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Ascendus Capital Management, LLC,
and Smith Holdings, LLC

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

R. WAYNE KLEIN, AS COURT-APPOINTED
RECEIVER FOR FFCF INVESTORS, LLC,
ASCENDUS CAPITAL MANAGEMENT,
LLC, AND SMITH HOLDINGS, LLC,

Plaintiff,

vs.

ROGER E. TAYLOR, JENNIFER TAYLOR,
AND TAYLOR HOLDINGS, LLC

Defendants.

COMPLAINT

Case No. 20100390295

Judge: ~~Denise P. Lindberg~~
Sandra Pluvs

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 files this Complaint against Defendants Roger E. Taylor ("Taylor"), Jennifer Taylor ("Jennifer"),

and Taylor Holdings, LLC ("Taylor Holdings") (collectively the "Defendants"), and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff was appointed Receiver for the Receivership Entities by the Honorable Denise P. Lindberg, Third Judicial District Court of Salt Lake County, State of Utah, pursuant to an Order dated March 18, 2009 (the "Order"), entered in the action A. *David Barnes, M.D., P.C. v. FFCF Investors, LLC et al.*, Case No. 08922273.

2. Under the terms of the Order, the Plaintiff is authorized to investigate the affairs of the Receivership Entities, to marshal and safeguard their assets, and to institute legal proceedings for the benefit of the Receivership Entities and their investors and creditors against individuals or entities which the Plaintiff claims have wrongfully or improperly received funds or other proceeds from the Receivership Entities.

3. Jurisdiction and venue are properly vested with this Court pursuant to Utah Code § 78A-5-102 and Utah Code § 48-2c-1212.

4. Upon information and belief, Taylor is a resident of Washington County, State of Utah.

5. Upon information and belief, Jennifer is a resident of Washington County, State of Utah.

6. Upon information and belief, Taylor Holdings is a Utah limited liability company with its principal place of business in Washington County, Utah.

GENERAL ALLEGATIONS, BACKGROUND

7. Taylor was the founder, managing member, and moving force behind Ascendus and FFCF. Taylor managed Ascendus in a manner that caused it to be

insolvent shortly after it was formed and structured the creation of FFCF so that it was insolvent from the very beginning. The insolvencies of these companies were hid from investors through the sending of false account statements to investors. These account statements reported that consistent, high profits were being earned.

8. Using his control of Ascendus and FFCF, Taylor caused investors to pay Ascendus \$1,438,384.15 in commissions which were fraudulently earned and misled investors as to the true value of their investments. Taylor caused millions of dollars belonging to investors to be spent on Defendants' personal uses and paid to others for non-investor purposes,¹ and permitted investors to withdraw funds to which they were not entitled.

9. These improper expenditures and the sending of false account statements to investors led to the transition from Ascendus to FFCF and ultimately caused FFCF to collapse in August 2008. This collapse caused the loss of several million dollars of investor funds.

10. During the operation of Ascendus and FFCF, Taylor caused millions of dollars in investor funds to be paid improperly to Jennifer, Taylor Holdings, himself, and others. This lawsuit seeks to recover from Defendants the amounts paid out improperly, so those funds can be returned to investors.

The Ascendus Options Trading Program

11. In January 2003, Taylor began working for a company called Teach Me To Trade, where he conducted seminars that claimed to teach others that options could be traded profitably.

¹ This included using investors' funds in Ascendus and FFCF bank accounts to pay expenses related to several other businesses, whose funds were commingled with investor funds in Ascendus and FFCF.

12. In January 2003, Taylor formed Ascendus Capital Management, LLC, along with Richard T. Smith (“Smith”). In April 2003, Ascendus received a license as an investment adviser. Taylor was the designated official of the investment adviser and referred to himself as the registered investment adviser.

13. Taylor solicited investors to engage Taylor and Ascendus to trade options, using the investors’ funds. Investors were told that Taylor would utilize a proprietary trading strategy that was consistently profitable and that was designed to avoid losses. In some cases, Taylor solicited investors at ‘Teach Me To Trade’ seminars.

14. Investors were required to pay Ascendus based on a sliding-scale commission rate that increased as reported profits rose. If the investment returns were under 12% a year, Ascendus would earn 10% of the profits earned each month. Commissions of 20% were due if profits were between 12% and 24% a year. If the investment earned greater than 24% annual returns, investors owed Ascendus 30% of the profits reported to them by Ascendus.

