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

R. WAYNE KLEIN,

Receiver,

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

Plaintiff,

vs.

FFCF INVESTORS, LLC, et al.

Defendants.

**REVISED SECOND REPORT OF  
R. WAYNE KLEIN, RECEIVER  
(FOR PERIOD ENDING MAY 15, 2009)**

Case No. 080922273

Judge: Denise P. Lindberg

R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of FFCF Investors, LLC, Ascendus Capital Management, LLC, and Smith Holdings, LLC (the "Receivership Entities") submits this Second Report of the Receivership, covering the period April 9, 2009 through May 15, 2009.

**PRELIMINARY STATEMENT**

*The following constitutes a summary of the Receiver's work to date. The Receiver has not completed his investigation. The statements contained in this report should not be relied*

*upon for any purpose but are presented for informational purposes only. The Receiver makes the following statements to inform those interested parties of the progress he is making. Upon completion of his investigation, the Receiver will be better able to make more accurate factual statements after having reviewed all the information available. Any opinions of the Receiver expressed herein are based on information the Receiver has reviewed to date. These opinions are subject to change as the Receiver continues with his investigation.*

## **DEVELOPMENTS SINCE THE LAST REPORT**

### **Records of the Receivership Entities**

1. On April 21, 2009, the Receiver received records of the Receivership Entities from James Warner, counsel for Roger Taylor. The records, totaling 3,428 pages, contain two types of documents: a) analysis by Mr. Warner, consisting of a factual overview and a summary of financial transactions with investors, and b) business records of the Receivership Entities containing investor information, corporate records, and bank records.
2. The Receiver had the documents numbered and an index created.
3. The documents reviewed by the Receiver to date indicate likely falsification of records. This includes the apparent falsified use of the name of Hans Anderson, certified public accountant, the unauthorized claim that the accounting firm HJ Associates provided accounting services for some of the Receivership Entities, and indications that wire transfer instruction forms may have utilized forged signatures.
4. Based on a preliminary review of certain records of the Receivership Entities and a review of

publicly-available records, it appears that Ascendus Capital Management was licensed as an investment adviser from April 22, 2003 to December 31, 2005 (when Ascendus said it was ending its investment program) and that Roger E. Taylor was licensed as an investment adviser representative for Ascendus Capital Management during the same period. It appears that neither of these licenses continued after December 31, 2005 and that Richard Smith was never licensed in any securities capacity at any time.

5. It appears to the Receiver that the monies given to FFCF by investors was done without compliance with the securities laws; it appears to the Receiver that no one associated with the Receivership Entities was licensed to sell securities after December 31, 2005 and the FFCF securities were not registered nor was there an exemption filing relating to the securities. In addition, based on a preliminary review of documents of the Receivership Entities, it appears that investments in FFCF were supposed to be restricted to investors who met the qualification of “accredited investors,” under state and federal securities laws. However, it appears that at least some of the investors did not meet this qualification, making them unsuitable to bear the risks of an investment such as this. There also does not appear to have been a disclosure document, such as a prospectus or offering memorandum, that informed investors about the nature and risks of the investment.

### **Bank Records**

6. The Receiver is putting his initial focus on the bank records. There appear to be at least nine bank accounts held by the Receivership Entities or into which investor funds were

transferred.

7. As noted earlier, the records received from Mr. Warner contained analysis in two areas: a history of the operations of the companies and financial transactions with investors after February 1, 2006. The summary of financial transactions with investors is limited to a certain time period and does not account for funds provided by or paid to investors before 2006.
8. The records provided to the Receiver did not include any reconstruction of the records of the nine bank accounts, showing the source of funds into the bank accounts of the Receivership Entities and how the funds in the bank accounts were spent. In addition, the bank records are incomplete; the records do not include copies of all checks written on the bank accounts or documents showing the sources of all deposits. The Receiver expects to request that the banks provide copies of those missing checks, wire transfers, and deposits. This will delay efforts to complete an accurate reconstruction of the bank records.
9. Based on the bank account transactions inputted in spreadsheets to date by assistants to the Receiver, it appears to the Receiver that there were significant funds expended in improper payments. There are suggestions that the bank accounts of the Receivership Entities were used as personal piggy banks for some insiders. There are indications of substantial payments from these bank accounts to insiders (including large fees and bonuses), charitable contributions, payment of credit card expenses, and commingling of funds with other business ventures.

10. For example, the preliminary analysis of one bank account open from 2004 to 2007 is showing over \$128,000 used to pay credit card bills and more than \$34,000 paid to insiders, withdrawn as cash, or used to pay traffic tickets.
11. The Receiver also is finding evidence of deposits into Ascendus bank accounts directly from brokerage firms (on behalf of customers) and payments from bank accounts of the Receivership Entities directly to brokerage firms during the pre-2006 time period—at a time when the Receiver had been led to expect that investor funds were held only in brokerage accounts at other institutions and were not run through bank accounts of Ascendus or within the control of principals of Ascendus.
12. The Receiver intends to complete the financial analysis of the bank accounts as the first step towards identifying recipients of funds from the Receivership, determining the purposes for expenditures from the bank accounts (including a determination whether payments were improper), tracking the uses of funds from investors, and developing a plan for recovery of any improper payments.

