

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE**

<b>MARION P. DEMOSS, BARBARA J. GALYEN, and PATRICIA J. KELLEY</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Case No.: 3:07-0405</b>
	)	<b>Judge Trauger</b>
<b>TERRY L. KRETZ, GEORGE THORPE, and MICHAEL C. LYNN</b>	)	<b>JURY DEMAND</b>
	)	
<b>Defendants.</b>	)	

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'  
MOTION FOR SUMMARY JUDGMENT**

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COME NOW, Plaintiffs Marion P. DeMoss, Barbara J. Galyen, and Patricia J. Kelley, by and through their counsel, and submit this Memorandum of Law in support of their Motion for Summary Judgment on the issues of whether the promissory notes are securities under federal and state law.

This is a case about individuals who invested significant sums of money, including their life savings, in promissory notes sold by Hanover Corporation, LLC as part of a ponzi scheme operated by the Defendants.

**STATEMENT OF FACTS**

On November 14, 2005, Plaintiff DeMoss entered into a promissory note agreement with Hanover Corporation, LLC. (Doc. 4, Late Filed Exhibit A to the Verified Complaint). The promissory note issued to Plaintiff DeMoss is in the amount of Three Hundred and Fifty Thousand Dollars (\$350,000.00), bears interest at the rate of 1.65% per month, and matures thirty-six (36)

months after the date of its execution. Id. Plaintiff DeMoss received a letter from Defendant Terry Kretz dated November 17, 2005 in which Defendant Kretz thanked Plaintiff DeMoss for her “recent investment” in Hanover Corporation, LLC. (Aff. Marion P. DeMoss ¶ 2; Exhibit A to Aff. Marion P. DeMoss).

On March 15, 2006, Plaintiff Kelley sent a e-mail to Defendant Kretz. (Aff. Patricia J. Kelley ¶ 2; Exhibit A to Aff. Patricia J. Kelley). In the e-mail, Plaintiff Kelley stated she heard of Hanover from a friend “that has been investing money with your company for the past few years.” Id. Plaintiff Kelley expressed an interest in “getting more information about the investment opportunities you offer.” Id. On March 22, 2006, Erin O’Barr, assistant to Michael Lynn, sent Plaintiff Kelley an e-mail asking if she received the information. (Exhibit A to Aff. Patricia J. Kelley). On April 7, 2006, Plaintiff Kelley responded to Ms O’Barr’s e-mail and stated that she was “interested in investing \$100,000.” (Aff. Patricia J. Kelley ¶ 3; Exhibit A to Aff. Patricia J. Kelley).

On April 10, 2006, Plaintiff Kelley entered into a promissory note agreement with Hanover Corporation, LLC. (Doc. 4). The promissory note issued to Plaintiff Galyen is in the amount of One Hundred Thousand Dollars (\$100,000.00), bears interest at the rate of 1.5% per month, and matures nine (9) months after the date of its execution. Id. Plaintiff Kelley received a letter from Defendant Michael Lynn dated April 12 in which Defendant Lynn thanked Plaintiff Kelley for her “investment” in Hanover Corporation, LLC. (Aff. Patricia J. Kelley ¶ 4; Exhibit B to Aff. Patricia J. Kelley).

On April 13, 2006, Plaintiff Galyen entered into a promissory note agreement with Hanover Corporation, LLC. (Doc. 4). The promissory note issued to Plaintiff Galyen is in the amount of Fifty Thousand Dollars (\$50,000.00), bears interest at the rate of 2% per month, and matures nine (9) months after the date of its execution. Id. Galyen received a letter from Defendant Kretz dated April

18 in which Defendant Kretz thanked Plaintiff Galyen for her “investment” in Hanover Corporation, LLC. . (Aff. Barbara J. Galyen ¶ 2; Exhibit A to Aff. Barbara J. Galyen ).

The promissory note agreements represented the ways in which the noteholders’ funds would be used by Hanover Corporation, LLC. (Dep. of T. Kretz dated 9/2/08, p.17 attached as Exhibit A hereto). According to the notes issued to each of the Plaintiffs:

[T]he proceeds of the Loan shall be invested at the exclusive direction of the Maker, provided however, the Maker shall only make investments in the following areas: (1) money market funds, (2) options, (3) options on real estate, (4) Bonds, (5) Treasury’s, (6) Bond Notes, (7

(Doc. 4). There were no representations as to the use of the funds other than those contained in the promissory note agreements. (Dep. of T. Kretz dated 9/2/08, p.17 ).

