

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MICHAEL J. QUILLING, as Receiver for
Robert Cord, Winterhawk West Indies,
Inc., and Steven C. Roberts d/b/a Funding
Resources Group and FRG Trust,
Plaintiff,

v.

C.A. No. 3:98-CV-2689-M
CONSOLIDATED WITH 3:99-CV-1504-X

TEXAS COASTAL BANK and BILLY
HOLCOMB,
Defendants.

DEFENDANT BILLY HOLCOMB'S ORIGINAL ANSWER

COMES NOW, Defendant Billy Holcomb (hereafter, "Defendant") and files his Original Answer to the First Amended Complaint of Plaintiff Michael J. Quilling, Receiver for Robert Cord, WinterHawk West Indies, Inc., and Steven C. Roberts d/b/a Funding Resources Group and FRG Trust (hereafter, "Plaintiff"). Defendant responds to the allegations contained in Plaintiff's First Amended Complaint as follows.

PARTIES

- 1. Admit.
2. Admit.
3. Admit.

JURISDICTION AND VENUE

- 4. Defendant is without personal knowledge or information sufficient to form a belief

as to the truth of this averment.

5. Defendant is without personal knowledge or information sufficient to form a belief as to the truth of this averment.

#### BACKGROUND FACTS

6. Defendant is without personal knowledge or information sufficient to form a belief as to the truth of this averment.

7. Defendant is without personal knowledge or information sufficient to form a belief as to the truth of this averment.

8. Defendant is without personal knowledge or information sufficient to form a belief as to the truth of the averments contained in the first two sentences of paragraph 8. Defendant admits that he knew Robert Franklin Schoonover a/k/a Robert Cord (hereafter, "Cord") had a bank account at Community Bank in Vidor, Texas. Defendant is without personal knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in sentence 3 of paragraph 8. Defendant admits that he learned at some point that WinterHawk West Indies, Ltd. was created under the laws of Antigua and Barbuda. Defendant is without personal knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in paragraph 8.

9. Defendant admits that he later became aware of the general nature of the investment programs offered by Cord. Defendant is without personal knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in paragraph 9.

10. Defendant is without personal knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 10.

11. Defendant admits that WinterHawk and Cord each opened a bank account at Texas Coastal Bank. Defendant further admits that he has over 40 years of banking experience. Defendant denies the remaining averments contained in paragraph 11.

12. Defendant admits that WinterHawk transferred approximately \$200,000 from Community Bank into a WinterHawk account at Texas Coastal Bank. Defendant further admits that Cord established a personal account at Texas Coastal Bank. Defendant denies the remaining averments contained in paragraph 12.

13. Defendant admits that Cord provided a tax I.D. number for WinterHawk when Cord opened an account at Texas Coastal Bank for WinterHawk. Defendant further admits that at some point, Cord provided Defendant with a number purported to be Cord's social security number. Defendant denies the remaining averments contained in paragraph 13.

14. Defendant admits that he did not check the second social security number provided by Cord. Defendant denies the remaining averments contained in paragraph 14.

15. Defendant admits that Cord asked Defendant to verify the existence of WinterHawk's account at Texas Coastal Bank if anyone called requesting such information. Defendant denies the remaining averments contained in paragraph 15.

16. Defendant admits that his name, Texas Coastal Bank's telephone number, and wiring instructions were included on the agreements referenced in this paragraph. Defendant denies the remaining averments contained in paragraph 16.

17. Defendant admits that he informed callers that WinterHawk's account was in good standing. Defendant denies the remaining averments contained in paragraph 17.

18. Defendant admits that the information contained in this paragraph referring to wire

transfers and certificates of deposits appears to be correct. Defendant denies the remaining averments contained in paragraph 18.

19. Denied.

20. Defendant denies that he owed a legal duty to tell any "investor" about loans made by Texas Coastal Bank to WinterHawk. Defendant further denies the remaining averments contained in paragraph 20.

