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Ascendus Capital Management, LLC,
and Smith Holdings, LLC*

IN THE THIRD DISTRICT COURT,
SALT LAKE COUNTY, STATE OF UTAH

A. DAVID BARNES, M.D., P.C.,

Plaintiff,

vs.

FFCF INVESTORS, LLC, et al.,

Defendants.

**RECEIVER’S STATUS REPORT AND
MEMORANDUM IN SUPPORT OF
MOTION FOR ORDER TO i) CLOSE
RECEIVERSHIP CASE, ii) APPROVE
LIMITED INVESTOR DISTRIBUTION,
AND iii) APPROVE CONTINGENT
APPLICATION FOR FEES**

FFCF INVESTORS, LLC,

Plaintiff,

vs.

RICHARD SMITH, et al.,

Defendants.

Case No. 080922273

Judge: James Blanch

Plaintiff R. Wayne Klein (the “Receiver”), as duly court-appointed Receiver for FFCF
Investors, LLC (“FFCF”), Ascendus Capital Management, LLC (“Ascendus”), and Smith

Holdings, LLC (“Smith Holdings”), (collectively, the “Receivership Entities”), by and through his counsel, Manning Curtis Bradshaw & Bednar LLC, hereby submits this status report and memorandum in support of his Motion seeking approval to:

1. Make a limited distribution to victims who assigned claims to the Receivership Estate;
2. Approve contingent payment of fees and expenses of the Receiver;
3. Terminate the Receivership Estate; and
4. Enter an order governing treatment of post-Receivership matters that may arise.

I. STATUS REPORT

A. **Background of the Receivership.**

1. Litigation Prior to Creation of the Receivership.

This litigation began on October 15, 2008, when Dr. A. David Barnes filed suit against the Receivership Entities and its managers (Roger Taylor and Richard Smith), seeking recoveries of monies Barnes had invested with FFCF (“Barnes Action”). Dr. Barnes sought the appointment of a receiver over the Receivership Entities.

James Warner, counsel for Taylor, opposed the appointment of a receiver, asserting that he could perform the functions of a receiver better than an independent receiver. Seeking to reinforce this argument, Warner filed suit in December 2008 on behalf of FFCF against Richard Smith and twelve of the FFCF investors. This suit alleged fraud by Smith and unjust enrichment by the twelve investors.¹

Subsequently, three other investors filed suit against the Receivership Entities. Annette

¹ *FFCF Investors, LLC v. Richard Smith, et al.*, Civ. No. 080925879. The Receiver later consolidated the suit filed by Warner with the present action.

Kay Donnell and Albert Wirth each filed lawsuits in federal court in February and March 2009.²

The Lighted Candle Society filed suit in state court on April 10, 2009.³

2. Appointment of the Receiver.

On March 18, 2009, the Court entered an order in the Barnes Action appointing R. Wayne Klein as Receiver for the Receivership Entities. This was followed by significant litigation between the Receiver and Taylor's counsel, James Warner, culminating in orders requiring Warner and Taylor to provide all records of the Receivership Entities to the Receiver and disqualifying Warner from any further involvement in the case. The Receiver also sought and received the Court's help compelling Taylor and Smith to provide records and deposition testimony.

3. Recovery Actions Brought by the Receiver.

The Receiver filed 22 actions seeking recovery of funds transferred fraudulently by the Receivership Entities and their managers. These actions sought funds from the officers of the company, overpaid investors, attorneys representing Receivership Entities, partners in other investments, recipients of commissions, credit card issuers, and financial institutions. These lawsuits all resulted in settlements or judgments.⁴ At a later point, the Receiver filed suit against Penson Financial Services, a brokerage firm that provided key services enabling the fraud committed by FFCF and Ascendus. The Penson suit is discussed separately below.

² *Annette Kay Donnell v. Roger E. Taylor, et al.*, No. 2:09-CV-00127 (D. Utah) (complaint, Feb. 10, 2009); *Albert Wirth v. Roger E. Taylor, et al.*, No. 2:09-CV-00229 (D. Utah) (complaint, Mar. 11, 2009).

³ *The Lighted Candle Society v. Ascendus Capital Management et al.*, Civ. No. 090906303 (Third Dist. Ct. Utah) (Complaint, April 10, 2009). This case was filed after the Court signed the order appointing the Receiver.