On July 28, 2006, Defendant Kretz sent a letter to each of the noteholders regarding a meeting of the scheduled for August 10, 2006 in which Defendant Kretz states:

At this next meeting, I will be present and will fully cover the state of affairs of Hanover and fully inform you of certain things that I believe you should know in making your decision regarding the future of your investment.

(Aff. Marion P. DeMoss ¶ 3; Exhibit B to Aff. Marion P. DeMoss; Aff. Patricia J. Kelley ¶ 5; Exhibit C to Aff. Patricia J. Kelley; Aff. Barbara J. Galyen ¶ 3; Exhibit B to Aff. Barbara J. Galyen ). On August 15, 2006, Defendant Kretz sent a letter to all of the noteholders of Hanover Corporation, LLC to follow up on the meeting of noteholders held on August 10, 2006. According to the letter, there were over 130 people at the meeting, “all of which are noteholders.” (Aff. Marion P. DeMoss ¶ 4; Exhibit C to Aff. Marion P. DeMoss; Aff. Patricia J. Kelley ¶ 6; Exhibit D to Aff. Patricia J. Kelley; Aff. Barbara J. Galyen ¶ 4; Exhibit C to Aff. Barbara J. Galyen ).

## STATEMENT OF LAW

### *Summary Judgment Standard*

Pursuant to Federal Rule of Civil Procedure 56(c), Summary Judgment is proper if “the pleadings, depositions, answers to the interrogatories and admissions on the file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to Judgment as a matter of law.” Fed.R.Civ.P. 56(c); see also, Blankenship vs. Park Care Center, Inc., 123 F. 3d 868, 871 (6th Cir. 1997), cert. denied, 522 US 1110 (1998). Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the movant has met the initial burden of “demonstrat[ing] the absence of a genuine issue of material fact, Id. at 323, and the nonmoving party is unable to meet its own burden of demonstrating a dispute of fact, summary judgment is proper. See Emmons v. McLaughlin, 874 F.2d 351, 353 (6th Cir. 1989). The evidence is viewed in the light most favorable to the non-moving party. Blankenship, supra.

Where a motion for summary judgment is properly made and supported, Federal Rule of Civil Procedure 56(e) requires that “an adverse party may not rest upon the mere allegations or denials of the adverse party’s pleadings, but the adverse party’s response, by affidavits or as otherwise provided [by the Rule], must set forth specific facts showing that there is a genuine issue for trial.” Fed.R.Civ.P. 56(e); see also Abeita v. TransAmerica Mailings, Inc., 159 F.3d 246 (6th Cir. 1998). A genuine issue of material fact exists for trial “if the evidence [presented by the nonmoving party] is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In essence, the inquiry is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” Id. at 251-52.

#### *Promissory Notes as Securities*

In Reves v. Ernst & Young, 494 U.S. 56, 65 (1990), the U.S. Supreme Court adopted the

“family resemblance test for determining whether a promissory note is a security and subject to federal securities regulations. The Sixth Circuit has adopted the Reves test for analyzing whether a given note is a security. See Bass v. Janney Montgomery Scott, Inc., 210 F.3d 577, 585 (6th Cir. 2000). Under the Reves test, every note is presumed to be a security because under the 1933 and 1934 Securities Acts, the term “security” is defined to include “any note.” Id. That presumption may only be rebutted by proving that, based upon four factors, the note resembles a family of instruments which are not considered securities. Id. at 67. The four factors are:

1. What are the parties’ motives for entering into the transaction? “If the seller's purpose is to raise money for the general use of a business enterprise or to finance substantial investments and the buyer is interested primarily in the profit the note is expected to generate, the instrument is likely to be a ‘security.’” Id. at 66.
2. What is the plan of distribution of the note(s)? If the notes are “offered and sold to a broad segment of the public,” then the note is likely a security. Id. at 66, 68.
3. What were the “reasonable expectations of the investing public?” Id. at 66. “Reasonable public expectations will govern the characterization, even where the underlying economic realities belie those expectations.” Bass, 210 F.3d at 585.
4. Are there any factors (i.e. another regulatory framework) which “significantly reduces the risk of the instrument, thereby rendering application of the Securities Acts unnecessary. Reves, 494 U.S. at 67.

