

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

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<b>MARK W. RASMUSSEN, RECEIVER</b>	§	
<b>FOR ARISEBANK,</b>	§	
	§	
<b>Plaintiff,</b>	§	
	§	
<b>vs.</b>	§	
	§	
<b>RICHARD SMITH, JR., and</b>	§	<b>Civil Action No. 3:18-cv-1034-M</b>
<b>KURT F. MATTHEW, JR.,</b>	§	
	§	
<b>Defendants.</b>	§	
	§	

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**RECEIVER’S MOTION FOR SUMMARY JUDGMENT**

Mark W. Rasmussen, the Court-appointed Receiver for AriseBank and its affiliates in No. 3:18-cv-186-M, *Securities and Exchange Commission v. AriseBank, et al.*, pending in the United States District Court for the Northern District of Texas (the “SEC Case”), files this Motion for Summary Judgment against Defendants Richard Smith, Jr. and Kurt F. Matthew, Jr.

1. The Receiver moves for summary judgment with respect to his claims of unjust enrichment, conversion, and fraudulent transfer under the Texas Uniform Fraudulent Transfer Act “TUFTA”), TEX. BUS. & COM. CODE ANN. §§ 24.001-24.013. This Motion is based on the Declaration of Mark W. Rasmussen, including the exhibits to that Declaration, which are set forth in the Appendix in support of this Motion, together with the argument and authorities set forth in the Brief in support of this Motion, which also includes the matters listed in Local Rule 56.3(a).

2. The summary judgment evidence conclusively establishes that the Receiver is entitled to judgment on his claims against Smith for \$1,320,050 and against Matthew for

\$123,000. On January 10, 2018, AriseBank sent 95,000 coins in the PIVX cryptocurrency<sup>1</sup> to Smith as a down payment or deposit for purchase of a purported “FDIC-insured bank.” Smith exchanged some of the PIVX coins for cash and then sent a deposit of \$123,000 of the proceeds to Matthew, the putative bank owner. The bank purchase never took place (and never could have taken place), and after appointment of the Receiver, all funds should have been returned to the Receivership. Smith and Matthew have refused to do so. The value of the 95,000 PIVX coins on the date of transfer is \$1,320,050.

For these reasons, the Receiver requests that the Court grant summary judgment against Defendant Richard Smith, Jr. in the amount of \$1,320,500, and against Defendant Kurt F. Matthew, Jr. for \$123,000, and against both defendants for prejudgment and post-judgment interest on the respective amounts, together with costs and attorneys’ fees against both defendants as permitted under section 24.013 of the Texas Business and Commerce Code. The Receiver also requests such further relief to which he may show himself entitled.

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<sup>1</sup> The Court may recall that the Receiver filed a motion to show cause in the SEC Case related to a contribution of 75,539 PIVX coins. (SEC Case Dkt. 25) Those coins were liquidated and the proceeds turned over to the Receiver by Rice’s counsel. The 95,000 PIVX coins addressed in this Motion were a separate contribution.

Dated: March 8, 2019.

Respectfully submitted,

*/s/ James A. Cox*

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*Counsel for the Receiver,  
Mark W. Rasmussen*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on March 8, 2019, the foregoing document was served on counsel of record for Defendants through the Court's electronic filing system.

*/s/ James A. Cox*

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James A. Cox

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