⁴ Sadly, many of the defendants sued by the Receiver had filed or subsequently filed bankruptcy or demonstrated an inability to pay the amounts sought by the Receiver.

4. Distribution to Investors.

With the fund recovered by the Receiver, the Receiver requested approval to distribute funds to victims. On February 17, 2010, the Court approved a claims process, by which investors and others who claimed to have been harmed by Ascendus and FFCF could submit claims for a share of the funds recovered by the Receiver. On June 21, 2010, the Receiver filed a report summarizing the results of the claims process and recommending a distribution plan. Two objections were filed to the Receiver's proposed distribution plan. On September 10, 2010, the Court denied the objections and approved the distribution plan proposed by the Receiver. The Court's order approving payment of distributions was entered October 14, 2010.

With this approval, the Receiver sent \$400,000.00 in distributions to the ten allowable claimants on October 19, 2010. An additional \$16,032.92 was paid at that time to Dr. Barnes as partial reimbursement of the legal fees he incurred in seeking the appointment of a receiver. After payment of these distributions and the partial reimbursement to Dr. Barnes, the Receivership bank account had a remaining balance of \$3,392.12.

5. Third Fee Application.

On November 16, 2010, the Court approved the Third Fee Application of the Receiver.⁵ This application covered the fees and expenses of the Receiver for the period from April 1, 2010 to September 30, 2010. The Court approved reimbursement of \$825.67 in expenses and \$97,889.25 in fees.⁶

In light of the Receivership bank account having only \$3,392.12 in funds, the Receiver

⁵ Pursuant to directions given by the Court, only the Receiver's fees and expenses were subject to review by the Court. The fees and expenses of counsel for the Receiver have been paid by the Receiver from Receivership assets in the ordinary course of operations of the Receivership.

⁶ The fee application represented a voluntary 50% discount off the fees earned by the Receiver.

did not pay himself the amount authorized by the Court. In connection with his fee application, the Receiver deliberately opted to defer payment of his fees until sufficient funds were recovered in the future to pay the fees—in order that the amount of the distribution to investors could be maximized. Thus, the amount authorized by the Court to be paid from the Third Fee Application remains unpaid. There have been no fee applications submitted since that time; the Receiver has not been paid for any work he has performed on this case since October 1, 2010.

6. Status Reports.

The Receiver has filed eleven status reports with the Court, with the most recent status report having been filed on May 20, 2011. As of May 20, 2011, six of the lawsuits filed by the Receiver were pending. Since that time, all these cases settled. The settlements reached after May 20, 2011 (excluding the Penson case, which is discussed separately below) were:

Defendant	Amount
Robert Alsop, Esq.	\$15,000.00
Family First C.U. (NCUA)	\$17,933.64
Courtney Smith	\$40,000.00
Aaron Smith	\$3,781.00
Capital One Credit Card	\$8,500.00
Total	\$85,214.64

In addition, the Receiver received one settlement payment from a settlement reached before May 20, 2011.

7. Financial Status.

On May 20, 2011, the Receivership bank balance was \$66,790.82. Since that time, the Receivership Estate has recovered \$189,747.64 and spent \$147,336.75. The tables below show the sources and expenditures of Receivership Funds.

RECEIVERSHIP RECOVERIES	
Defendant	Amount
Settlements after 5/20/11	\$85,214.64
Payments on prior settlements	\$8,533.00
Penson bankruptcy distribution	\$96,000.00
Total	\$189,747.64

RECEIVERSHIP EXPENSES	
Category	Amount
Penson arbitration, mediation	\$6,679.50
Tax preparation, filing fees	\$7,459.09
Legal fees: outside counsel ⁷	\$133,198.16
Total	\$147,336.75

The current balance in the bank account of the Receivership Estate is \$109,201.71.

B. Penson Financial Services.

1. Litigation Against Penson Financial Services.

On December 10, 2010, the Receiver filed suit against Penson Financial Services, a large national brokerage firm based in Texas, alleging that Penson facilitated the misconduct of Taylor and Smith, in violation of FINRA rules and in contravention of its own compliance manual. This began a two-year odyssey of multifarious substantive motions and procedural moves by Penson.

Penson first removed the litigation to federal court. The Receiver filed a motion asking the federal court to remand the case back to state court, which was granted on April 28, 2011.