If, based on the four factors, a note does not bear a resemblance to an instrument which is excluded from the definition of a security, then the note is a ‘security’ and is regulated by the Securities Acts. The 1933 Securities Acts provides an exemption for notes that mature within nine (9) months. 15 U.S.C. § 77c(a)(3). However, this exemption does not apply to fraudulent interstate transactions. 15 U.S.C. § 77q(c). The 1934 Securities Act also provides an exemption for notes that mature within nine (9) months. 15 U.S.C. § 78c(a)(10). However, in Reeves, the Supreme Court ruled that the demand notes at issue in the case were not included within the nine month maturity exemption under

the securities acts because, even though the notes could technically mature on demand, the parties did not intend for the notes to mature for less than nine months. Id. at 73.

Furthermore, the 6th Circuit has consistently applied this exemption only to notes which are for a purely commercial transaction.

Although a literal reading of the statutes would mean that notes with maturities of nine months or less cannot be securities, the courts have rejected this approach and focused instead on whether the notes are "investments" versus "commercial transactions".

S.E.C. v. Great Lakes Equities Co., 1990 WL 260587, 21 (E.D.Mich.,1990). See also American Bank & Trust Co. v. Wallace, 702 F.2d 93, 94-95 (6th Cir.1983).

## ARGUMENT

### **I. The Promissory Note sold to Plaintiff Marion DeMoss is a security under federal law and Tennessee state law.**

Under both federal securities law and Tennessee state securities law, the Promissory Note sold to Plaintiff Marion DeMoss is a security. On November 14, 2005, Plaintiff DeMoss was sold a promissory note. (Doc. 4). The note is in the amount of Three Hundred and Fifty Thousand Dollars (\$350,000.00), bears interest at the rate of 1.65% per month, and matured thirty-six (36) months after the date of its execution. Id.

#### ***a. Plaintiff DeMoss's promissory note is a security governed by federal law under the Reves test.***

Under the Reves test, all notes are presumed to be securities unless they bear a family resemblance to an instrument which has been determined not to be a security. The court looks at four factors to determine whether the note bears such a resemblance: (1) the seller's motives, (2) the plan of distribution, (3) the reasonable expectations of the investing public, and (4) the existence of factors

which reduce the risk and negate the need for protection under the securities acts.

As to the first factor examining the seller's motives, the Court in Reves explained,

If the seller's purpose is to raise money **for the general use of a business enterprise or to finance substantial investments** and the buyer is interested primarily in the profit the note is expected to generate, the instrument is likely to be a 'security.'

Reves, 494 U.S. at 66. (Emphasis added). In contrast,

If the note is exchanged to facilitate the purchase and sale of a minor asset or consumer good, to correct for the seller's cash-flow difficulties, or to advance some other commercial or consumer purpose, on the other hand, the note is less sensibly described as a security."

Id.

According to the Promissory Note Agreement between Hanover Corporation, LLC and Plaintiff DeMoss:

[T]he proceeds of the Loan shall be invested at the exclusive direction of the Maker, provided however, the Maker shall only make investments in the following areas: (1) money market funds, (2) options, (3) options on real estate, (4) Bonds, (5) Treasury's, (6) Bond Notes, (7) Equity Investments, and (8) Maker's operating capital.

(Doc. 4). The Promissory Note Agreement itself states that the funds invested by Plaintiff DeMoss would be used specifically for investment in other instruments and for the operating capital of Hanover Corporation, LLC. Defendant Kretz testified that the promissory note agreements represented the ways in which the noteholders funds would be used. (Dep. of T. Kretz dated 9/2/08, p.17). There were no representations as to the use of the funds other than those contained in the promissory note agreements. Id. Therefore, the first factor weighs in favor of Marion DeMoss's note being a security.

Under the second factor of the Reves test, notes which are sold via a broad plan of

