5-8; 68:15-16; See also, Exhibits 1-1 at ¶ 6; 1-2 at ¶ 6; 1-3 at ¶¶ 14, 15; 1-4 at ¶¶ 11, 12; 1-5 at ¶ 6; 1-6 at ¶¶ 8–10; 1-7 at ¶¶ 8-10; 1-8 at ¶¶ 6-13; 1-9 at ¶¶ 4, 12, 14; 1-10 at ¶¶ 9-11; and 1-11 at ¶¶ 5, 9).

BREACH OF FIDUCIARY DUTY

- **The general partner owes a fiduciary duty to the limited partners.**
- **Halo Asset Management, LLC and Halo Group, Inc. are listed as signatories on behalf of the General Partner in the LP Agreements.** (See Appendix C-13 and C12, C14-C17; See Amended Appendix B-1 at 96:21-99:12; See, e.g. Amended Appendix B-1 at 85:20-86:23; 115:6-118:5; See also, Exhibits 1-3 at Exhibits "B"-"D"; 1-4 at Exhibits "B"-"D"; 1-6 at Exhibit "B"; Exhibit 1-7 at Exhibit "B"; 1-8 at Exhibits "B" and "C"; 1-10 at Exhibit "B"; 1-11 at Exhibits "A" and "B).
- **Defendants Thompson, Williams, Reif Chron and Tony Chron are management of the GP. The GP was comprised of both Halo and legacy Stewardship members.** (See Amended Appendix B-4 at 89:1-92:23). **The managers were held out to investors as being responsible to oversee the process.** (Amended Appendix B-4 at 89:1-92:23).
- **Cade Thompson admits that he had a fiduciary duty to manage Halo and its subsidiaries appropriately.** (Amended Appendix B-4 at 21:4-8).

BREACH OF FIDUCIARY DUTY

- **B. Defendants breached their fiduciary duties to Plaintiffs.**
 - **Plaintiffs’ investments were not made according to the LP Agreements, nor managed as stated therein.** (See Plaintiffs’ Affidavits, Appendix A-8 at ¶¶ 3, 5, 6, 7, 8, 9 and 10; A-9 at ¶¶ 3-7; A-10 at ¶¶ 3-7; A-11 at ¶¶ 3-6; A-12 at ¶¶ 3-7; A-13 at ¶¶ 3-6; A-14 at ¶¶ 3-7; A-15 at ¶¶ 3-6; A-16 at ¶¶ 3-7; A-17 at ¶¶ 3-9; and A-18 at ¶¶ 3-7; See also, Exhibits 1-1 through 1-11; see LP Agreement at Appendix C-13, see pitch deck at Appendix C-14, see also Appendices C-26, C-29 and C-30; See Amended Appendix B-4 at 73:19-23.

BREACH OF FIDUCIARY DUTY

- C. Defendants' breach resulted in injury to Plaintiffs or benefit to Defendants.**
- **Plaintiffs' investments were never made, and Plaintiffs suffered a loss of the full amount of their investment -- \$4,898,157.** (See Appendix B-5 at 33:17-25; Appendix B-3 at 10:2-24; See Appendix A-8 at ¶¶ 3, 5-10; A-9 at ¶¶ 3-7; A-10 at ¶¶ 3-7; A-11 at ¶¶ 3-6; A-12 at ¶¶ 3-7; A-13 at ¶¶ 3-6; A-14 at ¶¶ 3-7; A-15 at ¶¶ 3-6; A-16 at ¶¶ 3-7; A-17 at ¶¶ 3-9; and A-18 at ¶¶ 3-7 ; See Appendix B-6 at 20:13-15; 20:17; 21:5-8; 68:15-16; See also, Exhibits 1-1 at ¶ 6; 1-2 at ¶ 6; 1-3 at ¶¶ 14, 15; 1-4 at ¶¶ 11, 12; 1-5 at ¶ 6; 1-6 at ¶¶ 8-10; 1-7 at ¶¶ 8-10; 1-8 at ¶¶ 6-13; 1-9 at ¶¶ 4, 12, 14; 1-10 at ¶¶ 9-11; and 1-11 at ¶¶ 5, 9).

NEGLIGENCE

A. Duty

- Defendants had a duty to ensure that prudent and proper measures were in place to adequately monitor and oversee the fund raising efforts of their agent/representative Temme.
- When Defendants allowed Temme to take Halo created documentation out to market investments to potential investors, like Plaintiffs, they undertook a duty to ensure that the investments were made and managed according to the process outlined in the Halo documentation.