15. In the majority of cases, investors were instructed to open brokerage accounts in their own name at Penson Financial Services, Inc. (“Penson”), a Dallas-based broker-dealer. Investors deposited their investment funds (and in some cases, stock) into their brokerage accounts at Penson. Investors signed forms granting Taylor authority to trade options, using funds in their Penson brokerage accounts. These forms were labeled ‘Limited Trading Authorizations’ (“LTA”). In at least one case, Taylor had an investor sign an LTA in which his father, Newton Taylor, was given authorization to conduct trades in the client’s account.²

² Newton Taylor had previously been convicted of white collar fraud; a fact not disclosed to the investor when the trading authorization was granted.

16. Ascendus hired salespersons to find additional investors for the Ascendus options trading program. These salespersons were paid commissions based on the amount of funds they obtained. None of these other salespersons were licensed as investment adviser representatives for Ascendus, as required by the Utah Securities Act. At least \$94,000 was paid out in commissions improperly.

17. Each month, Ascendus prepared account statements for each investor, reporting on how much profit had been earned from options trading in their accounts and how much commission was owed to Ascendus as a result. Smith and others delivered these account statements to investors monthly and collected from the investors checks payable to Ascendus for the commissions due on the reported profit. (In some cases, the investors authorized wire transfers directly from Penson to Ascendus for payment of the commissions.)

18. During the entire time that Ascendus operated, from early 2003 through January 2006, Ascendus reported profits every month to all investors. The reported profit varied each month, but the monthly statements always reported a profit.

19. Investors who opened accounts at Penson also received monthly account statements directly from Penson. These account statements listed the trades conducted in their account during the prior month and reported on the end-of-month value of the account. The Penson account statements were complex and difficult to understand, making it hard for investors to measure profits and losses. The Ascendus statements, by contrast, simply reported the total amount of profits earned and commissions due.

20. The account statements from Penson showed account values lower than the account values reported to investors by Ascendus. When some investors asked about

the discrepancies, Taylor gave a variety of explanations such as: Penson's accounting is not well suited for the type of trading Ascendus does, or that the difference was due to the value of options positions still open at the end of the month – positions that were really unrealized profits. Most investors accepted these explanations.

The Ascendus Account Statements Reported False Profits

21. In reality, Ascendus was not earning profits for investors every month. Some months saw significant declines in the value of the investors' accounts. In at least one case, the value of an investor's portfolio dropped 51% during a single month. Despite these losses, Ascendus continued to report profits to investors.

22. As Ascendus reported an unending stream of profits, at a time when account values were fluctuating and generally declining, the gap between the reality of account values and the perception – *i.e.*, the amount reported in the Ascendus account statements – grew.

23. Taylor realized that if Ascendus had admitted the truth to investors:

a. There would be months in which Taylor would have received no compensation;

b. The compensation levels he did receive would have been lower in months where actual profits were lower than the reported profits;

c. Investors likely would have been disillusioned and would have ceased sending additional investment funds; and

d. Investors would have demanded repayment of commissions improperly paid and repayment of losses reported as profits.

24. On information and belief, Ascendus had its first month of losses in July

2003. When Taylor decided to report profits for that month, perhaps hoping to make up the losses in future months, he started Ascendus on a downward spiral from which it never recovered. The losses were never made up and the monthly account statements issued by Ascendus (and later, FFCF) became increasingly fraudulent.

25. Some investors realized that the Ascendus statements could not be reconciled with the monthly reports being issued by Penson. Several investors challenged Taylor. When confronted, Taylor agreed to have Ascendus refund the commissions paid and compensate the investors for their trading losses. These include:

a. Investor FRT, whose \$200,000 investment account at Penson declined to \$90,459 in less than 15 months. During this entire period, Ascendus reported profits to FRT and continued to charge commissions for at least eight of those months.

When FRT confronted Taylor, he had Ascendus pay \$94,119 to FRT as compensation for losses in the account.

b. EP, a Florida attorney, threatened suit against Taylor and Ascendus for the losses in his investment account being managed by Taylor. Taylor, Smith, and Ascendus signed a settlement agreement with EP, pursuant to which Ascendus paid \$128,977.36 to EP. This represented the full amount of EP's investment losses and a portion of the profits that Ascendus had reported to him.

c. Investor DS complained to Taylor that his account had lost \$400,000, despite Ascendus statements reporting continued profits. Taylor agreed to compensate DS for his losses and transferred to DS 300,000 shares of stock in another company.