distribution to the public at large are likely to be securities. Reves, 494 U.S. at 66, 68. Hanover sold promissory notes to over 130 people scattered all over the country. According to the October 31, 2005 Balance Sheet, there were at least 135 individuals to whom Hanover Corporation, LLC owed long-term liabilities. (Exhibit 3 to Dep. of T. Kretz dated 2/23/07, p.16-17 attached hereto as Exhibit B). On August 15, 2006, Defendant Kretz sent a letter to certain noteholders of Hanover Corporation, LLC to follow up on the meeting of noteholders held on August 10, 2006. (Aff. Marion P. DeMoss ¶ 4; Exhibit C to Aff. Marion P. DeMoss; Aff. Patricia J. Kelley ¶ 6; Exhibit D to Aff. Patricia J. Kelley; Aff. Barbara J. Galyen ¶ 4; Exhibit C to Aff. Barbara J. Galyen ). According to the letter, there were over 130 people at the meeting, “all of which are noteholders.” Id. The notes were sold to individuals in numerous states including Tennessee, Wisconsin, and California. (Doc. 4). The number and distribution of noteholders of Hanover Corporation, LLC establish that the notes were sold to a large and diverse group of individuals. Therefore, the second factor weighs in favor of Plaintiff DeMoss’s note being a security.

The third factor examines the expectations of the investing public. In Reves, the Court found it to be persuasive that the notes were securities because “[t]he advertisements for the notes here characterized them as investments...and there were no countervailing factors that would have led a reasonable person to question this characterization.” Reves, 494 U.S. at 69. As discussed above, Plaintiff DeMoss’s promissory note agreement states that the proceeds from the note would be “**invested** at the exclusive direction of [Hanover Corporation, LLC].” (Doc. 4). (Emphasis added). A reasonable person would interpret this as an investment by the person.

Furthermore, after Plaintiff DeMoss purchased the promissory note, she received a letter from Defendant Terry Kretz dated November 17, 2005. (Aff. Marion P. DeMoss ¶ 2; Exhibit A to Aff.

Marion P. DeMoss). In the letter, Defendant Kretz thanked Plaintiff DeMoss for her “recent **investment**” in Hanover Corporation, LLC. Id. (Emphasis added). On July 28, 2006, Defendant Kretz sent a letter to each of the noteholders regarding a meeting scheduled for August 10, 2006. (Aff. Marion P. DeMoss ¶ 3; Exhibit B to Aff. Marion P. DeMoss; Aff. Patricia J. Kelley ¶ 5; Exhibit C to Aff. Patricia J. Kelley; Aff. Barbara J. Galyen ¶ 3; Exhibit B to Aff. Barbara J. Galyen ). In the letter, Defendant Kretz states:

At this next meeting, I will be present and will fully cover the state of affairs of Hanover and fully inform you of certain things that I believe you should know in making your decision regarding the future of your **investment**.

Id. (Emphasis added). The promissory notes sold to the Plaintiffs were consistently represented by the Defendants to be an investment. Although the Defendants will argue that the promissory note was a loan to the company and not a security, based upon the promissory note and the communications from Defendant Kretz, a reasonable person would characterize the promissory notes issued by Hanover Corporation, LLC as an investment.

Under the final factor of Reves, the court looks for risk reducing factors. In Reves, the Court held that:

[W]e find no risk-reducing factor to suggest that these instruments are not in fact securities. The notes are uncollateralized and uninsured. Moreover...the notes here would escape federal regulation entirely if the Acts were held not to apply.

Reves, 494 U.S. at 69. The promissory notes sold the Plaintiffs are similar to those in Reves. No collateral or insurance was offered to the Plaintiffs to secure their investment. If Hanover did not fulfill its obligations under the terms of the promissory notes, the Plaintiffs would lose their investment. The promissory notes do not fall under any other regulatory framework to provide the Plaintiffs recourse for the fraudulent activities of the Defendants and Hanover Corporation, LLC. The

Plaintiffs bore the full burden of the risk of their investment.

Finally, because Plaintiff DeMoss's promissory note has a thirty-six (36) month term, it does not fall into the exception for a nine month note under the federal statute. Based upon the Reves test, the promissory note sold to Plaintiff DeMoss does not bear a family resemblance to any other instrument which is not a security. As a result, the note is a security the sale of which is governed by the federal Securities Acts.

***b. Plaintiff DeMoss's promissory note is a security under Tennessee state law.***

In Bass v. Janney Montgomery Scott, Inc., 210 F.3d 577, 584-85 (6th Cir. 2000), the 6th Circuit applied the Reves test to analyze whether a promissory note is a security under Tennessee state law and under the federal securities laws. The court ruled that because the definition of a security under Tennessee law closely follows the definition under federal law, the same test should be should to analyze whether a particular instrument is a security. Id. As a result, the promissory note sold to Plaintiff DeMoss is also security under Tennessee state law based upon the same argument presented above.

