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THIRD DISTRICT COURT
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SALT LAKE COUNTY
BY _____
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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.

FFCF INVESTORS, LLC,

Plaintiff,

vs.

RICHARD SMITH, et al.

Defendants.

**REPORT AND RECOMMENDATIONS
ON CLAIMS PROCESS BY
R. WAYNE KLEIN, RECEIVER**

Case No. 080922273

Judge: Denise P. Lindberg

R. Wayne Klein, the Court-Appointed Receiver of FFCF Investors, LLC, Ascendus

Capital Management, LLC, and Smith Holdings, LLC (the "Receivership Entities") submits this

report on the status of the claims process and his recommendations on the treatment of the claims

of investors. It accompanies the Eighth Report of the Receiver.

This Report addresses two distinct but related issues that need to be addressed in finalizing the claims process and making distributions:

1. Allowable Claims and Claim Amounts. The first issue involves making a final determination on which claimants have allowable claims and the amount of their allowable claims. As described below, the Receiver is recommending that two claims be rejected. The Receiver requests that the Court determine whether these claims should be allowed. In addition, the amount of some of the claims is being disputed by the Receiver. The Receiver seeks a ruling from the Court on the amount of allowable claims for these disputed claims.
2. Distribution Plan. The second issue involves selecting a methodology for distributing receivership funds to the allowable claimants. The Receiver identifies below two alternative distribution plans and recommends one for approval by the Court.

PROCEDURAL HISTORY OF THE CLAIMS PROCESS

On February 17, the Court granted the Receiver's request for approval of the claims process and a Notice of Claim Form. On February 18, the Receiver mailed approximately 50 claim forms to investors and other potential claimants. Claim forms and the court filings relating to the claims process were also posted on the Receiver's website.

RECEIPT, PROCESSING, AND ANALYSIS OF CLAIMS

The Receiver processed the claims, as they were received, as follows:

- Claims were date-stamped when received.

- A unique claim number was assigned to each claim received, based on the sequence in which the claim was received.
- Summary information from each claim was entered into a tracking sheet. This summary included the claim number, information on the claimant, the amount of the claim, and the type of claim (*e.g.*, whether it was an investor claim or trade creditor).
- The claim was assigned to an analyst who first verified whether the claim form had been completed. If the claim form lacked required signatures, omitted necessary responses, or included claims for an investment made through another person or entity, the claimant was requested to submit a corrected claim form. One claim form required correction.
- In some cases, investors' claims were combined, such as claims submitted by related family members or where investments were made by multiple companies controlled by one person.
- The analyst then evaluated every financial transaction between the claimant and the bank accounts of Ascendus, FFCF, Smith, and Taylor, to ensure that payments listed in the claim form were accurate and included all financial transactions that occurred. In some cases, claimants submitted documentation demonstrating that the claimant had invested larger amounts than shown on the reconstructed bank accounts. In other cases, the Receiver's records showed that monies had been paid to the claimant by one of the Receivership Entities, which the claimant had not included in his or her claim form.
- The analysis was reviewed by the Receiver.

- If the amount claimed matched the records of the Receiver or the claimant submitted proof of higher amounts than shown on the records of the Receiver, the claimant was sent a notice that the claim amount was “Allowed.”
- If the claim form asserted a claim for an amount higher than shown on the Receiver’s records and did not provide documentation proving the claimed amounts, a notice of “Reduced Claim” was sent to the claimant. In these cases, the claimants were given an opportunity to submit documentation demonstrating that the amounts claimed were valid. Alternatively, the claimants had the opportunity to accept the amount of “Reduced Claim” determined by the Receiver.
- If the Receiver determined that the claim was not valid, a notice of “Rejected Claim” was sent to the claimant, along with an explanation of the reasons for the “Rejected Claim.” An opportunity was provide the claimant to submit additional information or explanations as to why the claim should be deemed valid.
- Half of the claimants who received notice of reduced or rejected claim amounts responded by accepting the Receiver’s determination or by providing additional documentation to the Receiver, seeking to justify the amount of the claim. The Receiver reviewed these submissions and, in a number of instances, accepted the documentation provided by the claimant and revised the allowable claim amount upwards.
- As this additional documentation was received and the Receiver’s calculation of allowable amounts changed, the summary tracking sheet was updated.

- In a few cases, the Receiver entered into discussions with claimants in an effort to reach agreement on the treatment of certain claims.