21. Denied.

22. Denied.

23. Defendant admits that Re/Max Gulf Coast is an assumed name of Hojen Corporation, which is owned by Defendant and his wife, Dorothy Holcomb. Defendant denies the remaining averments contained in paragraph 23.

24. Denied.

25. Defendant admits that Texas Coastal Bank did "cut cashier's checks" out of funds from WinterHawk's account, under Cord's authority as a representative of WinterHawk. Defendant denies the remaining averments contained in paragraph 25.

26. Defendant denies the averments contained in the first sentence of paragraph 26. Defendant further denies that he owed a legal duty to the "investors" referenced in sentence 2 of paragraph 26. Defendant denies the remaining averments contained in paragraph 26.

27. Defendant admits that he, Cord and Wayne Melson contemplated establishing an off-shore bank in Belize. Defendant further admits that he has 40 years of banking experience. Defendant further admits that a proposed bank license was sought in the name of Belize City Bank International, Ltd. with Defendant, Cord and Wayne Melson named as directors, officers,

shareholders and trustees of that proposed entity. Defendant denies the remaining averments contained in paragraph 27.

28. Defendant admits that he and Cord took two business trips to Belize. Defendant further admits that Dorothy Holcomb and his daughter accompanied him on one of the two trips to Belize. Defendant further admits that Cord paid the expenses associated with these two trips. Defendant denies the remaining averments contained in paragraph 28.

29. Defendant admits that he worked hard to prepare a business plan and that Cord paid him a \$25,000 consulting fee for Defendant's preparation of the plan related to the proposed off-shore bank in Belize. Defendant denies the remaining averments contained in paragraph 29.

30. Defendant admits that he saw a copy of WinterHawk's Articles of Incorporation sometime in 1996. Defendant denies that the Belize venture was contemplated by him to "further the purpose" of Cord's investment programs because Defendant was not a participant in Cord's programs. Defendant denies the remaining averments contained in paragraph 30.

31. Defendant admits the first sentence of paragraph 31. Defendant admits that he was advised by Cord that Cord would be responsible for the initial "cash infusions" into the proposed off-shore bank in Belize. Defendant denies the remaining averments contained in paragraph 31.

32. Defendant admits that the Belize banking venture never materialized. Defendant denies that he had anything to do with a "passport scam." Defendant further denies the remaining averments contained in paragraph 32.

33. Defendant is without personal knowledge or information sufficient to form a belief as to the truth of the averments contained in sentence 1 of paragraph 33. Defendant admits sentence 2 of paragraph 33. Defendant denies sentence 3 of paragraph 33. Defendant admits that, at the

direction of the FBI, Defendant and Texas Coastal Bank continued to do business as usual with Cord. Defendant denies the remaining averments contained in paragraph 33.

34. Defendant is without personal knowledge or information sufficient to form a belief as to the truth of the averments continued in paragraph 34.

35. Defendant is without personal knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 35.

36. Defendant admits that the "Deposit Monies" referenced in paragraph 36 were turned over to the Receiver. Defendant further admits that Texas Coastal Bank is claiming a security interest in the CDs referenced in paragraph 36. Defendant denies the remaining averments contained in paragraph 36.

37. Defendant is without personal knowledge or information sufficient to form a belief as to the truth of the averments contained in sentences 1 through 3 of paragraph 37. Defendant admits that Steven Roberts contacted Texas Coastal Bank and spoke to Defendant. Defendant is without personal knowledge or information sufficient to form a belief as to the truth of the remaining averments in sentence 4 of paragraph 37. Defendant denies the remaining averments contained in paragraph 37.

38. Defendant is without personal knowledge or information sufficient to form a belief as to the truth of the averments contained in sentence 1 of paragraph 38. Defendant admits that the wire transfers and the dates and amounts referenced in paragraph 38 appear to be accurate.

39. Defendant admits that he now knows "investors" were "duped" by Cord. Defendant denies that he assisted Cord in any way in deceiving the investors referenced in paragraph 39. With respect to the identity of investors, the date of wire transfers, and the amounts referenced in

paragraph 39, this information appears to be correct. Defendant denies that he assisted Cord in any fraudulent scheme. With respect to the last sentence of paragraph 39, which notes that "all the foregoing investor monies had been lost," Defendant is without personal knowledge or information sufficient to form a belief as to the truth of this averment.