**II. The Promissory Note sold to Plaintiff Patricia Kelley is a security under federal law and Wisconsin state law.**

Under both federal securities law and Wisconsin state securities law, the Promissory Note sold to Plaintiff Patricia Kelley is a security. On April 10, 2006, Plaintiff Kelley was sold a promissory note. (Doc. 4). The note is in the amount of One Hundred Thousand Dollars (\$100,000.00), bears interest at the rate of 1.5% per month, and matured nine (9) months after the date of its execution.

Id.

***a. Plaintiff Kelley's promissory note is a security governed by federal law under the Reves test.***

As with Plaintiff DeMoss's promissory note, the Reves test also applies to determine whether the promissory note sold to Plaintiff Kelley is a security under the federal securities laws.

As to the first factor examining the seller's motives, according to the Promissory Note Agreement between Hanover Corporation, LLC and Plaintiff Kelley:

[T]he proceeds of the Loan shall be invested at the exclusive direction of the Maker, provided however, the Maker shall only make investments in the following areas: (1) money market funds, (2) options, (3) options on real estate, (4) Bonds, (5) Treasury's, (6) Bond Notes, (7) Equity Investments, and (8) Maker's operating capital.

(Doc. 4). The Promissory Note Agreement itself states that the funds invested by Plaintiff Kelley would be used specifically for investment in other instruments and for the operating capital of Hanover Corporation, LLC. Defendant Kretz testified that the promissory note agreements represented the ways in which the noteholders funds would be used. (Dep. of T. Kretz dated 9/2/08, p.17). There were no representations as to the use of the funds other than those contained in the promissory note agreements. Id. Therefore, the first factor weighs in favor of Plaintiff Kelley's note being a security.

Under the second factor of the Reves test, the same facts discussed above are applicable. The promissory notes were sold to over 130 individuals in numerous states. Therefore, the second factor weight in favor of Plaintiff Kelley's note being a security.

Regarding the third factors, on March 15, 2006, Plaintiff Kelley sent a e-mail to Defendant Kretz. (Aff. Patricia J. Kelley ¶ 2; Exhibit A to Aff. Patricia J. Kelley). In the e-mail, Plaintiff Kelley stated she heard of Hanover from a friend "that has been **investing** money with your company for the past few years." Id. Plaintiff Kelley expressed an interest in "getting more information about the **investment** opportunities you offer." Id. Thereafter, Plaintiff Kelley was sent a copy of the note for

her review. On March 22, 2006, Erin O’Barr, assistant to Michael Lynn, sent Plaintiff Kelley an e-mail asking if she received the information. (Exhibit A to Aff. Patricia J. Kelley). On April 7, 2006, Plaintiff Kelley responded to Ms O’Barr’s e-mail and stated that she was “interested in **investing** \$100,000.” (Aff. Patricia J. Kelley ¶ 3; Exhibit A to Aff. Patricia J. Kelley). Plaintiff Kelley’s promissory note agreement also states that the proceeds from the note would be “**invested** at the exclusive direction of [Hanover Corporation, LLC].” (Doc. 4). (Emphasis added). A reasonable person would interpret this as an investment.

After signing the promissory note on April 10, 2006 and wiring the funds to Hanover Corporation, LLC, Plaintiff Kelley received a letter from Defendant Michael Lynn dated April 12. (Aff. Patricia J. Kelley ¶ 4; Exhibit B to Aff. Patricia J. Kelley). In the letter, Defendant Lynn thanked Plaintiff Kelley for her “**investment**” in Hanover Corporation, LLC. Id. On July 28, 2006, Defendant Kretz sent a letter to each of the noteholders regarding a meeting of the noteholders scheduled for August 10, 2006. (Aff. Marion P. DeMoss ¶ 3; Exhibit B to Aff. Marion P. DeMoss; Aff. Patricia J. Kelley ¶ 5; Exhibit C to Aff. Patricia J. Kelley; Aff. Barbara J. Galyen ¶ 3; Exhibit B to Aff. Barbara J. Galyen ). In the letter, Defendant Kretz states:

At this next meeting, I will be present and will fully cover the state of affairs of Hanover and fully inform you of certain things that I believe you should know in making your decision regarding the future of your **investment**.

Id. (Emphasis added). The promissory notes sold to the Plaintiffs were consistently represented by the Defendants to be an investment. Based upon the promissory note and the communications to and from Hanover Corporation, LLC, Defendant Kretz and Defendant Lynn, a reasonable person would characterize the promissory note as an investment.

