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SALT LAKE DEPARTMENT

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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.

**FOURTH REPORT OF
R. WAYNE KLEIN, RECEIVER
(FOR PERIOD ENDING SEPT. 24, 2009)**

Case No. 080922273

Judge: Denise P. Lindberg

FFCF INVESTORS, LLC,

Plaintiff,

vs.

RICHARD SMITH, et al.

Defendants.

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

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

Fourth Report of the Receivership, for the period July 11, 2009 through September 24, 2009.

DEVELOPMENTS SINCE THE LAST REPORT

A. Settlements and Negotiations with Overpaid Investors

1. In December 2008, Sara Pfrommer, counsel for Roger Taylor (who was also acting as counsel for FFCF), filed a lawsuit in the Third District Court against Richard Smith and twelve other defendants who were alleged to be overpaid investors. On July 31, 2009, that lawsuit was combined with the lawsuit in which the Receiver was appointed.
2. The Receiver has taken an independent look at the defendants sued by FFCF in the December lawsuit based on more complete financial information available to the Receiver and the Receiver's own analysis of the legal liability of investors. As a result, these and certain other investors can be divided into five categories related to overpayments:
 - a. Settlement Agreements. The Receiver has entered into settlements with four overpaid investors: Bary Jones, David Young, Richard Young, and Kelly Cook. The first three of these currently are defendants in the lawsuit filed by FFCF in December; the fourth, Cook, was not named as a defendant in the lawsuit, but was found by the Receiver to have been overpaid. The Receiver has filed a notice of these proposed settlements with the Court and asked the Court's approval to accept the settlement agreements. Pursuant to these proposed settlements, \$190,800 has been paid to the Receiver. More information on these settlements can be found in the Receiver's notice filed with the Court, which is posted on the Receiver's web site.
 - b. Defendants to be Dismissed from Lawsuit. The Receiver has filed a motion with the

Court to dismiss four defendants from the litigation: Gerald Millard, Millard Living Trust, Stanford Petersen, and Michael Usher. In his analysis of transactions with these investors, the Receiver determined that they had given more money to the Receivership Entities than indicated in the complaint filed against them.

- c. Ongoing Discussions and Negotiations. The Receiver has had discussions with attorneys for four of the remaining defendants: Robert Workman, T. Courtney Smith, Kathryn Rowley, and Al Wirth in an attempt to clarify the amounts owed by these investors and, in at least one case, to discuss settlement. The Receiver has scheduled a deposition of Workman and expects to take depositions of some of the others in the near future.
- d. Non-Cooperative Defendants. The remaining two defendants, Richard Smith and Steven James have not responded to requests for information. As noted below, the Receiver attempted to take the deposition of Richard Smith, but he did not appear for his deposition.
- e. Overpaid Investors Not Yet Sued. The Receiver has identified a number of current and former investors who received more in payments from the Receivership Entities than they invested. The Receiver is in the process of demanding that they return the excess payments to the Receiver. In one case discussed above (Cook), a settlement agreement has already been reached and payment has been made. In another case, the Receiver has a tentative agreement with the overpaid investor. In other cases, the

Receiver expects to have to issue subpoenas, take depositions, or file suit against the overpaid investors.

B. Litigation Developments

3. Since the last court hearing on July 20, 2009, the following issues have been presented to the Court for resolution:

- a. Consolidation. By order dated July 31, 2009, the Court consolidated the lawsuit against the overpaid investors with the main receivership action. They both are now before this Court under case #080922273.
- b. Conflicts of Interest. In his Third Report to the Court, the Receiver raised issues regarding potential conflicts of interest by having former counsel for the corporate entities continue to represent one of the defendants in this action. Additional briefing was submitted to the Court by Roger Taylor, A. David Barnes, and the Receiver. The briefing has been completed and the Receiver has filed a notice that the matter is ready for a court ruling.
- c. Motion to Compel Deposition. On September 1, 2009, the Receiver filed a motion with the Court asking that Richard Smith be compelled to appear at a deposition after he objected to a subpoena issued by the Receiver. No responses to the Receiver's motion were filed and the Receiver notified the Court that this issue is ready for decision.
- d. Request for Approval of Settlements. On September 8, 2009 the Receiver filed a

notice with the Court seeking approval for several proposed actions: 1) approving the execution of settlement agreements with four overpaid investors (discussed above), 2) dismissing four defendants from the lawsuit who are not overpaid (discussed above), and 3) using some of the settlement funds received to pay expenses of litigation against other recipients of Receivership money. As of September 24, there had been no objections to these proposals and the Receiver expects to notify the Court (before the October 1, 2009 hearing) that these requests are ready for Court ruling.

4. In the federal court litigation, the lawsuits filed by investors Wirth and Donnell have been consolidated.

C. Bank Records

5. The Receiver has finished reconstructing the financial records of the companies, using the bank records received relating to nine bank accounts held at four banks. While the Receiver believes the reconstructed records give a fairly complete picture of financial transactions by these companies, the results are still preliminary. A number of transactions still have not been identified because they were wire transfers to unknown accounts, used to purchase cashier's checks to unknown persons, reflect cash withdrawals, or were paid to insiders for unknown purposes.
6. The dangers of placing too much emphasis on the accuracy of these records was highlighted during settlement discussions with one overpaid investor where some of the funds the investor had received were payments where the Receiver had not known to whom the funds

had been paid. As a consequence, the investor had received more than had been indicated by the analysis of either Warner or the Receiver. To counter this problem, the Receiver is insisting that any settlement agreements include representations by the investors that they did not receive funds unknown to the Receiver.