Penson next filed a motion to compel arbitration, asserting that the claims being asserted by the Receiver were subject to mandatory arbitration. On October 4, 2011, the Court ruled that those counts in the Receiver's complaint that derived from claims assigned to the Receiver by customers of Penson were subject to arbitration. The parties agreed to toll filing deadlines of the

⁷ This total reflects legal services through December 31, 2014. Additional legal fees associated with preparing and submitting this motion and closing the Receivership Estate will be incurred in 2015.

arbitration action until resolution of the motion to dismiss that Penson intended to bring.

On October 21, 2011, Penson filed a motion in state court to dismiss the Receiver's complaint. On June 14, 2012, Judge Himonas denied Penson's motion to dismiss, ruling that: i) the Receiver had standing to bring claims against Penson, ii) the *in pari delicto* doctrine did not provide a defense to Penson, and iii) the claims were not time-barred.

On July 11, 2012, the Receiver filed an arbitration claim before FINRA on the claims that had been assigned to the Receiver by investors. Litigation in the civil action in this Court and the arbitration action before FINRA continued until the bankruptcy filing by Penson.

2. Penson Bankruptcy Filing.

On January 11, 2013, Penson filed chapter 11 bankruptcy petitions. The Penson bankruptcy proceedings are complex, involving ten entities and \$6.2 billion in assets. The bankruptcy petition stayed all litigation in the civil action and arbitration proceedings. Consequently, the arbitration proceedings were dismissed without prejudice.

The Receiver filed two claims in the bankruptcy proceeding, one reflecting claims in the civil action and the second reflecting claims asserted in the arbitration action. The Penson trustee objected to the Receiver's claim as lacking adequate documentation. The Receiver provided additional documentation and Penson withdrew its objection in May 2013. The Receiver and his counsel have reviewed voluminous additional filings, motions, and notices in the bankruptcy proceedings, to ensure the Receivership claims were not being prejudiced, and submitted ballots on the proposed liquidation plan.

3. Mediation and Settlement of the Receivership Claims.

The court administering the Penson bankruptcy authorized implementation of alternative dispute resolution procedures, to promote efforts to resolve disputed bankruptcy claims. The Receiver participated in mediation of Receivership claims on February 13, 2014. In that mediation, the Receiver accepted a settlement in the form of a stipulated claim in the amount of \$160,000.00. The Receiver continues to believe the Receivership claims have merit, but determined to accept the agreed-upon settlement based on two factors: i) the settlement amount was slightly larger than the settlement ratios of similar claims by other creditors, and ii) the alternative to settlement would have required that the Receiver litigate his claims in bankruptcy court in Delaware, requiring the engagement of Delaware counsel. Because the Receiver had distributed the bulk of the Receivership Estate to investors, there were insufficient funds to pay outside counsel.

The Receiver and Penson notified the court overseeing the Penson litigation of the settlement and stipulated to dismissal of the arbitration and the civil litigation—with prejudice.

4. Bankruptcy Distribution.

On January 5, 2015, the Receiver received a distribution check from the Penson bankruptcy trustee. The \$96,000.00 check represents 60% of the Receivership's allowable claim in the Penson bankruptcy. As noted above in Part I.A.7, this money has been deposited into the Receivership bank account.

The distribution payment was accompanied by the following statement from the bankruptcy trustee: "This check represents 60% of the Allowed amount of the above-referenced

Claim. It is possible that you will receive future distributions on account of your Claim as Disputed Claims are resolved, but there can be no guarantee that there will be future distributions.”

At this point, the Penson claim and the pendency of the Penson bankruptcy proceedings are the only matters pending for the Receivership Estate. Thus, the question is presented whether the Receivership Estate should remain open until the final distribution payments are received from the Penson bankruptcy. The Receiver believes the Receivership Estate should be terminated now.

II. MEMORANDUM IN SUPPORT

A. Motion to Terminate Receivership Estate.

The Receiver believes the Receivership Estate should be terminated now because those who have made claims on the Receivership Estate would realize no benefit if the Receivership Estate remained open. The only matters remaining to be accomplished by the Receiver are: i) waiting for distribution of final proceeds from the Penson bankruptcy estate, ii) distribution of any funds that might be available for victims who have had their claims allowed, and iii) closing the Receivership Estate. For the reasons described below, waiting for the conclusion of the Penson bankruptcy estate is not expected to result in the recovery of any monies that can be distributed to investors. As a result, the Receivership Estate should be terminated now.