### **Litigation Developments**

13. On April 10, 2009, the Receiver filed a motion to consolidate *FFCF Investors LLC v. Richard Smith, et al.* (case number 080925879) with the instant case. Plaintiff Barnes filed a notice with the court indicating he does not object to the consolidation. The Receiver is not aware of any other objections to the consolidation motion.
14. On April 16, 2009, a lawsuit was filed by The Lighted Candle Society against two

Receivership Entities (Ascendus Capital Management and FFCF Investors) as well as four other defendants. The lawsuit, filed in the Third District Court, alleges claims of securities laws violations and other causes of action. That case is pending before Judge Toomey.

### **Related Legal Developments**

15. On May 7, 2009, a jury in federal court in Alexandria, Virginia convicted Linda Woolf and David Gengler of conspiracy and wire fraud related to false representations they made to encourage individuals to pay for stock trading classes. Woolf and Gengler were instructors for a company called “Teach Me to Trade.”
16. Solicitation of investors through the “Teach Me to Trade” program appears to have some connections to and parallels with this case.
  - a. The Receiver’s preliminary review of bank records of Ascendus Capital Management has revealed multiple payments to Linda Woolf from at least one of the Ascendus bank accounts. These payments are labeled as “bonuses.”
  - b. Some FFCF investors have claimed that they became acquainted with FFCF after attending a “Teach Me to Trade” seminar.
17. The Receiver intends to examine whether there were payments to other persons associated with “Teach Me to Trade.”

### **Update to the Receiver Web Site**

18. The Receiver’s Initial Report has been posted to the Receiver’s web site.

## Alleged Overpayments to Certain Investors

19. The Receiver has been investigating the claim that funds nearly equal to the amount still owed to investors in FFCF are recoverable from 11 FFCF investors who were overpaid. The Receiver's objective in this inquiry is to determine the strength of claims asserted in the recoupment action (*FFCF Investors, LLC v. Richard Smith, et al.*, #080925879).
20. Based on conversations with and documents received from attorneys for some of the 11 investors sued in the recoupment action and based on information provided with investor questionnaires, it appears to the Receiver that his ability to successfully recover \$3.5 million in overpayments is questionable. At least three of the investors who were alleged to have received funds from FFCF without having made any investment, have provided evidence to the Receiver that they invested funds with FFCF or a predecessor company. Others in this group of 11 investors have provided information indicating that they were not overpaid, but suffered net losses in their investments. The key to resolving these disputes will be determining whether funds invested prior to December 31, 2005 were returned and a separate investment decision made or whether the pre-2006 investment funds were under the control of Receivership entities and rolled over into FFCF without being returned to investors.
21. Preliminary indications from the Receiver's initial review of bank records suggests that FFCF's inability to repay investors was substantially impacted by improper expenditures by the Receivership Entities.
22. Nonetheless, the Receiver believes that some members of this group of 11 investors have

been overpaid and intends to seek recovery of all funds that have been paid to investors in excess of the principal amounts invested.

### **Information Gathering**

23. The Receiver has begun sending letters to companies that appear to have been affiliated with the Receivership Entities, seeking information about transactions with the Receivership Entities. Some recipients have been cooperative. As a result of that cooperation, the Receiver has determined that none of the furniture in the FFCF offices belongs to the Receivership Entities. The Receiver is exploring whether there were rent deposits, related to former offices of FFCF, that can be recovered by the Receiver.
24. Other recipients of requests for information have not been cooperative. This includes some investors who had promised to provide information to the Receiver, Utah-based entities that might have connections with the Receivership Entities, and California-based LBS Advisors, which managed close to \$10 million of FFCF funds. LBS Advisors continues to ignore requests by the Receiver for information.
25. When the Receiver has completed his analysis of the bank accounts, the Receiver will be in a better position to seek court assistance to obtain this information and to determine what other information to seek.

### **NEXT STEPS**

1. In light of questions whether monies sufficient to repay investor losses are being held by investors who were overpaid, it appears that recovery of significant funds for the benefit of



investors—if it is to occur—will have to come from recipients of funds from Ascendus, FFCE, and Smith Holdings. This requires the Receiver to complete an analysis of the bank accounts of the Receivership Entities. Because this involves nine bank accounts that were in use for several years, it is taking some time. The Receiver has determined it would be most cost-effective (cheapest) to have as much of this analysis as possible performed by analysts working for him who bill at low rates. In order to ensure accuracy, this process will take longer, but will significantly reduce the amount of time the Receiver will need to spend analyzing the bank accounts. In other words, the Receiver is sacrificing speed in order to reduce costs until additional sources of repayment can be identified.

2. When the total amount of funds paid to each recipient is identified, the Receiver intends to:
  - a. Obtain information regarding the purposes of those payments;
  - b. Make a determination of which payments were improper;
  - c. Demand the return of improper payments; and
  - d. Take steps necessary to recover funds that can be returned to the Receivership, seeking help from the court as necessary.
3. During this process, the Receiver is also identifying which persons may have information that will aid the Receiver in understanding the reasons for expenditures. The Receiver expects to issue subpoenas and take depositions of persons with knowledge of the Receivership Entities.

## CONCLUSION

The Receiver respectfully submits this Initial Report for the period from April 10, 2009 through May 15, 2009.

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

DATED this 29<sup>th</sup> day of May, 2009.

  
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WAYNE KLEIN, Receiver

## CERTIFICATE OF SERVICE

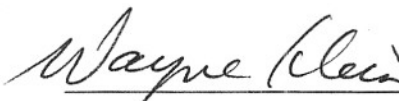
I hereby certify that on the 29<sup>th</sup> day of May, 2008, a true copy of the foregoing Second

Report of Receiver was mailed to the following:

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