7. Very recently, the Receiver found a previously-unknown additional bank account at Key Bank. The Receiver has requested copies of those records from Key Bank.
8. The Receiver has sent subpoenas to several financial institutions requesting records showing the purposes for payments to those institutions by the Receivership Entities. The Receiver hopes this information will enable him to identify other persons from whom the Receiver can demand returns of funds.

D. Recipients of Funds

9. As noted in the Third Report to the Court, some of these bank accounts were used for business transactions that are unrelated to Ascendus and FFCF and which involved deposits and payments of non-investor funds. The Receiver estimates that only about half of the funds deposited into these accounts came from investors. This not only substantially complicates the process of determining where the money was spent, but it also means that some payments to others will be deemed legitimate, good-faith transactions. Such transactions may be beyond the reach of the Receiver.
10. Nevertheless, the monies in the bank accounts were commingled. Investor funds were used to pay non-investor expenses and non-investor deposits were used to make distributions to

investors. This may enable the Receiver to argue that payments made from Receivership Entities should be deemed a constructive trust and are subject to recovery by the Receiver.

11. The Receiver has met with limited success to date obtaining information about the recipients of payments from the Receivership Entities, including investors. The Receiver's efforts to obtain information about payments made fall generally into the following categories:

- a. Unknown Payees. There were many payments where the Receiver has been unable to discover any information about the payee or the purposes of the payments. There are no company documents showing the reasons for payments and efforts to identify the recipients have been unsuccessful.
- b. Cooperation Promised, but Information Not Provided. In some cases, the Receiver has identified the recipients of funds and initiated contact with the recipients. But, when the Receiver has requested information as to the purpose of the payments or questioned the validity of the payments, the recipients have refused to provide any further information. The Receiver expects to issue subpoenas to these recipients.
- c. Refusal to Respond. In other cases, the Receiver believes he has identified the correct recipients of funds, but they refuse to respond to requests for information. The next step will be to issue subpoenas requiring the delivery of information.
- d. Ignore Repayment Demands. Some recipients of funds, such as the Sutherland Institute, were recipients of contributions by Ascendus but have failed to respond to a request by the Receiver to return the contributions. Litigation may be required.

e. Cooperation Reveals Business Expenses Unrelated to Investment Program. In several instances, recipients of funds have been cooperative. Generally this cooperation has revealed that the expenditures were for legitimate business purposes that were funded from non-investor monies.

12. As the list of categories in the preceding paragraph illustrates, the Receiver's lack of information about payees makes his work more difficult. The lack of business records relating to these transactions further hampers the Receiver's work. As a result, the importance of being able to depose Richard Smith and others who controlled bank accounts becomes apparent.

E. Information Gathering and Analysis

13. Attempted Deposition of Richard Smith. As noted above, the Receiver served a subpoena on Richard Smith requiring him to appear at a deposition. The day before the scheduled deposition, Smith delivered a notice of objection, claiming that being deposed would create an "undue burden." The Receiver is seeking a court order compelling him to submit to a deposition.

14. Interviews About Related Businesses. The Receiver has interviewed several people associated with other entities with whom Ascendus and FFCF conducted business. These people have provided valuable information helping the Receiver understand the nature of the transactions with investment trading companies, entities providing management services, and affiliated companies.

15. Interviews with Investors. The Receiver has obtained significant helpful information from investors, including those who entered into settlement agreements with the Receiver. In many cases, this was information that the Receiver did not have.
16. Analysis of Investor Information, Other Transactions with the Receiver. The Receiver has performed financial analysis of loans to the Receivership Entity by other entities and traced the flow of funds from many complicated transactions. The Receiver has requested information relating to these transactions, but is finding substantial resistance and a lack of cooperation from other parties to these transactions. Litigation likely will be required.
17. Review of Litigation Files. The Receiver has reviewed court filings related to litigation against Superwire, Inc., a company that was managed by Richard Smith and which shared bank accounts with Ascendus. The Receiver has also requested copies of other court documents related to this litigation and documents related to other litigation that resulted in payments from bank accounts of Receivership Entities.
18. New Entities. The Receiver has found information indicating that additional entities were created that were affiliated with Ascendus. The Receiver is seeking additional information about these entities.

F. Informing Investors

19. The Receiver has continued to post information and court filings on its web site to keep investors informed of progress in this case.
20. The Receiver also has met or spoken with a number of investors who provided information to

the Receiver about the case or who were seeking information from the Receiver about their particular investments.

G. Next Steps

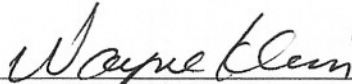
21. The primary challenges currently faced by the Receiver include:
- a. Identifying certain former investors and finding their addresses.
 - b. Identifying other companies and persons who received funds from Receivership Entities, but where there are no company documents relating to the transactions.
 - c. Issuing subpoenas to persons and entities who have failed to respond to requests by the Receiver for information.
 - d. Analyzing information received from the subpoenas to identify the persons on whose behalf payments were made to financial institutions.
 - e. Filing lawsuits to compel the repayment of funds owed to the Receivership.

CONCLUSION

The Receiver respectfully submits this Initial Report for the period from July 11, 2009 through September 24, 2009.

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

DATED this 25th day of September, 2009.



WAYNE KLEIN, Receiver

CERTIFICATE OF SERVICE

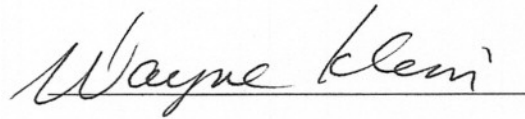
I hereby certify that on the 25th day of September, 2009, a true copy of the foregoing

Fourth Report of Receiver was mailed to the following:

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A handwritten signature in cursive script that reads "Wayne Klem". The signature is written in black ink and is positioned above a horizontal line.