40. Defendant is without personal knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 40.

41. Defendant admits that he was contacted about opening an account for Saber Industries. Defendant denies the remaining averments contained in paragraph 41.

42. Defendant denies the averments contained in the first sentence of paragraph 42. Defendant is without personal knowledge or information sufficient to form a belief as to the truth of the averments contained in sentences 2 and 3 of paragraph 42. Defendant admits that Texas Coastal Bank would "issue a Receipt for Funds" deposited in Saber Industries' account. Defendant denies the remaining averments contained in paragraph 42.

43. Defendant denies that he participated in any way in the scam referenced in paragraph 43. With respect to the names of investors and the amount of money referenced in paragraph 43, this information appears to be correct.

44. Defendant admits that Saber Industries opened an account at Texas Coastal Bank on June 27, 1997. Defendant denies that the "foregoing funds" were deposited into the Saber Industries' account. Defendant admits that Texas Coastal Bank issued a Receipt for the funds received by the investors referenced in paragraph 44. Defendant admits that he returned the money sent to Texas Coastal Bank. Defendant denies the remaining averments contained in paragraph 44.

45. Defendant neither admits nor denies the first two sentences of paragraph 45 because

they are not directed to him. Defendant denies the remaining averments contained in paragraph 45.

46. Defendant denies that he engaged in any improper conduct. Defendant can neither admit nor deny the remaining averments contained in paragraph 46 because they are directed to Texas Coastal Bank, not Defendant.

**COUNT ONE - DECLARATORY JUDGMENT**  
**(AS TO TCB ONLY)**

47. There is nothing in paragraph 47 for Defendant to either admit or deny.

48. There is nothing in paragraph 48 for Defendant to either admit or deny.

49. There is nothing in paragraph 49 for Defendant to either admit or deny.

50. There is nothing in paragraph 50 for Defendant to either admit or deny.

**COUNT TWO - DISALLOWANCE OR SUBORDINATION OF CLAIMS**  
**(AS TO TCB ONLY)**

51. There is nothing in paragraph 51 for Defendant to either admit or deny.

52. Defendant denies that he assisted Cord in any fraudulent schemes. There is nothing else in paragraph 52 for Defendant to either admit or deny.

53. There is nothing in paragraph 53 for Defendant to either admit or deny.

**COUNT THREE - UNJUST ENRICHMENT**  
**(AS TO TCB ONLY)**

54. There is nothing in paragraph 54 for Defendant to either admit or deny.

55. Defendant denies he engaged in any improper conduct. There is nothing else in paragraph 55 for Defendant to either admit or deny.

56. There is nothing in paragraph 56 for Defendant to either admit or deny.



**COUNT FOUR - AIDING AND ABETTING CORPORATE WASTE**  
**(AS TO TCB AND HOLCOMB)**

57. There is nothing in paragraph 57 for Defendant to either admit or deny.

58. Defendant denies paragraph 58 to the extent the word "cronies" refers to him personally. Defendant denies he owed any legal duty to those persons referenced in paragraph 58. Defendant is without personal knowledge or information sufficient to form a belief as to the remaining averments contained in paragraph 58.

59. Denied.

60. Denied.

61. There is nothing in paragraph 61 for Defendant to either admit or deny.

**COUNT FIVE - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(AS TO TCB AND HOLCOMB)**

62. There is nothing in paragraph 62 for Defendant to either admit or deny.

63. Defendant denies paragraph 63 to the extent the word "cronies" refers to him personally. Defendant denies he owed any legal duty to the persons identified in paragraph 63. Defendant is without personal knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph 63.