TIMELINESS OF CLAIM SUBMISSIONS

1. Claims Timely Filed The Court-established deadline for filing claims was April 30, 2010. Nineteen claims were filed by the deadline.
2. Claims Filed After the Deadline One claim was filed after the deadline. This claim was filed by an individual who has been sued by the Receiver. The claimant believes she is underpaid and the Receiver believes that payments to a relative of hers should be offset against the investments she made.

CLASSIFICATION OF CLAIMS

The attached spreadsheet, marked as Exhibit A, shows each claim – by claim number.

This includes the amount, classification (whether allowed, reduced, or rejected), and the recommended “Allowable Claim Amount” of each claim.

3. Initial “Allowed” Claims Ten claims were for amounts that were the same as shown on the Receiver’s records or included documentation that demonstrated payments of amounts greater than shown on the Receiver’s records. These claims total \$2,023,493.36.
4. “Reduced” Claims Accepted by Claimant There were four claims where the Receiver told the claimants that he intended to recommend a reduced amount of claim and the claimants have accepted the Receiver’s preliminary determination. These four claims originally totaled \$742,799.95. The reduced claim amounts that these claimants have

accepted total \$640,883.91, a reduction of \$101,916.04 in the total claim amount.

5. “Reduced” Claims That Might be Contested Four other claimants submitted claims totaling \$2,331,529.57. The Receiver notified these claimants that he intended to recommend to the Court that only \$1,169,781.63 of these claims be deemed allowed. This is a reduction of \$1,161,747.94. The Receiver expects that at least one of these claimants will contest the Receiver’s recommendation. The claim submission by another one of these claimants is the subject of an earlier settlement agreement that limits the amount of his actual recovery.
6. “Rejected” Claims The Receiver is recommending rejection of two claims, totaling \$101,632.25. One was a claim submitted by a relative of one of the managers of Ascendus and FFCF; the other was filed by a claimant married to an investor who was significantly overpaid. The second claimant has indicated acceptance of the Receiver’s determination. It is not known whether the first claimant will contest the Receiver’s recommendation.

SUMMARY OF VALID CLAIM AMOUNTS

7. From the beginning, the Receiver has been cognizant that the recovery for valid claimants would be maximized by both increasing the amount of funds recovered and reducing the number and size of valid claims. As noted in prior reports to the Court and in notices of settlements, the Receiver has entered into a number of settlement agreements that have involved the other party agreeing not to submit claims against Receivership assets. This

has substantially reduced the amount of valid claims, thereby increasing the percentage amount that each valid claim could be paid from assets recovered by the Receiver.

8. The following chart summarizes the claim amounts submitted and the Receiver’s recommendation to the Court. These are described in more detail in attached Exhibit A.

Category	Number of Claims	Claim Amount	Receiver Recommendation	Reduction
Initial “Allowed”	10	\$2,023,493.36	\$2,023,493.36	\$0.00
“Reduced” Accepted	4	\$742,799.95	\$640,883.91	\$101,916.04
“Reduced” Contested	4	\$2,331,529.57	\$1,169,781.63	\$1,161,747.94
“Rejected”	2	\$101,632.25	\$0.00	\$101,632.25
Total	20	\$5,199,455.13	\$3,834,158.90	\$1,365,296.23

RECOMMENDED PROCEDURE FOR RESOLUTION OF OBJECTIONS

9. As noted above, four of the claimants who were the subject of “Reduced” recommendations have agreed to accept the Receiver’s recommendation. The Receiver expects that others may decide not to contest the Receiver’s recommendation. At most, there will be four objections that could be filed with the Court. Due to the small number of potential objections, the Receiver recommends that these objections be handled by the Court, instead of appointing a special master or creating a third-party appeal process.
10. The Receiver recommends the following procedure for resolving the objections.
- a. Deadline for Filing Objections The claims procedure approved by the Court on February 17, 2010 included a requirement that those objecting to the Receiver’s recommendation of an “Allowable Claim Amount” will have thirty (30) days to file an objection with the Court. At the same time the Receiver files this Report

with the Court, he will mail a copy of the Report to all claimants and post a copy on his website. With this mailing, the claimants are being notified that any objections need to be filed before that deadline.