There are two principal reasons why there is no benefit expected from waiting to terminate the Receivership Estate. First, the range of the recovery expected from the Penson bankruptcy estate is known. The Receivership has a claim for \$160,000.00. To date, \$96,000.00 of this claim amount has been paid. It is not known whether there will be further distributions, but even if there are, the additional distributions will not exceed another \$64,000.00. The Receivership Estate currently has \$109,201.79 in cash. This cash amount is encumbered by the \$98,714.92 owed to the Receiver for expenses advanced and services performed in 2010, which payment was approved by order dated November 16, 2010. After payment of that amount, \$10,486.87 would remain in the Receivership Estate to pay: i) the fees that will be incurred by Receiver's counsel in closing the Receivership Estate, ii) ongoing expenses that will be required relating to closure of the estate (such as tax preparation fees, document storage, and document destruction), iii) further Receiver fees that will be incurred in administering and closing the

Receivership, and iv) Receiver fees and expenses owed for the period since October 1, 2010.⁸

Moreover, the Receiver proposes in his motion to make a distribution of \$9,600.00 to certain investors whose claims were assigned to the Receiver and \$1,000.00 to Dr. Barnes. This means that no monies would be available to pay expenses associated with closing the Receivership Estate—let alone any compensation for work performed by the Receiver after October 1, 2010.

Even if the full amount of the claim were paid by Penson (an additional \$64,000.00), the Receivership Estate would still lack funds to pay to investors after payment of administrative expenses of the Receivership Estate.

Second, if the Receivership Estate remains open, costs and administrative fees will continue to accrue. Because any future distributions of funds from the Penson bankruptcy estate is conditioned on the resolution of disputed claims in the Penson bankruptcy, future distributions might be years in the future. Each new year will require the preparation of additional tax returns (which cost approximately \$1,600.00 per year), require the Receiver to spend time administering the Receivership Estate, and likely require work by counsel for the Receiver. These additional expenses will all accrue without increasing the amount of recovery that can be expected aside from the Penson claim.

For these reasons, the Receiver believes the Receivership Estate should be terminated now, rather than waiting for the Penson bankruptcy proceedings to be concluded. The terms that should be included in an order terminating the Receivership Estate are discussed in Part II.D, below.

⁸ As noted earlier, the Receiver has not been paid for any of his work since October 1, 2010.

B. Motion to Approve Supplemental Selective Investor Distribution.

The initial distribution by the Receiver on October 19, 2010 brought all investors to a 30.11% recovery of their net principal losses.⁹ Due to the bankruptcy of Penson and the meager recovery of other assets,¹⁰ the Receiver has exhausted the potential avenues for further recovery for victims of FFCF and Ascendus.

Until its bankruptcy, Penson represented the best hope for further recovery for victims. In order to maximize the potential recovery against Penson, the Receiver asked certain investors to assign to him their claims against Penson.¹¹ Fifteen investors assigned claims on sixteen accounts to the Receiver in November 2010. In return for these assignments, the Receiver agreed that 20% of the net recovery from Penson—after payment of legal fees incurred in pursuing Penson—would be divided among the assignors on a pro rata basis, according to the claims the Receiver asserted against Penson on their behalf.

As described in Part I.B., above, the litigation against Penson was contentious and protracted. Penson's removal of the action to federal court, motion to dismiss, motion to compel arbitration, and discovery fights caused the Receivership to incur very significant legal fees. Between December 2010 (when the Receiver sued Penson) and January 2013 (when Penson filed for bankruptcy), the Receivership incurred \$210,836.67 in outside legal fees.¹² Between January

⁹ This counts funds distributed by the entities before the Receiver was appointed and distributions by the Receiver.

¹⁰ Many defendants have lacked the resources to pay the amounts sought by the Receiver in his litigation. For example, Roger Taylor declared bankruptcy, preventing the Receiver from obtaining any recovery from him. Similarly, the Receiver obtained a judgment of \$3.2 million against Richard Smith, but has been unable to collect any of that amount.

¹¹ There were 15 investors who assigned their claims to the Receiver. One of these assignments included two separate accounts at Penson, making a total of 16 assignments. These assigned claims totaled \$6.2 million.

¹² The overwhelming majority of these fees related to the litigation against Penson.

2013 and December 2014, outside legal fees totaled \$15,998.62.¹³ During the entire pendency of this action, fees for outside counsel to the Receiver have been discounted by a considerable margin.