64. Denied.

65. Denied.

66. There is nothing in paragraph 66 for Defendant to either admit or deny.

**COUNT SIX - FRAUD**  
**(AS TO TCB AND HOLCOMB)**

67. There is nothing in paragraph 67 for Defendant to either admit or deny.

68. Denied.

69. There is nothing in paragraph 69 for Defendant to either admit or deny.

**COUNT SEVEN - NEGLIGENCE**  
**(AS TO TCB AND HOLCOMB)**

70. There is nothing in paragraph 70 for Defendant to either admit or deny.

71. Denied.

72. Denied.

73. Denied.

74. There is nothing in paragraph 74 for Defendant to either admit or deny.

**COUNT EIGHT - UNJUST ENRICHMENT**  
**(AS TO HOLCOMB ONLY)**

75. There is nothing in paragraph 75 for Defendant to either admit or deny.

76. Denied.

77. There is nothing in paragraph 77 for Defendant to either admit or deny.

**COUNT NINE - FRAUDULENT TRANSFER**  
**(AS TO HOLCOMB ONLY)**

78. There is nothing in paragraph 78 for Defendant to either admit or deny.

79. Denied.

80. Denied.

81. Denied.

82. There is nothing in paragraph 82 for Defendant to either admit or deny.

**COUNT TEN - RECISSION OF NEGOTIATION AND RECUPEMENT OF PROCEEDS**  
**(AS TO TCB AND HOLCOMB)**

83. There is nothing in paragraph 83 for Defendant to either admit or deny.

84. Denied.

85. Denied.

86. There is nothing in paragraph 86 for Defendant to either admit or deny.

87. There is nothing in paragraph 87 for Defendant to either admit or deny.

88. There is nothing in paragraph 88 for Defendant to either admit or deny.

**JURY DEMAND**

89. There is nothing in paragraph 89 for Defendant to either admit or deny.

90. Defendant denies all facts and allegations contained in the Complaint which must be admitted or denied and which are not otherwise specifically admitted.

**DEFENDANT'S FIRST DEFENSE**

91. The First Amended Complaint fails to state a claim against Defendant upon which relief can be granted.

**DEFENDANT'S SECOND DEFENSE**

92. If any loss or damage was sustained by Plaintiff, which loss or damage is not admitted, but is denied by Defendant, it was caused or contributed to by the fault or conduct of Plaintiff or others whose interests he purports represent, the conduct of agents or attorneys of Plaintiff, or the parties whose interests he purports to represent, by the conduct of others for whom Defendant is not responsible and over whom Defendant had no control.

**DEFENDANT'S THIRD DEFENSE**

93. Defendant denies the existence of the joint venture alleged in the First Amended Complaint.

94. Defendant denies that Plaintiff is entitled to recover in the capacity in which he sues.

**DEFENDANT'S FOURTH DEFENSE**

95. Defendant asserts that Plaintiffs or the parties whose interests he purports to represent failed to exercise such due diligence or ordinary care with respect to their investments as would be expected of a reasonably prudent person under the same or similar circumstances. Therefore, such persons may not recover from Defendant any losses occasioned by their own lack of due diligence or ordinary care.

**DEFENDANT'S FIFTH DEFENSE**

96. Plaintiff's claims are barred by the doctrines of laches, waiver, estoppel, and/or ratification.

**DEFENDANT'S SIXTH DEFENSE**

97. Plaintiff or the parties whose interests he purports to represent failed reasonably to mitigate any damages which they may have incurred.

**DEFENDANT'S SEVENTH DEFENSE**

98. Defendant asserts that he acted in good faith and did not directly or indirectly induce and was not involved in any act or acts constituting any violations or cause of action asserted by Plaintiff.

**DEFENDANT'S EIGHTH DEFENSE**

99. Defendant asserts that Plaintiff or the parties whose interests he purports to represent knew or should have known of any alleged misconduct, untruth or admission, if any occurred.

**DEFENDANT'S NINTH DEFENSE**

100. Defendant denies that he marketed, distributed, offered, sold, or solicited the purchase or sale of any investment by or to Plaintiff or any other person whose interests he purports to

represent and further denies that Defendant was a seller, solicitor, a proximate cause, a producing cause or a substantial factor in any purchase or sale of any investment by or to Plaintiff for any of the parties he purports to represent.