Under the final factor of Reves, as discussed above, there are no risk reducing factors or other

regulatory framework which govern the promissory notes.

Unlike Plaintiff DeMoss's note, Plaintiff Kelley's note matures nine (9) months from the date of its execution. While the definition of a security under the federal securities acts contains an exemption for notes with a maturity of nine (9) months, the U.S. Supreme Court and federal courts interpret th exception to apply only to commercial instruments. In SEC v. RG Reynolds, 952 F.2d 1125 (9th Cir. 1991), the Ninth Circuit discussed the legislative history interpreting the nine month maturity exemption.

The legislative history of the 1933 Act indicates that the exemption was meant to apply to short term paper of the type available for discount at a Federal Reserve bank and of a type which rarely is bought by private investors. Drawing on the legislative history of the 1933 Act, the SEC has interpreted its exemption to apply only to commercial paper.

Id. at 1132 (Internal quotations and citations omitted). A majority of the federal circuits, including the Sixth Circuit, have interpreted the exemption to apply only to commercial paper. S.E.C. v. Great Lakes Equities Co., 1990 WL 260587, 21 (E.D.Mich.,1990). See also American Bank & Trust Co. v. Wallace, 702 F.2d 93, 94-95 (6th Cir.1983). The court in RG Reynolds further reasoned that

Including all notes with a maturity of less than nine months within the exemptions of the Securities Acts would serve no discernable legislative purpose. In the instant case, those investors who were issued six month promissory notes were no less in need of statutory protection than investors who received twelve month promissory notes.

952 F.2d at 1133.

As discussed above, both the Plaintiffs and Defendants regarded the promissory notes as investments. There are no facts to indicate that these notes were commercial instruments of the type intended by Congress to be exempt from the federal Securities Acts. In regards to Plaintiff Kelley's promissory note, it is clear that there is no discernable difference between it and Plaintiff DeMoss's

promissory note except the amount invested, the amount of interest, and the length of the note. There is no reason why Plaintiff DeMoss's note should be entitled to protection under the Securities Acts while Plaintiff Kelley's note is not.

***b. Plaintiff Kelley's promissory note is a security under Wisconsin state law.***

Wisconsin state courts apply the Reves test when analyzing whether a note is a security under Wisconsin state law. See State v. Mueller, 549 N.W.2d 455, 465-66 (Wis. App. 1996); State v. Johnson, 652 N.W.2d 642, 647 (Wis. App. 2002) (“[W]e adopted the family resemblance framework set out in *Reves* for use in Wisconsin to determine whether the note under consideration was a security with the meaning of [Wisconsin securities law].”) As a result, the promissory note sold to Plaintiff Kelley is also security under Wisconsin state law based upon the same arguments presented above.

**III. The Promissory Note sold to Plaintiff Barbara Galyen is a security under federal law and California state law.**

Under both federal securities law and California state securities law, the Promissory Note sold to Plaintiff Barbara Galyen is a security. On April 13, 2006, Plaintiff Galyen was sold a promissory note. (Doc. 4). The note is in the amount of Fifty Thousand Dollars (\$50,000.00), bears interest at the rate of 2% per month, and matured nine (9) months after the date of its execution. (Doc. 4).

***a. Plaintiff Galyen's promissory note is a security governed by federal law under the Reves test.***

As with the notes sold to Plaintiffs DeMoss and Kelley, the Reves test also applies to determine whether the promissory note sold to Plaintiff Galyen is a security under the federal securities laws.

As to the first factor examining the seller's motives, according to the Promissory Note

Agreement between Hanover Corporation, LLC and Plaintiff Galyen:

[T]he proceeds of the Loan shall be invested at the exclusive direction of the Maker, provided however, the Maker shall only make investments in the following areas: (1) money market funds, (2) options, (3) options on real estate, (4) Bonds, (5) Treasury's, (6) Bond Notes, (7) Equity Investments, and (8) Maker's operating capital.

(Doc. 4). The Promissory Note Agreement itself states that the funds invested by Plaintiff Galyen would be used specifically for investment in other instruments and for the operating capital of Hanover Corporation, LLC. Defendant Kretz testified that the promissory note agreements represented the ways in which the noteholders funds would be used. (Dep. of T. Kretz dated 9/2/08, p.17). There were no representations as to the use of the funds other than those contained in the promissory note agreements. Id. Therefore, the first factor weighs in favor of Plaintiff Galyen's note being a security.