Obviously, the meager settlement of \$160,000.00 in allowable claims is less than the amount the Receivership expended in litigation against Penson. Under the terms of the agreements with assignors, the Receiver would have no obligation to share any proceeds from the Penson settlement with the assignors—since there were no net proceeds after payment of outside legal fees. Nevertheless, the assignors were required to provide material assistance in the Receivership’s litigation against Penson, including providing documents that the Receiver delivered to Penson in discovery. Accordingly, the Receiver feels it is appropriate to share some of the settlement proceeds with the assignors—even though there is no contractual obligation to do so. The Receiver proposes to pay 10% of the \$96,000.00 received in the distribution from the Penson bankruptcy trustee to the fifteen assignors—on a pro-rata basis—in the following amounts:

Assignor	Amount of Penson Claim	% of Total	Allocation
Anderson, Doug	\$502,741.62	0.080431	\$772.13
Bushnell, Ned	\$39,559.67	0.006329	\$60.76
Cook, Kelly	\$160,883.24	0.025731	\$247.02
Donnell, Annette	\$439,440.19	0.070303	\$674.91
Hulse, Rodney	\$239,713.84	0.038350	\$368.16
Hulse, Stan	\$34,760.53	0.005561	\$53.39
Molina, Roy	\$48,155.71	0.007704	\$73.96
Mortensen, Wayne	\$800,031.98	0.127992	\$1,228.73
Narra, Rao	\$52,324.74	0.008371	\$80.36
Petersen, Rodney	\$63,685.52	0.010189	\$97.81

¹³ Again, most of these fees related to Penson: filing claims, overcoming claim objections, participating in bankruptcy proceedings (including balloting), and participation in the mediation proceedings that resulted in a settlement.

Rogers, Steven	\$30,672.00	0.004907	\$47.11
Wilcox, Sharon	\$710,995.85	0.113748	\$1,091.98
Wirth, Albert (IRA)	\$1,382,545.85	0.221185	\$2,123.38
Wirth, Albert	\$464,414.62	0.074299	\$713.27
Young, David	\$101,685.31	0.016268	\$156.17
Young, Richard	\$1,179,065.42	0.188632	1,810.86
Total	\$6,250,626.42	1.00	\$9,600.00

The Receiver also proposes paying \$1,000.00 to Dr. Barnes, the original plaintiff that brought the action resulting in appointment of the Receiver. Dr. Barnes provided a service to all the investors by getting a receiver appointed that eventually resulted in a 30% recovery for those victims. In the process, Dr. Barnes paid approximately \$48,000.00 in legal fees. To date, the Court has approved reimbursement of approximately \$32,000.00 to Dr. Barnes, leaving approximately \$16,000.00 in unreimbursed expenses. The Receiver proposes paying Dr. Barnes a final payment of \$1,000.00 towards the expenses he incurred in seeking appointment of a Receiver.

Approving these distribution payments to investors is within the broad discretion afforded to courts overseeing receiverships. In federal equity receiverships, it is well established that federal district courts have broad discretion in fashioning relief.¹⁴ So long as the assets are distributed in a “logical way,” a court’s adoption of a distribution plan should not be disturbed.¹⁵ When a Court is acting in equity, the overarching test is whether the distribution plan is “fair and reasonable.”¹⁶ Decisions from Utah courts are similar.¹⁷

Accordingly, the Receiver requests approval to pay \$10,600.00 to the fifteen assignors

¹⁴ *SEC v. Forex Asset Mgmt., LLC*, 242 F.3d 325, 328 (5th Cir. 2001); *SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 91 (2d Cir. 2002); *SEC v. Hardy*, 803 F.2d 1034, 1037-39 (9th Cir. 1986).

¹⁵ *SEC v. Forex*, 242 F.3d at 331; *U.S. v. Durham*, 86 F.3d 70, 73 (5th Cir. 1996).

¹⁶ *SEC. Wealth Mgmt., LLC*, 628 F.3d 323, 332-33 (7th Cir. 2010).

¹⁷ *Interlake Co. v. Von Hake*, 697 P.2d 238 (Utah 1985) (receivership is an equitable matter and is entirely within the control of the court); *accord, Shaw v. Robinson*, 535 P.2d 1251 (Utah 1975).

and Dr. Barnes from assets of the Receivership Estate.