**DEFENDANT'S TENTH DEFENSE**

101. The parties Plaintiff purports to represent are experienced and knowledgeable in business and financial matters and investments similar to the ones at issue; were accredited investors; were capable of evaluating the merits and risk of investing in the investments in question; obtain qualified and experienced independent advise with respect thereto; performed their own independent due diligence and detailed investigations concerning the investments and relied upon their own due diligence, investigation and evaluation in making the investments in question. As a result, such persons knowingly and voluntarily assumed all risk attendant to investing in the investments in question, did not rely upon Defendant with respect thereto and such parties are therefore not entitled to recover from Defendant any losses sustained in connection with such investments.

**DEFENDANT'S ELEVENTH DEFENSE**

102. Defendant denies that he engaged in any conduct which was an a proximate cause or a producing cause of any loss or damage, if any, sustained by Plaintiff or the parties whose interests he purports to represent.

**DEFENDANT'S TWELFTH DEFENSE**

103. Defendant denies that he engaged in any conduct which constitutes negligence, common law fraud, statutory fraud, or breach of fiduciary duty.

**DEFENDANT'S THIRTEENTH DEFENSE**

104. Defendant denies that Plaintiff or the parties whose interests he purports to represent

relied in any way on Defendant in making the investments in question.

**DEFENDANT'S FOURTEENTH DEFENSE**

105. Defendant denies that he had a duty, fiduciary or otherwise, to Plaintiff or the parties whose interests he purports to represent, and further denies that he breached any duty owed to Plaintiff or the parties whose interests he purports to represent.

**DEFENDANT'S FIFTEENTH DEFENSE**

106. Defendant denies that Plaintiff or the parties whose interests he purports to represent reasonably relied on any misrepresentations, acts or omissions, if any, by Defendant.

**DEFENDANT'S SIXTEENTH DEFENSE**

107. Defendant denies that he engaged in any conduct or made any misrepresentation or omission that constitutes common law or statutory fraud.

**DEFENDANT'S SEVENTEENTH DEFENSE**

108. Damages of Plaintiff or the parties whose interests he purports to represent, if any, were proximately caused in whole or in part by new, superceding or intervening acts or events over which Defendant had no control or right of control.

**DEFENDANT'S EIGHTEENTH DEFENSE**

109. Defendant denies that Plaintiff is entitled to any award of attorneys' fees.

**DEFENDANT'S NINETEENTH DEFENSE**

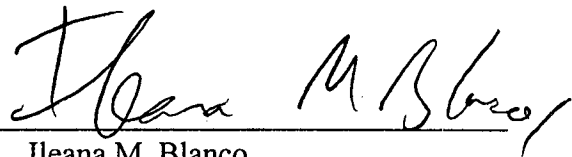
110. Defendant asserts that he is entitled to an appropriate credit, offset and/or reduction in any potential liability in the event of the settlement by any person or party and/or with respect to the contributory negligence, fault or comparative responsibility of any other person or party hereto.

DEFENDANT'S TWENTIETH DEFENSE

111. Defendant denies that he directly or indirectly with intent to deceive or defraud or with reckless disregard for the truth of the law materially aided any other party connected with the transactions made the basis of Plaintiff's First Amended Complaint.

WHEREFORE, Defendant Billy Holcomb respectfully requests that this Court deny Plaintiff the damages and relief requested, dismiss Plaintiff's lawsuit and enter an order awarding Billy Holcomb his reasonable and necessary attorneys' fees and court costs incurred as a result of this litigation, along with such other and further relief to which Billy Holcomb may be entitled.

Respectfully submitted,

By:   
Ileana M. Blanco  
TBA No. 02449590

*By permission  
CSO*

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**CERTIFICATE OF SERVICE**

This pleading was served on opposing counsel in compliance with Rule 5 of the Federal Rules of Civil Procedure on February 21st, 2000 by facsimile and certified mail, return receipt requested.



Ileana M. Blanco

*By Dumesnil*  
BSD