d. At the beginning of January 2004, investor VF had \$200,000 in his

investment account at Penson. During January, the account value dropped by 13%, while Ascendus reported the account had increased in value 6.9% from December 19, 2003 to January 17, 2004. Ascendus charged VF a commission of \$3,048.52 as Ascendus' share of profits supposedly earned during the month of January. In February, the value of VF's account dropped another 10.8% (while Ascendus reported a 3.5% profit). In March, the account lost \$81,484.26 in value, a 51.6% drop. By the end of June 2005, the value of VF's account had dropped to \$47,492.32, a 76.2% decline – and this was despite Ascendus depositing an additional \$10,000 into VF's account at Penson in March 2005. Ascendus deposited an additional \$10,000 into VF's account in July 2005. Despite this additional cash infusion, VF's account value had dropped to \$39,405.39 by August 2005 when he withdrew this amount from Penson. VF filed a lawsuit in September. The suit was settled, resulting in Taylor and Ascendus paying an additional \$148,500.00 to investor VF.

e. In October 2003, investor KC suffered a \$29,649.18 loss due to a single stock trade in his account at Penson. Ascendus paid \$34,000 directly to KC to compensate him for this loss.

f. Investor KR also had a separate brokerage account at Penson. In June and July 2004, Ascendus paid \$142,156.77 to KR, to compensate her for losses she suffered in her Penson account. Ascendus had to withdraw funds from an account it was managing for other investors (Ascendus Growth Fund) in order to fund this payment to KR.

g. In November and December 2004, Ascendus repaid \$70,182.53 in commissions and repayment of principal to investor BC, whose trading account at Penson

suffered significant losses – while Ascendus was reporting profits.

h. Beginning in November 2005, Ascendus made a series of payments, totaling \$116,499.53 to investment group THL, as refunds of commissions and compensation for losses in their Pension accounts. Funds to make these payments came from investments given to Ascendus by other investors.

Insolvency of Ascendus

26. By sending false account statements to investors, Taylor caused Ascendus to become insolvent. This insolvency occurred because the false account statements caused Ascendus to owe more to investors than its net worth. The aggregate account value that Ascendus reported to investors in the monthly account statements exceeded the combined value of the brokerage accounts of the investors and the assets of Ascendus. In other words, Ascendus lacked the net worth to pay investors the amount by which the “reported” account values exceeded the “actual” account values.

27. Other factors causing Ascendus to be insolvent early in its operations were:

a. Expending company funds to pay investors who recognized the account statement discrepancies, thereby decreasing the company’s capital and net worth;

b. By using falsely-claimed profits as justification for collecting high commissions, Ascendus became liable to investors for those improperly-collected commissions. In fact, in multiple instances, Ascendus used company funds to repay commissions to investors who complained that the commissions had been collected improperly. Ascendus lacked the financial capacity to repay all the commissions it had collected improperly; and

c. Taylor accepted investors into Ascendus who did not meet the net worth standards required as part of Ascendus' investment advisory license. This made Ascendus liable to repay any investor who did not have \$750,000 under management by Ascendus or who did not have a net worth of over \$1.5 million. Ascendus lacked sufficient funds to make those payments.

Ascendus Growth Fund

28. While a majority of investors opened separate brokerage accounts at Penson, some sent their money directly to Ascendus to be pooled and managed by Taylor. Investors were told that they needed to have at least \$100,000 in a Penson brokerage account to qualify for options trading by Taylor. Investors who had less than \$100,000 to invest could send their investment funds to Ascendus for management by Ascendus in the pooled "Ascendus Growth Fund" ("AGF").

29. At least fifteen investors sent their money directly to Ascendus, expecting their funds would be managed by Taylor directly in an account he controlled. These investors also received monthly account statements from Ascendus, reporting on profits supposedly earned each month. Because these investors did not have separate accounts at Penson, they did not receive any account statements from Penson. The Penson account statements showing the actual profits and losses were sent only to Ascendus.

30. These 15 AGF investors gave a total of \$1,016,683.96 to Ascendus. Of this amount, \$331,580.94 was placed by Ascendus in its AGF account at Penson for at least a period of time. The remaining \$685,103.02 was used to pay distributions to other investors or expenses of Ascendus.

31. Monthly account statements sent to AGF investors also reported consistent

profits. In reality, at least a fourth of the months saw declines in the value of the AGF fund and AGF earned less than \$3,000 in cumulative net profits during its three years of existence.

32. Because Ascendus was in control of the AGF, Ascendus was liable to the investors for:

- a. Misrepresenting the value of their investments in AGF;
- b. Misappropriating the investor funds in AGF; and
- c. Violating the terms of the Ascendus investment advisory license,

in which Ascendus represented: "Neither the advisor nor Mr. Taylor will take custody of any of the funds of Clients."

33. These factors, and the liabilities they created to investors, further exacerbated the insolvency of Ascendus.

Misuse of Funds by Ascendus

34. Of the \$1,016,683.96 given by investors directly to Ascendus for investment in AGF, only \$525 was returned to a single AGF investor. The remaining \$1,016,158.96 was used to make payments to non-AGF investors, insiders, affiliated persons for commissions, and business expenses.