Under the second factor of the Reves test, the same facts discussed above are applicable. The promissory notes were sold to over 130 individuals in multiple states. Therefore, the second factor weight in favor of Plaintiff Galyen's note being a security.

Regarding the third factors, Plaintiff Galyen received a letter from Defendant Kretz dated April 18. (Aff. Barbara J. Galyen ¶ 2; Exhibit A to Aff. Barbara J. Galyen ). In the letter, Defendant Kretz thanked Plaintiff Kelley for her "**investment**" in Hanover Corporation, LLC. Id. On July 28, 2006, Defendant Kretz sent a letter to each of the noteholders regarding a meeting of the noteholders scheduled for August 10, 2006. (Aff. Marion P. DeMoss ¶ 3; Exhibit B to Aff. Marion P. DeMoss; Aff. Patricia J. Kelley ¶ 5; Exhibit C to Aff. Patricia J. Kelley; Aff. Barbara J. Galyen ¶ 3; Exhibit B to Aff. Barbara J. Galyen ). In the letter, Defendant Kretz states:

At this next meeting, I will be present and will fully cover the state of affairs of

Hanover and fully inform you of certain things that I believe you should know in making your decision regarding the future of your **investment**.

Id. (Emphasis added). The promissory notes sold to the Plaintiffs were consistently represented by the Defendants to be an investment. Based upon the promissory note and the communications to and from Hanover Corporation, LLC and Defendant Kretz, a reasonable person would characterize the promissory note as an investment.

Under the final factor of Reves, as discussed above, there are no risk reducing factors or other regulatory framework which govern the promissory notes.

Plaintiff Galyen's note also matures nine (9) months from the date of its execution. As was the case with Plaintiff Kelley's note, the nine month exemption does not apply to the notes issued by Hanover Corporation, LLC because they are not commercial instruments which were intended by Congress to be exempt from the Securities Acts. There is no discernable difference between it and Plaintiff DeMoss's note except the amount invested, the amount of interest, and the length of the note.

***b. Plaintiff Galyen's promissory note is a security under Wisconsin state law.***

Both the Ninth Circuit Court of Appeals and California state courts apply the Reves test when analyzing whether a promissory note is a security under California law. See SEC v. RG Reynolds, 952 F.2d at 1131; SEC v. Wallenbrock, 313 F.3d 532, 535 (9th Cir. 2002) (holding that notes issued as part of a ponzi scheme in which funds were used to pay off prior investors and invest in risk start-ups are securities); People v. Lampel, 2002 WL 31087844, \*7 (Cal.App. 2 Dist. Sep 19, 2002) (holding that the Reves applies to the determination of whether a note is a security). As a result, the promissory note sold to Plaintiff Galyen is also security under California state law based upon the

same arguments presented above.

### CONCLUSION

The Reves test is uniformly used by the courts of this country to analyze whether a promissory note is a security and subject to the respective state and federal laws governing securities. Based upon the four factors, the promissory notes sold to the Plaintiffs do not bear a family resemblance in any instruments which are excluded from the definition of a security. In fact, the promissory notes are nearly identical to the notes involved in cases such as Reves and Wallenbrock where the courts determined the notes were securities. Finally, the nine month maturity date on Plaintiff Kelley's and Plaintiff Galyen's promissory notes does not exempt their notes from regulation because the notes are not commercial instruments.

WHEREFORE AND FOR WHICH, the Plaintiffs respectfully requests this Honorable Court to grant them summary judgment on the issue of whether the promissory notes sold to the Plaintiffs are securities under the federal Securities Acts and under Tennessee, Wisconsin, and California State law.

Respectfully submitted

/s/ John A. Beam, III

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Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16th day of October, 2008, I electronically filed the Memorandum in Support of Motion for Summary Judgment and accompanying documents with the Clerk of this Court using the CM/ECF system which will automatically send email notification of such filing to the following parties who are CM/ECF participants:

Thomas J. Dement, II  
Jack P. Brewer  
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414 Union Street, Suite 1900  
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Keith C. Dennen  
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and served defendants who have not yet identified their attorney of record by depositing a copy in United States mail with adequate postage thereon and addressed as follows:

Terry L. Kretz  
186 Putter Point  
Gallatin, TN 37066

/s/ John A. Beam, III