NEGLIGENCE

B. Breach of the duty.

- **Defendants, through their management, determined they would not monitor Temme's activity or ensure that investments were managed properly.** (Amended Appendix B-4 at 49:19-52:2).
- **Reif Chron testified, "I'm not sure what all Jay Temme was doing."** (Amended Appendix B-1 at 185:4).
- **Nor did Mr. Chron, Halo's General Counsel, care** (Amended Appendix B-1 at 84:6-12):
 - **Q:** Okay. Now, we've been talking about this clawback provision in Exhibit 8. **What policies and procedures did Halo enact in order to ensure that Jay Temme was fulfilling his obligations under the agreements?**
 - **A:** Halo, as far as Reif Chron is concerned, didn't really care.

NEGLIGENCE

Breach of the duty.

- **Halo admits it did not receive responses to its due diligence requests to Temme.** (Amended Appendix B-1 at 22:1-17; Amended Appendix B-4 at 225:6-226:21).
- **Halo representatives believed that Temme was disorganized and that his historical data and Stewardship's performance records were difficult to comprehend.** (Amended Appendix B-4 at 202:17-203:8).

NEGLIGENCE

- **C. Damages proximately caused by the breach.**
 - **Plaintiffs invested, and lost, \$4,898,157.** (See Appendix B-5 at 33:17-25; Appendix B-3 at 10:2-24; See Appendix A-8 at ¶¶ 3, 5-10; A-9 at ¶¶ 3-7; A-10 at ¶¶ 3-7; A-11 at ¶¶ 3-6; A-12 at ¶¶ 3-7; A-13 at ¶¶ 3-6; A-14 at ¶¶ 3-7; A-15 at ¶¶ 3-6; A-16 at ¶¶ 3-7; A-17 at ¶¶ 3-9; and A-18 at ¶¶ 3-7 ; See Appendix B-6 at 20:13-15; 20:17; 21:5-8; 68:15-16; See also, Exhibits 1-1 at ¶ 6; 1-2 at ¶ 6; 1-3 at ¶¶ 14, 15; 1-4 at ¶¶ 11, 12; 1-5 at ¶ 6; 1-6 at ¶¶ 8-10; 1-7 at ¶¶ 8-10; 1-8 at ¶¶ 6-13; 1-9 at ¶¶ 4, 12, 14; 1-10 at ¶¶ 9-11; and 1-11 at ¶¶ 5, 9). **None of that money has been returned to Plaintiffs.**

BREACH OF CONTRACT

- **A. A valid contract between Plaintiffs and Defendants.**
 - **Plaintiffs entered into the LP agreements as stated in the Third Amended Petition at ¶¶ 91-98.** (See Appendix B-5 at 33:17-25; Appendix B-3 at 10:2-24; See Appendix A-8 at ¶¶ 3, 5-10; A-9 at ¶¶ 3-7; A-10 at ¶¶ 3-7; A-11 at ¶¶ 3-6; A-12 at ¶¶ 3-7; A-13 at ¶¶ 3-6; A-14 at ¶¶ 3-7; A-15 at ¶¶ 3-6; A-16 at ¶¶ 3-7; A-17 at ¶¶ 3-9; and A-18 at ¶¶ 3-7 ; See Appendix B-6 at 20:13-15; 20:17; 21:5-8; 68:15-16; See also, Exhibits 1-1 at ¶ 6; 1-2 at ¶ 6; 1-3 at ¶¶ 14, 15; 1-4 at ¶¶ 11, 12; 1-5 at ¶ 6; 1-6 at ¶¶ 8-10; 1-7 at ¶¶ 8-10; 1-8 at ¶¶ 6-13; 1-9 at ¶¶ 4, 12, 14; 1-10 at ¶¶ 9-11; and 1-11 at ¶¶ 5, 9).