35. Taylor paid himself and his personal company (Taylor Holdings) at least \$517,925.44 from Ascendus funds, including \$140,000 in commissions returned to Ascendus by a trading partner because the trading partner recognized that their trading had not resulted in profits for investors. Rather than return the funds to investors or leave the funds in Ascendus to cover its liabilities to investors, Taylor paid the money to

himself.³

36. In addition to these payments, Taylor caused the following payments to be made to himself and family members from Ascendus funds, when Ascendus was insolvent:

- a. \$3,784.64 was paid to Taylor's father;
- b. \$14,061 was paid by Ascendus to Tooele Federal Credit Union in monthly payments for a sport utility vehicle purchased by Taylor's wife, Jennifer; and
- c. \$20,281.44 was transferred for credit card expenses.

Investor Funds Were Used to Make Payments to Other Investors

37. In addition to the use of AGF funds to pay non-AGF investors (described above), Ascendus used other funds paid to it by investors in order to make distribution payments to other investors. This is a practice typically found in Ponzi schemes, where funds from new investors are used to make payments to earlier investors, in order to retain the investors and attract even larger investments. This practice began at least by August 2003:

- a. On August 22, 2003, an investor gave \$20,000 to Ascendus. Before this deposit, the balance in the Ascendus bank account was \$1,037.84. The money from the investor was used to make a \$20,000 payment to an AGF investor 11 days later.
- b. In November 2005, an investor paid \$275,000 to Ascendus. The bulk of those funds was used to make distribution payments to five other investors, including repaying the investor whose August 2003 investment was used to pay off another investor (described in the preceding paragraph). That 2003 investor was paid a

³ Taylor later repaid \$75,000 of this amount to Ascendus.

50% return on her investment.

Closure of Ascendus, Formation of FFCF

38. In late 2005, Taylor decided to close the Ascendus options trading program. Taylor paired with his brother-in-law, Jeff Roylance, to raise investment funds for a California investment adviser – LBS Advisors (“LBS”). Roylance and his company, Summit Capital Advisors, had secured exclusive rights to raise funds for LBS. Taylor became a sub-advisor for Summit. Taylor was to earn commissions from Summit Capital for investment funds he was able to deliver to LBS.

39. Pursuant to Taylor’s sub-advisor agreement with Summit Capital, Taylor would receive 66% of the management fees generated by Summit on funds Taylor raised from investors in the first year and 50% in subsequent years.

40. Taylor and Smith formed FFCF Investors, LLC in January 2006, as a vehicle for pooling investor funds to send to LBS. Taylor was again the managing member. The FFCF name was itself an indication that investor monies were to be sent to “Franklin Forbes Composite Fund,” a fund operated by LBS.

41. Because Taylor and Ascendus would no longer receive commissions from options trading for investors after Ascendus closed, Taylor would receive no further income from Ascendus. In order to continue receiving compensation – this time from LBS Advisors – Taylor needed to persuade investors to move their money to LBS.

42. In late 2005, Taylor, Roylance, and others began talking and meeting with Ascendus investors, telling them the options trading environment was not conducive to the continued string of "profits" they had received in the past. Taylor told investors about FFCF and the investment programs offered by LBS, encouraging investors to move their

investments to FFCF. Most investors were told that LBS required a significant minimum, so investor funds would have to be pooled.

43. The process of having investors withdraw their funds from their Penson accounts created a problem for Taylor, as liquidating the Penson accounts would have made investors realize that their Penson accounts had lost money and that the accounts did not have the value as stated in the account statements from Ascendus. To solve this problem, Taylor and Smith had investors sign wire transfer forms, instructing Penson to wire the investors' money directly to the newly-created FFCF entity.

44. When Taylor met with investors, he generally had them sign subscription agreements memorializing their decisions to invest in FFCF. These subscription agreements significantly overstated the amount of their beginning investment balance in FFCF. The amounts listed in the subscription agreements were consistent with the investment values that had been reported in the account statements sent out by Ascendus. For example:

a. Investor DA had a \$470,792.56 ending value in his investment account at Penson. This was wired from Penson to FFCF on February 15, 2006. During this time period, his Ascendus account statement said his investment balance was almost twice that amount – \$912,000.

b. Investor AB had a \$179,237.88 balance in his Penson account, but his subscription agreement with FFCF showed a \$500,000 beginning investment balance.

c. Investor RH had a \$239,713.84 balance in his Penson account, but his FFCF subscription agreement showed a beginning investment balance of \$329,830.28.