- b. Reply by the Receiver The Receiver requests that he be allowed thirty (30) days, following the deadline for filing objections, to file a response to each of the objections.
- c. Evaluation by the Court The Court can then rule on the written submissions or set a date and time for a hearing at which it can accept evidence and hear oral argument on the objections. Due to the similarity of the issues involved in the various objections, the Receiver recommends that all the objections be considered at one hearing – if a hearing is held.

11. After the Court has ruled on the objections, a proposed order will be submitted that will confirm the allowable claimants and the amounts of each allowable claim.

DISTRIBUTION PLAN

A distribution plan must be implemented to determine how funds being returned should be allocated among the valid claimants. Either of two primary plans could be adopted; the Receiver believes each would be considered fair and equitable. However, the amounts paid to individual claimants would differ under each plan.

- Pro-Rata Distribution Plan. This plan would involve determining the “Verified Investment Amount” paid by each claimant to the Receivership Entities and deducting

the total amount the claimant received as distributions, profits, or withdrawals (“Total Distributions”) on the investment from the Receivership Entities – or others. The difference is the “Allowable Claim Amount.” Under this plan, the net funds recovered by the Receiver would be divided among the claimants on a pro-rata basis. In other words, the total amount of money to be returned to claimants would be divided by the total amount of net loss (for valid claimants) and each claimant would be paid that percentage of her/his losses by the Receiver. For example, if the Receiver were to recover a net total of \$383,415.89, that would be applied against the total amount of net claimant losses of \$3,834,158.90 and each claimant would be paid 10% of her/his net losses.¹

- “Target” Distribution Level: Payments Based on Amounts Already Recovered. Under this plan, once the total losses are calculated, there is a further calculation to determine the percentage of the claimant’s original investment amount that has already been paid to the claimant as distributions. The funds in the possession of the Receiver would then be directed to those claimants who had received no distributions and to those who were paid distributions representing a small percentage of their investment amount. Under this plan, the Receiver would establish a “target” recovery amount. This target amount would result in the Receiver paying funds only to those claimants who had received less than this “target” amount in distributions. Those claimants who have already received more than this “target” amount, would receive funds only if the Receiver recovers sufficient

¹ This hypothetical example assumes that the Court confirms the Receiver’s recommendations on the allowable claimants and the allowable claim amounts.

funds to make additional distributions that would allow him to increase the “target” amount. For example, under this plan, the same hypothetical recovery of \$383,415.89 discussed above would result in a “target” recovery of 29.39%. That means the Receiver would make payments to all claimants who have received less than 29.39% of the money they invested. The payments would be made in a manner that would bring each claimant’s recovery to 29.39%. This would result in ten claimants receiving funds and eight claimants receiving nothing (until additional funds are recovered).²

Discussion of the Merits of Each Distribution Plan. The first plan has the advantages of being simple to administer and resulting in the payment of some money to every valid claimant. The second plan has the advantages of ensuring that all claimants will have received a minimum level of recovery from the scheme (the “target” amount) and allocating recovered funds to those claimants who have been most harmed by the collapse of the scheme.

The Receiver notes that the second plan is the methodology recommended by the Securities and Exchange Commission (“SEC”) in Ponzi scheme cases where the SEC has sought appointment of a receiver.

Each plan would yield very different results. It is expected that those who would benefit most from each particular distribution plan would favor that plan. In the pro-rata plan, all 18 allowable claimants would receive some amount. In the “target” plan, all the money would be paid to ten claimants. Only seven of these claimants would receive more than they would under

² Again, this hypothetical assumes the Receiver’s recommendations as to the allowable claims are approved by the Court.

the pro-rata plan. Exhibit B, attached, illustrates the effects of the two different plans for each allowable claimant (identified by claim number). Column I shows the dollar payout of a hypothetical \$383,415.89 under the “pro-rata” plan and column K shows the dollar payout under the “target” plan. Columns J and L show the percentage returns after each sample distribution.

Under either plan, if the Receiver is successful in recovering additional net funds over time, additional distributions will be made to claimants. It is hoped that an initial distribution will be made in the Fall of 2010 and that additional distributions can be made by the Receiver in the future. The payment of additional distributions depends on the outcome of litigation filed by the Receiver and the discovery of other assets or claims that can be pursued by the Receiver.

Recommendation by Receiver. The Receiver is reluctant to recommend a choice to the Court because such a choice necessarily involves picking winners and losers for the monies to be distributed. Nevertheless, the Receiver believes it is important that the Court be advised of the alternative approaches and that the distribution plan chosen be selected deliberately. Accordingly, the Receiver is recommending the second (“target” amount) distribution plan. This recommendation is based entirely on the fact that this is the methodology recommended to courts by the SEC. Given the SEC’s long experience and significant expertise in the area of recovering funds for victims of Ponzi schemes, the Receiver believes the merits and disadvantages of each plan should favor the second plan.