BREACH OF CONTRACT

- **B. Plaintiffs performed or tendered performance.**
 - **Plaintiffs invested \$4,898,157.** (See Third Amended Petition at ¶¶ 91-98. See Appendix B-5 at 33:17-25; Appendix B-3 at 10:2-24; See Appendix A-8 at ¶¶ 3, 5-10; A-9 at ¶¶ 3-7; A-10 at ¶¶ 3-7; A-11 at ¶¶ 3-6; A-12 at ¶¶ 3-7; A-13 at ¶¶ 3-6; A-14 at ¶¶ 3-7; A-15 at ¶¶ 3-6; A-16 at ¶¶ 3-7; A-17 at ¶¶ 3-9; and A-18 at ¶¶ 3-7 ; See Appendix B-6 at 20:13-15; 20:17; 21:5-8; 68:15-16; See also, Exhibits 1-1 at ¶ 6; 1-2 at ¶ 6; 1-3 at ¶¶ 14, 15; 1-4 at ¶¶ 11, 12; 1-5 at ¶ 6; 1-6 at ¶¶ 8-10; 1-7 at ¶¶ 8-10; 1-8 at ¶¶ 6-13; 1-9 at ¶¶ 4, 12, 14; 1-10 at ¶¶ 9-11; and 1-11 at ¶¶ 5, 9).

BREACH OF CONTRACT

- **C. Defendants breached the contract.**
 - **Defendants, through their management, determined they would not monitor Temme's activity or ensure that investments were made and/or managed properly.** (Amended Appendix B-4 at 49:19-52:2).
 - **The investments were not made as represented in the agreements.** (See Appendix B-5 at 33:17-25; Appendix B-3 at 10:2-24; See Appendix A-8 at ¶¶ 3, 5-10; A-9 at ¶¶ 3-7; A-10 at ¶¶ 3-7; A-11 at ¶¶ 3-6; A-12 at ¶¶ 3-7; A-13 at ¶¶ 3-6; A-14 at ¶¶ 3-7; A-15 at ¶¶ 3-6; A-16 at ¶¶ 3-7; A-17 at ¶¶ 3-9; and A-18 at ¶¶ 3-7 ; See Appendix B-6 at 20:13-15; 20:17; 21:5-8; 68:15-16; See also, Exhibits 1-1 at ¶ 6; 1-2 at ¶ 6; 1-3 at ¶¶ 14, 15; 1-4 at ¶¶ 11, 12; 1-5 at ¶ 6; 1-6 at ¶¶ 8-10; 1-7 at ¶¶ 8-10; 1-8 at ¶¶ 6-13; 1-9 at ¶¶ 4, 12, 14; 1-10 at ¶¶ 9-11; and 1-11 at ¶¶ 5, 9).

BREACH OF CONTRACT

- D. Plaintiffs sustained damages as a result of the breach.**
- **Plaintiffs lost \$4,898,157.** (See Appendix B-5 at 33:17-25; Appendix B-3 at 10:2-24; See Appendix A-8 at ¶¶ 3, 5-10; A-9 at ¶¶ 3-7; A-10 at ¶¶ 3-7; A-11 at ¶¶ 3-6; A-12 at ¶¶ 3-7; A-13 at ¶¶ 3-6; A-14 at ¶¶ 3-7; A-15 at ¶¶ 3-6; A-16 at ¶¶ 3-7; A-17 at ¶¶ 3-9; and A-18 at ¶¶ 3-7 ; See Appendix B-6 at 20:13-15; 20:17; 21:5-8; 68:15-16; See also, Exhibits 1-1 at ¶ 6; 1-2 at ¶ 6; 1-3 at ¶¶ 14, 15; 1-4 at ¶¶ 11, 12; 1-5 at ¶ 6; 1-6 at ¶¶ 8-10; 1-7 at ¶¶ 8-10; 1-8 at ¶¶ 6-13; 1-9 at ¶¶ 4, 12, 14; 1-10 at ¶¶ 9-11; and 1-11 at ¶¶ 5, 9).

VIOLATION OF TEXAS SECURITIES ACT SEC. 581-33

A. Aiding and abetting liability.

- **1. A primary violation of the securities laws.**
- **The investments were not made as presented to Plaintiffs.** (See Appendix B-5 at 33:17-25; Appendix B-3 at 10:2-24; See Appendix A-8 at ¶¶ 3, 5-10; A-9 at ¶¶ 3-7; A-10 at ¶¶ 3-7; A-11 at ¶¶ 3-6; A-12 at ¶¶ 3-7; A-13 at ¶¶ 3-6; A-14 at ¶¶ 3-7; A-15 at ¶¶ 3-6; A-16 at ¶¶ 3-7; A-17 at ¶¶ 3-9; and A-18 at ¶¶ 3-7 ; See Appendix B-6 at 20:13-15; 20:17; 21:5-8; 68:15-16; See also, Exhibits 1-1 at ¶ 6; 1-2 at ¶ 6; 1-3 at ¶¶ 14, 15; 1-4 at ¶¶ 11, 12; 1-5 at ¶ 6; 1-6 at ¶¶ 8-10; 1-7 at ¶¶ 8-10; 1-8 at ¶¶ 6-13; 1-9 at ¶¶ 4, 12, 14; 1-10 at ¶¶ 9-11; and 1-11 at ¶¶ 5, 9).