45. In total, investors who joined FFCF at its inception delivered actual funds to FFCF totaling \$7,585,727.61 (between December 2005 and February 2006). These investors were told by Taylor and FFCF that their investment balances were at least \$12,819,451.19. This \$5,233,723.58 difference represented fictitious investment deposits.

46. Taylor employed various devices to persuade investors to move to FFCF, in addition to the expected profits. In at least one instance, Taylor caused Ascendus to deposit \$41,434.08 into an investor's account at Penson, to make it appear as if the individual account had over \$200,000, instead of the actual value of \$160,833.24. This investor was then persuaded to move his investment to FFCF. The investor learned in 2009 that the \$41,434.08 was removed from his Penson account before the transfer, so the investor had only \$160,833.24 actually transferred to FFCF from Penson. Nevertheless, this investor was told his beginning investment balance at FFCF was \$200,000.

47. Not all investors were given the choice of withdrawing their funds invested through Ascendus or moving to FFCF. Investors whose funds were pooled by Ascendus for participation in the Ascendus Growth Fund had their funds continue to be held in AGF until July 2006.

Insolvency of FFCF

48. As a result of telling investors that they had at least \$12.8 million invested, when FFCF only had received \$7.6 million, FFCF was insolvent from the beginning.

49. The problem was exacerbated from there. As the investor funds were sent to LBS and FFCF began to receive account statements from LBS claiming profits were

being earned, Taylor and FFCF had to report to investors profit on the \$12.8 million the investors thought they had, rather than the \$7.6 million actually invested. The monthly account statements sent to investors by FFCF reflected this illusion.

50. Taylor and FFCF may have hoped that the \$7.6 million would earn sufficiently high returns to repay the \$12.8 million promised to investors, but Taylor and FFCF were not able to keep up with disbursements and began to immediately redistribute new investment funds coming into FFCF, instead of forwarding those new investor funds to LBS.

Additional Investment Funds Were Not Invested As Promised

51. Between March 2006 and July 2007, investors gave an additional \$3.6 million to FFCF, believing it would be combined with other investment funds already in the pool formed by FFCF. However, only \$430,000 of this \$3.6 million was ever sent to LBS. Despite having received a total of \$11.2 million from investors, only \$8.0 million was actually sent to LBS for investment.

52. During this time, the investors were told their initial investment balances far exceeded what was actually invested.

Taylor's Role with FFCF

53. Taylor was the manager of FFCF. This was reflected in the organizational documents filed with the Utah Division of Corporations, the FFCF Operating Agreement, and communications with investors and LBS. LBS sent monthly account statements to FFCF reporting on the profits earned each month from the funds invested by FFCF. These account statements were sent to Taylor. Taylor then prepared a summary as to how much profit to report to each investor whose money was in the pool and had Smith

use that summary to prepare monthly account statements that were sent to investors.

54. Only Taylor could withdraw funds from LBS on behalf of FFCF. When making withdrawals, Taylor submitted notarized withdrawal requests in which Taylor affirmed that he was the manager of FFCF. In many cases, funds withdrawn from LBS were sent directly to Taylor and deposited into his personal bank account or the account of his company, Taylor Holdings. Regardless of whether the payments from LBS were deposited into FFCF or Taylor's accounts, Taylor endorsed the refund checks.

55. During the time FFCF had pooled funds from investors and sent most of it to LBS, Taylor continued in the role as the investing expert for FFCF. Newsletters, which Taylor authored, were sent to investors telling them about the progress of their investments and market trends affecting their investments.

Investor Funds Paid to FFCF Were Used to Pay Off Other Investors

56. As noted above, almost all of the investor funds in the Ascendus Growth Fund were used to pay other investors or for expenses of Taylor and Ascendus. After Ascendus ceased its options investment program in February 2006, AGF continued. Over the next four months, the \$39,237.81 remaining in this trading account were used to pay expenses unrelated to the investors whose funds were in the account, including \$37,775.69 paid out to other investors.

57. There were numerous instances in which \$5.3 million in new monies sent to FFCF by investors were used to make payments to other investors, instead of being sent to LBS for inclusion in the investment pool

a. Out of \$300,000 deposited by an investor into FFCF in March 2006, more than \$250,000 was used to pay distributions to three other investors.

b. Out of \$500,000 given to FFCF in November 2006 by an investor, \$430,000 was sent to LBS for investment. Of the remaining funds, \$14,111.11 was used to make distribution payments to two other investors, \$30,000 was paid to Taylor, and the balance was used for the operations of FFCF.

c. An investor delivered \$332,309.26 to FFCF on March 16, 2007. \$276,662.36 of this amount was used to make distribution payments to three other investors.

d. A \$200,000 distribution payment to an investor on March 21, 2007 was funded from deposits by two other investors.

e. A \$50,000 payment by an investor on March 20, 2007 was transferred from one bank account to another and finally to FFCF where it was used to have sufficient funds to make a \$160,000 distribution to another investor.

f. On April 26, 2007, investor GDN wired \$200,000 to FFCF for investment. The next day, the \$200,000 was wired as a payment to another investor; none of the funds were sent to LBS.

g. Investor JG sent \$25,000 for investment on June 27, 2007. The next day, the \$25,000 was paid out to another investor, leaving the bank account with a zero balance.