Objections to Recommendation on a Distribution Plan. Since every claimant will be affected positively or negatively by the selection of a distribution plan, the Court may want to permit

claimants to file objections to the Receiver's recommendation and identify the reasons that either plan – or some other distribution methodology – should be chosen. The Receiver recommends that the Court set a deadline of thirty (30) days from the June 28, 2010 status hearing for the filing of any objections to the Receiver's recommendation regarding a distribution plan. A proposed order is attached. If the proposed order is signed, the Receiver will cause it to be mailed to all those who filed claims.

CONCLUSION

The Receiver respectfully submits this Report and Recommendations on Claims Process and on the selection of a distribution plan.

The Receiver verifies under penalty of perjury that the foregoing is true and correct.

DATED this 21st day of June, 2010.



WAYNE KLEIN, Receiver

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of June, 2010, a true copy of the foregoing Report

and Recommendations on the Claims Process was mailed to the following:

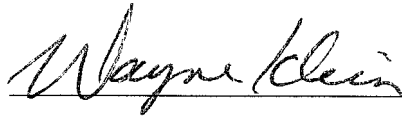
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FFCF/Ascendus Claim Form Tracking Sheet

Claim	Investor Name	Allowed, Reduced, or Rejected?	Claim Amount	Preliminary Allowable Claim	Reduction Accepted?	Allowable Claim Amount
3006		Allowed	122,220.00	122,220.00	N.A.	122,220.00
3009		Allowed	21,071.27	21,071.27	N.A.	21,071.27
3003		Allowed	43,700.00	43,700.00	N.A.	43,700.00
3011		Allowed	75,000.00	75,000.00	N.A.	75,000.00
3016A&B		Allowed	324,076.70	324,076.70	N.A.	324,076.70
3005		Allowed	264,002.40	264,002.40	N.A.	264,002.40
3007		Allowed	47,118.49	47,118.49	N.A.	47,118.49
3015		Allowed	51,256.04	51,256.04	N.A.	51,256.04
3001		Allowed	332,309.76	332,309.76	N.A.	332,309.76
3019		Allowed	742,738.70	742,738.70	N.A.	742,738.70
Initial "Allowed"			2,023,493.36	2,023,493.36		2,023,493.36
3002		Reduced	28,975.08	26,500.00	Yes	26,500.00
3010		Reduced	420,000.00	413,666.67	Yes	413,666.67
3012		Reduced	83,824.87	30,717.24	Yes	30,717.24
3017		Reduced	210,000.00	170,000.00	Yes	170,000.00
"Reduced Accepted"			742,799.95	640,883.91		640,883.91
3013		Reduced	825,056.00	80,653.77		80,653.77
3008		Reduced	118,641.78	45,266.19		45,266.19
3004		Reduced	1,006,739.19	681,211.07		681,211.07
3014		Reduced	381,092.60	362,650.60		362,650.60
"Reduced" Contested or No Response			2,331,529.57	1,169,781.63		1,169,781.63
3018		Rejected	15,132.25	0.00		0.00
3020		Rejected	86,500.00	0.00	Yes	0.00
"Rejected"			101,632.25	0.00		0.00
Total			5,199,455.13	3,834,158.90		3,834,158.90
Created by Jake Hennessy 5/18/2010, using FFCF Claim Analysis Summary Updated 6/21/10						

FFCF/Ascendus Distribution Plans

(showing effects of alternative plans)