C. Contingent Application for Fees.

As described in Part I.A.6, above, the Receivership bank account has a balance of \$109,201.71 as of January 9, 2015. If the selective distribution of \$10,600.00 proposed by the Receiver for assignors and Dr. Barnes is approved by the Court, the bank account balance will be \$98,601.71. This is less than the amount owed to the Receiver pursuant to the November 16, 2010 order granting the Receiver's third fee application. Thus, there are no funds to pay for any work performed by the Receiver since October 1, 2010.

Between October 1, 2010 and December 31, 2014, the Receiver and his staff have performed 1,241.7 hours of work, which results in total fees earned of \$247,746.50.¹⁸ In addition, the Receiver has advanced expenses in the amount of \$1,303.65,¹⁹ for a total amount of \$249,050.15 owed.²⁰ If the proposed limited distribution and the fee application approved by the Court on November 16, 2010 were paid in full, the Receivership account would have a balance of (\$113.21). That amount, of course, leaves no funds for reimbursement of expenses incurred after October 1, 2010 or any time spent by the Receiver since October 1, 2010.

There is the possibility, however, that the Penson bankruptcy trustee will pay up to another \$64,000.00 to the Receivership Estate. The Receiver seeks Court approval to retain any further amounts received from the Penson trustee as partial reimbursement of post-April 1, 2010 fees and expenses.

¹⁸ It has been the Receiver's practice to discount his fees by 50% or more in his fee applications. Thus, even if there were funds available to pay the fees of the Receiver, the actual payment to the Receiver would be expected to be less than half of this amount. A detailed invoice describing the work performed by the Receiver and his staff since October 1, 2010 is attached as Exhibit A.

¹⁹ A list of unreimbursed expenses is attached at Exhibit B.

²⁰ This total does not include 265.0 hours of time related to the case that was performed, but not billed. This non-billed time would be valued at \$44,405.00.

It is important to recognize that the Receivership Estate will continue to incur expenses in this case, even assuming the Court grants the current motion. These expenses include the need to prepare and file 2014 tax filings (estimated at \$1,600.00), legal fees incurred for work in seeking approval of the current motion, and costs associated with storage and destruction of Receivership documents. When the post-October 1, 2010 expenses are included, these expenses are expected to be at least \$6,000.00. That means that even if the Penson trustee eventually were to pay the full \$64,000.00 remaining amount of the claim, the Receiver will be paid less than \$58,000.00 of the \$247,746.60 in fees billed to the Receivership Estate—or approximately 24% of his fees for work performed since October 1, 2010. If the Penson trustee pays less than the full amount of the claim, the Receiver's compensation will be less—and perhaps zero. This means the Receiver will be discounting his fees by at least 76%.

The Order Appointing Receiver provides:

The costs, fees and expenses of the Receiver incurred in connection with the performance of his/her duties described herein, including the costs and expenses of those persons who may be engaged or employed by the Receiver to assist him/her in carrying out his/her duties and obligations hereunder shall be paid out of the proceeds or other assets of the Defendant and any other assets under the control of the Receiver pursuant to this Order. All applications for costs, fees and expenses for services rendered in connection with the Receiver shall be made by application detailing the nature of the services and shall be heard by the Court. Appointment Order at ¶ 11, ppg. 4-5.

This Application is being submitted pursuant to this provision.

D. Proposed Terms of Order Terminating Receivership.

Unfortunately, terminating the Receivership is not as simple as having the Court enter an order closing the Receivership Estate—especially when certain tasks will still need to be

accomplished. These include making provisions for the treatment of future revenues, payment of expenses incident to the closing of the Receivership Estate, the filing of future tax returns, management of Receivership documents, the prevention of future claims from being asserted against the Receivership Estate, and creation of a mechanism for the Receiver to seek direction from the Court in the event of developments needing Court assistance. To manage these matters, the Receiver asks the Court to enter an order providing the following:

1. Payment of Distributions.

Directing the Receiver to pay \$9,600.00 to the fifteen investors who assigned claims to the Receivership and \$1,000.00 to Dr. Barnes.

2. Receiver Actions in Closing Receivership Estate.

Allowing the Receiver to take those ordinary actions that he deems advisable, in his discretion, in closing this matter, including accepting and retaining all funds owed to the Receivership Estate, paying ordinary expenses incident to closing the Receivership,²¹ filing final tax returns for the Receivership Entities, managing documents of the Receivership, and closing bank accounts of the Receivership Estate.