58. Sometimes, investors requested distributions and FFCF lacked funds to pay the withdrawal. In some instances, Smith borrowed funds and used the proceeds from the loans to make distribution payments to investors, including a \$150,000 payment to an investor on August 20, 2007 and a \$750,000 payment to another investor on November 7, 2007.

Investor Funds Were Used to Pay Unrelated Business Expenses

59. Because FFCF owed investors over \$5 million more than FFCF had in its investment account at LBS or its own bank account, all funds in the control or possession of FFCF should have been used for the benefit of investors – either to increase the size of the investment pool or to return funds to investors. Instead, substantial funds from FFCF were used to pay expenses that were not only *not* for the benefit of investors but which were completely unrelated to the business of FFCF.⁴

60. \$725,000 of the funds deposited into the bank account of Ascendus in August 2007 by Time Warner (for a business venture unrelated to FFCF) was paid by Taylor to himself. This payment was made from an Ascendus bank account when Ascendus and FFCF were insolvent.

61. In September 2007, Taylor caused FFCF to pay \$57,007.50 to a collection agency to satisfy a debt. This debt was unrelated to the investment business of Ascendus or FFCF.

62. As noted earlier, during the FFCF period, Taylor agreed to a settlement of a lawsuit in which he and Ascendus were required to pay money to a former investor for losses sustained in his Penson account. Although the settlement agreement required Ascendus and Taylor to pay \$125,000 to this investor, the Receivership Entities actually paid \$148,500 to him.

a. \$68,500 of these settlement payments were paid by FFCF. FFCF had not been a party to that settlement agreement and had not even existed at the time of

⁴ Discussion of these expenditures for non-FFCF purposes is complicated by two factors. First, Taylor and Smith used the Ascendus and FFCF bank accounts for business purposes other than FFCF. Second, \$3 million was deposited into the Ascendus bank account in August 2007 from Time Warner Cable for a communications business venture. That \$3 million was then used for that communications venture, personal expenditures, and payments to investors.

the settlement agreement. Taylor required FFCF to pay these funds to reduce the amount he was obligated to pay under the settlement agreement. FFCF received no benefit from this payment of Taylor's debt.

b. \$67,500 of this debt was paid by Taylor and \$12,500 was paid by Taylor Holdings. However, Taylor caused \$47,500 of these amounts to be paid to him by FFCF, to fund these settlement payments. These payments were made from FFCF to Taylor when FFCF had no legal obligation under the settlement agreement and obtained no benefit from the payment.

Taylor's Conversion of FFCF Funds

63. As described above, Taylor's only right to compensation for his work with investors in FFCF was to come from Summit Capital sharing its management fee with him. Despite this, Taylor also withdrew funds from LBS that belonged to investors and used those funds for personal uses.

64. Taylor withdrew \$1,611,000 from FFCF's investment account at LBS and had the funds deposited into his personal bank accounts. \$1,435,000 was subsequently sent on to FFCF, but the remaining \$176,000 remained in Taylor's personal accounts. Most of it appears to have been used for personal expenses.

65. In addition to the withdrawal of funds from LBS, Taylor caused FFCF and Ascendus to make payments to him after January 2006 with funds that belonged to investors and when FFCF and Ascendus were insolvent. These payments include:

- a. \$650,000 paid from the Ascendus bank accounts to Taylor Holdings;
- b. \$186,500 paid from the FFCF bank accounts to Taylor Holdings;
- c. \$75,000 paid from the Ascendus bank accounts to Taylor; and

- d. \$284,000 paid from the FFCF bank accounts to Taylor.
- 66. These payments to Taylor and Taylor Holdings were in addition to:
 - a. Taylor continuing to have Ascendus make car payments to Tooele Federal Credit Union for Jennifer, totaling \$9,344.44. Ascendus paid a total of \$23,361.10 for Jennifer's car. The car payments made for Jennifer were not done for the purpose of benefitting Ascendus or FFCF; and
 - b. \$40,218.02 in credit card bills being paid by Ascendus and FFCF after January 2006.