Claim #	Investor Name	A	B	E	F	G	H	I	J	K	L
	Status			Verified Investment Amount	Total Distributions	Allowable Claim Amount	% Return on Verified Investment	Pro-Rata Distribution Plan	% Return After Pro-Rata Distrib.	"Target" Distribution Plan	Target % After Partial Distribution
3006	Allowed			904,015.09	772,210.00	122,220.00	85.42%	12,222.00	86.77%	0.00	85.42%
3020	Rejected			16,371.78	12,000.00	0.00	73.30%	0.00	73.30%	0.00	73.30%
3002	Reduced			77,500	51,000	26,500.00	65.81%	2,650.00	69.23%	0.00	65.81%
3013	Reduced			200,000.00	119,346.23	80,653.77	59.67%	8,065.38	63.71%	0.00	59.67%
3017	Reduced			380,000.00	210,000.00	170,000.00	55.26%	17,000.00	59.74%	0.00	55.26%
3012	Reduced			57,461.08	26,743.84	30,717.24	46.54%	3,071.72	51.89%	0.00	46.54%
3009	Allowed			36,071.27	15,000.00	21,071.27	41.58%	2,107.13	47.43%	0.00	41.58%
3003	Allowed			68,700	25,000.00	43,700.00	36.39%	4,370.00	42.75%	0.00	36.39%
3014	Reduced			539,989.43	177,338.83	362,650.60	32.84%	36,265.06	39.56%	0.00	32.84%
3019	Allowed			1,007,305.62	264,566.92	742,738.70	26.26%	74,273.87	33.64%	31,487.66	29.39%
3004	Reduced			910,995.85	229,784.78	681,211.07	25.22%	68,121.11	32.70%	37,963.64	29.39%
3011	Allowed			100,000.00	25,000.00	75,000.00	25.00%	7,500.00	32.50%	4,390.74	29.39%
3010	Reduced			500,000.00	86,333.33	413,666.67	17.27%	41,366.67	25.54%	60,620.37	29.39%
3016A&B	Allowed			332,065.85	40,055.00	324,076.70	12.06%	32,407.67	21.82%	57,541.61	29.39%
3005	Allowed			300,000	35,997.60	264,002.40	12.00%	26,400.24	20.80%	52,174.62	29.39%
3008	Reduced			46,184.08	917.89	45,266.19	1.99%	4,526.62	11.79%	12,655.95	29.39%
3007	Allowed			47,118.49	0.00	47,118.49	0.00%	4,711.85	10.00%	13,848.47	29.39%
3015	Allowed			51,256.04	0.00	51,256.04	0.00%	5,125.60	10.00%	15,064.53	29.39%
3001	Allowed			332,309.76	0.00	332,309.76	0.00%	33,230.98	10.00%	97,668.30	29.39%
3018	Rejected			101,554.64	168,721.92	0.00	0.00%	0.00	0.00	0.00	0.00%
Totals				6,008,898.98	2,260,016.34	3,834,158.90	29.39%	383,415.89		383,415.89	

Created by Jake Hennessy 5/18/2010, using FFCF Claim Analysis Summary
updated 6/21/10

Proposed order prepared by:

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IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY

STATE OF UTAH

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

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FFCF INVESTORS, LLC,

Plaintiff,

vs.

RICHARD SMITH, et al.

Defendants.

[PROPOSED]

**ORDER SETTING DEADLINES FOR
FILING OBJECTIONS TO
RECEIVER'S REPORT ON CLAIMS
PROCESS AND RECOMMENDED
DISTRIBUTION PLAN**

Case No. 080922273

Judge: Denise P. Lindberg

This matter came to be heard at a status hearing before this Court on June 28, 2010. In

his Report and Recommendations on Claims Process, filed June 21st, 2010, the Receiver recommended a procedure to be followed in considering objections to his recommendations on the allowable claims and objections to his recommended distribution plan.

IT IS HEREBY ORDERED that the following deadlines shall apply to objections to the Receiver's recommendations. Accordingly, it is ordered that:

1. Any objections to the Receiver's recommendation as to the allowable claimants and the allowable claim amounts shall be filed with the Court by July 28, 2010 and also served on the Receiver and other parties to this lawsuit.
2. Any objections to the Receiver's recommendation on the allowable claimants and allowable claims not filed by July 28, 2010 shall be deemed waived.
3. The Receiver will be permitted until August 27, 2010 to file any responses.
4. Any objections to, or filings in support of, the Receiver's recommendation of a distribution plan shall be filed with the Court by July 28, 2010 and also served on the Receiver and other parties to this lawsuit.
5. Any objections to the Receiver's recommendation on a distribution plan not filed by July 28, 2010 shall be deemed waived.
6. The Receiver will be permitted until August 27, 2010 to file any responses to the objections or filings in support of the distribution plan.
7. At a status hearing after August 27, 2010, the Court will determine the procedure to be followed for resolving the objections, which may include the Court issuing rulings based on the written submissions.

DATED this ____ day of _____, 2010.

BY THE COURT:

Denise P. Lindberg
Third District Court Judge