3. Document Management.

Allowing the Receiver to dispose of records of the Receivership Estate. Because all claims and other matters relating to the Receivership Estate have now been resolved, there is no need for the Receiver to retain records of the Receivership Estate for an extended time. The order should provide that any interested party that wishes to take custody and control of the documents currently in the possession of the Receiver, and who demonstrates a legitimate interest in the

²¹ Payment of these expenses will reduce the net amount that the Receiver will be paid for his work administering the estate.

documents and an intent to protect confidential information contained in those documents, has 30 days after the entry of this Order to make arrangements with the Receiver, at the other party's own expense, to take control of the documents. If no party makes a claim to the documents within 30 days of the entry of this Order, the Receiver should be authorized to dispose of the documents.

4. Termination of Receivership Estate; Prohibition Against Asserting Future Claims Against Receivership Assets; Discharge of Receiver; Retention of Jurisdiction.

Closing the Receivership Estate and discharging the Receiver. Because the entire Receivership Estate was under the control of this Court and the Receiver was an arm of this Court in fulfilling his duties,²² no future claims should be asserted against the Receivership Estate or the Receiver without the claimant first seeking leave of this Court to assert such a claim. Accordingly, this Court should retain jurisdiction over this matter in the event any person seeks to assert a claim against Receivership Assets or in the event the Receiver or unexpected developments require the Receiver to seek guidance from the Court.

²² *Interlake Co. v. Von Hake*, 697 P.2d 238 (Utah 1985).

III. CONCLUSION

Because all recoveries that the Receiver reasonably could seek have been exhausted and the funds in the Receivership Estate will have been distributed, there is no just cause to keep the Receivership in existence. The Receivership has accomplished its purpose and should be concluded.

The Receiver asks that the Court enter an order containing the terms described in this motion. A proposed order is attached to the Motion. No hearing is requested on the Motion.

DATED this 29th day of January, 2015.

**MANNING CURTIS BRADSHAW
& BEDNAR LLC**

/s/ David C. Castleberry

David C. Castleberry
*Attorneys for Receiver for FFCF Investors, LLC, Ascendus
Capital Management, LLC, and Smith Holdings, LLC*

CERTIFICATE OF MAILING

I hereby certify that on the 29th day of January, 2015 I served the foregoing Receiver's Status Report and Memorandum in Support of Motion for Order to i) Close Receivership Case, ii) Approve Limited Investors Distribution, and iii) Approve Contingent Application for Fees on the following:

<input type="checkbox"/> HAND DELIVERY <input checked="" type="checkbox"/> U.S. MAIL <input type="checkbox"/> OVERNIGHT MAIL <input type="checkbox"/> FAX TRANSMISSION <input checked="" type="checkbox"/> E-MAILTRANSMISSION <input type="checkbox"/> USDC ECF NOTICE	Annette Kay Donnell c/o Jonathan O. Hafen Parr Brown Gee & Loveless 185 South State Street, Suite 800 Salt Lake City, UT 84111 AK_donnell@comcast.net
<input type="checkbox"/> HAND DELIVERY <input checked="" type="checkbox"/> U.S. MAIL <input type="checkbox"/> OVERNIGHT MAIL <input type="checkbox"/> FAX TRANSMISSION <input checked="" type="checkbox"/> E-MAILTRANSMISSION <input type="checkbox"/> USDC ECF NOTICE	Sharon Wilcox 11853 N. Whispering Ridge Drive Tucson, AZ 85737 esLw415@msn.com
<input type="checkbox"/> HAND DELIVERY <input checked="" type="checkbox"/> U.S. MAIL <input type="checkbox"/> OVERNIGHT MAIL <input type="checkbox"/> FAX TRANSMISSION <input checked="" type="checkbox"/> E-MAILTRANSMISSION <input type="checkbox"/> USDC ECF NOTICE	Ned Bushnell 170 Westview Circle Orem, Utah 84058 Mbush8@comcast.net
<input type="checkbox"/> HAND DELIVERY <input checked="" type="checkbox"/> U.S. MAIL <input type="checkbox"/> OVERNIGHT MAIL <input type="checkbox"/> FAX TRANSMISSION <input checked="" type="checkbox"/> E-MAILTRANSMISSION <input type="checkbox"/> USDC ECF NOTICE	Douglas Anderson 924 N. Heritage Mesa, AZ 85201 usapatriot@msn.com

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/s/ Melissa Aguilar