The Collapse of FFCF

67. From early 2006 to July 2008, LBS was reporting to FFCF that FFCF was earning profits on its investment managed by LBS. However, those reported profits were not high enough to cover the gap between the amount FFCF had sent to LBS and what was reported to investors.

68. Nevertheless, Taylor continued to withdraw funds from LBS. Between the inception of the investment and March 2007, Taylor withdrew \$2,016,594.75 from LBS, reducing FFCF's earning capacity. At least \$432,272.39 of the amount withdrawn from LBS was paid to persons and entities who were not investors.

69. In April 2007, FFCF permitted investor Al Wirth to separate his investment funds from the rest of the pool. To avoid acknowledging that the investment pool was valued at significantly less than was being reported to investors, FFCF permitted him to separate the entire amount of value that FFCF had reported to him – \$3.8 million. This substantially reduced the size of FFCF's investment pool to \$3.1 million.

70. In July 2007, FFCF permitted another investor to separate his investment funds from FFCF. Again, the investor was permitted to separate the full reported value of his investment, rather than his proportionate share of the actual value of the investment. This \$1,545,000 reduction in the value of FFCF's investment left FFCF with an account value of \$1,581,849.52.

71. In December, 2007, Taylor withdrew \$1,500,000 from LBS, along with that month's \$14,206.10 in reported earnings. As described above, this money was sent to Taylor's own bank account, where most of it was later sent on to FFCF. This withdrawal left an account value of \$81,849.52.

72. In the interim, investors were still receiving account statements showing high values for their portions of the FFCF investment pool.

73. In February 2008, Lighted Candle Society (an investor) ("LCS"), requested withdrawal of its \$100,000 investment. In mid-April, Taylor wrote LCS saying that because of a communication failure between Smith and Taylor, Taylor was not informed of the withdrawal request and, therefore, FFCF had missed the deadline to request the withdrawal during the current quarter. Taylor told LCS that its withdrawal request was submitted to LBS on April 11 and that LCS could expect payment approximately July 11, 2008.

74. In reality, Taylor knew that the value of FFCF's investment with LBS was less than the amount needed to pay LCS.

75. On or around July 10, 2008, when LCS was told it would receive the return of its investment, Smith attempted suicide and was hospitalized. A letter was sent to investors, saying that the fund had collapsed and that the investments were lost. This

letter acknowledges that investor accounts were suffering losses as early as 2004 and that the account statements sent to investors did not reflect the amount actually in the investor accounts. The letter bears the purported signature of Smith, but was actually drafted by Taylor.

76. On August 1, Taylor withdrew the remaining \$81,849.52 of FFCF's funds from LBS, depositing those funds into his own bank account.

77. On October 15, 2008, subsequent to the collapse of the FFCF fund, investor David Barnes filed suit in Third District Court seeking the appointment of a Receiver, and the Receiver was appointed Receiver for the Receivership Entities pursuant to an Order in that case dated March 18, 2009.

78. In a California action, a receiver was appointed for the assets of GJB Enterprises, the entity that had been managing FFCF's funds. It is now believed that GJB was operating as a Ponzi scheme and investor funds were lost. While FFCF's investment funds had all been withdrawn, with additional distributions, the funds separated by investor Al Wirth have been lost.

FIRST CLAIM FOR RELIEF

(Breach of Fiduciary Duty – Roger Taylor)

79. The Receiver incorporates each and every allegation contained in the foregoing paragraphs.

80. As a member and manager of FFCF and Ascendus, Taylor owed fiduciary duties to these companies.

81. By his conduct, Taylor breached his fiduciary duties to Acendus and FFCF by, *inter alia*, the following:

- a. Reporting false profits on Ascendus account statements to investors so he could claim higher commissions than he was justified in claiming;
- b. Misusing funds from Ascendus for personal gain or for illegitimate purposes unrelated to Ascendus;
- c. Causing Ascendus to become insolvent through his fraud and his misuse of company funds;
- d. Misrepresenting the amount of money investors with FFCF had actually deposited with FFCF;
- e. Misusing funds from FFCF for personal gain or for illegitimate purposes unrelated to FFCF;
- f. Causing FFCF to become insolvent through his fraud and his misuse of company funds; and
- g. Converting the funds of Ascendus and FFCF.

82. The Receivership Entities have been damaged by Taylor's breach of fiduciary duties in an amount to be proven with specificity at trial.

83. Taylor's conduct in breaching his fiduciary duties was willful and malicious, and otherwise entitles the Receiver to punitive damages.

SECOND CLAIM FOR RELIEF

(Fraudulent Transfer – All Defendants)

84. The Receiver incorporates each and every allegation contained in the foregoing paragraphs.

85. The transfer of funds to the Defendants from the Receivership Entities were inherently fraudulent because they were made as part of a Ponzi scheme, and were

made with the intent to hinder, delay, or defraud the creditors and/or investors of the Receivership Entities.