VIOLATION OF TEXAS SECURITIES ACT SEC. 581-33

- 2. The alleged aider had general awareness of its role in the violation.**
 - **Defendants met face to face and/or had direct conversations with several of the Plaintiffs.** (Amended Appendix B-4 at 73:17-23; Appendix A-8, A-16, A-17, the affidavits of Stuart Cartner, Timothy Weber, and Bruce Berg).
 - **Defendants drafted the documentation that was given to Plaintiffs.** (Appendices C-8, C-26, C-29 and C-30; Appendix A-8 at ¶¶ 3, 5-10; A-9 at ¶¶ 3-7; A-10 at ¶¶ 3-7; A-11 at ¶¶ 3-6; A-12 at ¶¶ 3-7; A-13 at ¶¶ 3-6; A-14 at ¶¶ 3-7; A-15 at ¶¶ 3-6; A-16 at ¶¶ 3-7; A-17 at ¶¶ 3-9; and A-18 at ¶¶ 3-7; Amended Appendix B-4 at 68:1-6; 89:1-92:23; 107:24-109:24; 245:4-19; 256:7-258:3; Amended Appendix B-1 at 143:2-6; 24-109:24).
 - **Defendants knew that Temme was taking Halo branded documents and LP agreements into the marketplace to look for investors.** (Amended Appendix B-1 at 77:12-78:22; 85:5-87:10; Amended Appendix B-4 at 53:15-20, 68:1-6, 71:13-22, 73:19-23, 107:24-109:24, 110:17-109:24, 230:4-232:6).

VIOLATION OF TEXAS SECURITIES ACT SEC. 581-33

- 3. The alleged aider rendered substantial assistance in the violation.**
 - **Defendants were aware of at least one investment that was diverted by Temme away from Halo in March 2011, and continued to ignore Temme's business activities. (Amended Appendix B-1 at 106:4-8).**
 - **Defendants had credible evidence that Temme had defrauded investors in early August of 2011, but never contacted any of the Plaintiffs to alert them before they made the single largest investment on August 26, 2011, Stewardship Philanthropy 4. (Appendix C-37 and C-38, Cade Thompson and Reif Chron Amended Discovery Responses).**

VIOLATION OF TEXAS SECURITIES ACT SEC. 581-33

- 4. The alleged aider either intended to deceive Plaintiffs or acted with reckless disregard for the truth of the representations made by the primary violator.**
 - Defendants, through their management, determined they would not monitor Temme's activity or ensure that investments were managed properly. (Amended Appendix B-4 at 49:19-52:2). (Amended Appendix B-1 at 185:4). (Amended Appendix B-1 at 84:6-12). Defendants acted with reckless disregard of the truth.**

VIOLATION OF TEXAS SECURITIES ACT SEC. 581-33

B. Control Person Liability.

- Control person liability is founded on the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract, or otherwise.
- Halo Companies, Inc., Chief Executive Officer, Cade Thompson, testified that Halo had a direct relationship with Temme “and it was our understanding, yes, that Mr. Temme would assist Halo and its subsidiaries in the process of raising funds to acquire assets.” (Exhibit 2-2 at 49:8-18).
- According to Defendant Thompson, “Halo controlled all of the drafting, reviewing and approval of all documents utilized to raise funds on behalf of Halo.” (See Exhibit 2-2 at 242:16-18.)
- Halo prepared a series of documents to effectuate an investment into an entity called Stewardship Philanthropy Fund (“SPF”). (Exhibit 2-2 at 68:1-6). Halo expected Temme to send the SPF documents to Plaintiff Wildcat Lake Partner’s representative Tim Weber. (Exhibit 2-2 at 71:13-22).

PRAYER FOR RELIEF

- Plaintiffs have exceeded their burden of proof.
- The record before this Court contains more than a scintilla of evidence in support of each of Plaintiffs' claims against Defendants.
- This Court is respectfully urged to Grant Plaintiffs' Motion for Reconsideration and Motion for New Trial.