86. None of the Receivership Entities received a reasonably equivalent value from the Defendants for goods or services in exchange for the transfers from the Receivership Entities.

87. Accordingly, any transfers from the Receivership Entities to the Defendants are fraudulent transfers under the Utah Uniform Fraudulent Transfer Act.

88. The Receivership Entities were insolvent at the time the transfers were made to the Defendants.

89. Pursuant to Utah Code § 25-6-1 *et seq.*, the Receiver is entitled to avoid and recover the transfer of money from the Receivership Entities to the Defendants as an actual or constructive fraudulent conveyance.

THIRD CLAIM FOR RELIEF

(Unjust Enrichment – All Defendants)

90. The Receiver incorporates each and every allegation contained in the foregoing paragraphs.

91. The Defendants received money from the Receivership Entities to which they were not entitled, and this money continues to be wrongfully retained by the Defendants.

92. The Receiver is entitled to disgorgement of the money he seeks in this action, and the circumstances present in this action render the Defendants' retention of those benefits inequitable.

93. The Defendants have been unjustly enriched at the expense of the

Receivership Entities, and the Receiver is entitled to a judgment against the Defendants in an amount to be proven at trial.

FOURTH CLAIM FOR RELIEF

(Conversion – Roger Taylor)

94. The Receiver incorporates each and every allegation contained in the foregoing paragraphs.

95. Taylor willfully interfered with the property of the Receivership Entities without lawful justification when he transferred money from the Receivership Entities to himself, Taylor Holdings, and Jennifer, and when he transferred money from the Receivership Entities to other third parties so as to benefit the Defendants.

96. The Receivership Entities are entitled to the use and possession of the property of which Taylor deprived them.

97. The Receivership Entities have been damaged as a result of Taylor's conversion of their property, and the Receiver is entitled to a judgment against him in an amount to be proven at trial.

FIFTH CLAIM FOR RELIEF

(Appointment of a Receiver – Taylor Holdings)

98. The Receiver incorporates each and every allegation contained in the foregoing paragraphs.

99. As alleged above, Taylor, who controls Taylor Holdings, has acted and will continue to act in a manner that is illegal, oppressive, and/or fraudulent.

100. Funds belonging to the investors in the Receivership Entities were deposited into bank accounts of Taylor Holdings, and these funds were used for purposes

that did not benefit these investors or the Receivership Entities.

101. The property of Taylor Holdings is in danger of being lost, removed, damaged, or may be insufficient to satisfy a judgment against it by the Receiver.

102. Taylor's self-dealing, illegal and fraudulent activities, and his decision to pay to himself and to Taylor Holdings money that belongs to the Receivership Entities at the expense of the investors and creditors of the Receivership Entities entitles the Court to place Taylor Holdings in receivership.

103. Accordingly, the Receiver requests that a Receiver be appointed to handle the business and affairs of Taylor Holdings.

SIXTH CLAIM FOR RELIEF

(Constructive Trust – All Defendants)

104. The Receiver incorporates each and every allegation contained in the foregoing paragraphs.

105. A constructive trust may be imposed as a matter of equity where there has been a wrongful act, unjust enrichment, and specific property that can be traced to the wrongful behavior.

106. The Defendants received money wrongfully and fraudulently obtained by the Receivership Entities, which diminished the amounts available to pay the investors and creditors of the Receivership Entities.

107. The Defendants have been unjustly enriched at the expense of the Receivership Entities, and the money that they have received from the Receivership Entities can be traced to the wrongful and fraudulent acts of Taylor as set forth above.

PRAYER FOR RELIEF

WHEREFORE, the Receiver prays for judgment against the Defendants as follows:

1. For a judgment against the Defendants in an amount equal to all payments received by him from the Receivership Entities, which total at least \$2,525,387.37;
2. For an order requiring the Defendants to disgorge the money they have received from the Receivership Entities;
3. For punitive damages;
4. For pre-judgment and post-judgment interest to the fullest extent permitted;
5. For an appointment of a receiver for Taylor Holdings;
6. For a judgment imposing a constructive trust in favor of the Receiver over all monies and assets obtained with those monies that the Defendants received from the Receivership Entities;
7. For costs and attorneys' fees expending in recovering funds from the Defendants; and
8. For such other and further relief as the Court may deem just and proper.

DATED this 1st day of March, 2010.

MANNING CURTIS BRADSHAW & BEDNAR LLC



L.R. Curtis, Jr.

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Capital Management, LLC and Smith Holdings, LLC

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