

MANNING CURTIS BRADSHAW

& BEDNAR LLC

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Court-Appointed Receiver

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

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U.S. COMMODITY FUTURES  
TRADING COMMISSION,

Plaintiff,

v.

U.S. VENTURES LC, a Utah limited liability  
company, WINSOME INVESTMENT  
TRUST, an unincorporated Texas entity,  
ROBERT J. ANDRES and ROBERT L.  
HOLLOWAY,

Defendants.

**RECEIVER'S MEMORANDUM IN  
SUPPORT OF MOTION FOR  
APPROVAL OF PROOF OF CLAIM  
FORM AND CLAIM REVIEW  
PROCESS**

Case No. 2:11CV00099 BSJ

Judge Bruce S. Jenkins

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R. Wayne Klein, the Court-Appointed Receiver<sup>1</sup> (the “Receiver”), by and through his counsel of record, hereby submits his Memorandum in Support of Motion for Approval of Proof of Claim Form and Claim Review Process to allow investors and others (“Claimants”) to make claims (“Claims”) against the assets of the Receivership Entities, and also for approval by the Court of the process to be used by the Receiver in evaluating the Claims.

### BACKGROUND

On January 25, 2011, the Court entered an Order Granting Plaintiff’s Ex Parte Motion for Statutory Restraining Order, Expedited Discovery, Accounting, Order to Show Cause re Preliminary Injunction and Other Equitable Relief (the “Receivership Order”). (Dkt. no. 15.) With the Receivership Order, the Court placed U.S. Ventures, Winsome, and all the assets of Andres and Holloway under the control of the Receiver. (*See generally id.*) In the Receivership Order, the Court directed and authorized the Receiver to “take exclusive custody, control, and possession of all the funds, property . . . and other assets” of the Receivership Entities (*id.* at ¶27(c)) “in order to preserve assets, investigate, and determine customer claims,” (*id.* at ¶7). The recovery of funds is for “payment of restitution . . . for the benefit of customers,” (*id.* at ¶6) and to “distribute remaining funds under the Court’s supervision,” (*id.* at ¶7).

Since the date the Receiver was appointed, notable progress has been made in recovering funds for the Receivership Estate. This progress is described in the four reports submitted to the Court by the Receiver for the periods ending March 18, 2011 (Dkt. no. 47), June 15, 2011 (Dkt. no. 66), September 15, 2011 (Dkt. no. 74), and December 15, 2011 (Dkt. no. 94). Much remains

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<sup>1</sup> The Receiver has been appointed over U.S. Ventures LC (“USV”), Winsome Investment Trust (“Winsome”), and all the assets of Robert J. Andres (“Andres”) and Robert L. Holloway (“Holloway”), collectively, the “Receivership Entities.”

to be accomplished in the recovery of funds. Nevertheless, the Receiver believes it is appropriate at this time to identify those persons who will be asserting Claims against the property of the Receivership Estate and determine the amount of valid Claims.

Accordingly, the Receiver moves for Court approval of the following Claims Review Procedure and the attached Proof of Claim Form.

#### PROPOSED CLAIMS REVIEW PROCEDURE

1. Distribution of Proof of Claim Forms. The Receiver will send electronic copies<sup>2</sup> of the Proof of Claim Forms, in the form attached as Exhibit A (Instructions and Proof of Claim Form), to all persons that the Receiver believes are investors or who might be investors and to others who have informed the Receiver of an intent to make Claims against the Receivership Estate. The Proof of Claim Form will also be posted on the website of the Receiver, available for any person to access and use to submit a Claim.

2. Proof of Claim Deadline. Proof of Claim Forms must be submitted to the Receiver by April 30, 2012 to be accepted. Proof of Claim Forms mailed after that date will be deemed invalid, absent demonstration of compelling circumstances or Court order.

3. Assignment of Claim Number. When Claims are submitted, the Receiver will assign a Claim number (“Claim Number”) to each Claim. To maintain the confidentiality of Claimants, Claims will be referred to by Claim Number in public filings and in information posted on the Receivership website. The identity of Claimants will be provided to the Court for *in camera* review at the request of the Court.

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<sup>2</sup> The Receiver intends to send the Proof of Claim Form and the majority of all communications to investors relating to the Claims process via electronic mail in order to keep costs low and because the Receiver has more e-mail addresses than mailing addresses. However, the Receiver will require that completed Proof of Claim Forms and supporting documents be submitted to the Receiver via U.S. mail.

4. Review for Completeness. Proof of Claim Forms will be reviewed for completeness when received. If required information is missing, the Claimant will be given an opportunity to submit the missing information within ten days after the Receiver sends electronic notice to Claimant that information is missing.

5. Documentation Required. Claimants will be expected to submit documents supporting the amounts of their Claims. If Claimants fail to submit documents supporting the amounts of their Claims, the Receiver will make a recommendation to the Court of an allowable Claim amount based on the records of the Receiver. The Receiver may recommend that the Claim be allowed in full, allowed at a reduced Claim amount, or denied. (*Note: the amount allowed for the "Claim" does not mean there will be enough money to pay the full Claim.*)

6. Signature and Waiver Required. For a Proof of Claim to be valid, the Claimant must sign the Proof of Claim Form under penalty of perjury and agree to make the Claims process the exclusive means of making a Claim against the Receivership Estate.

7. Initial Classification of Claims. The Receiver will initially classify Claims as "allowed," "reduced," or "rejected." The Receiver's review will be premised upon the Guidelines set forth in the attached Exhibit B.

a. "Allowed" Claims will be those where the amount of Claim is the same as shown on records of the Receiver or where the Claimant submits documentation demonstrating to the satisfaction of the Receiver that the claimed amount is accurate.

b. "Reduced" Claims will be those where the Receiver believes the Claimant is entitled to a portion, but not all, of the amount claimed. Reductions might be recommended based on: i) inadequate evidence that the claimed amount was actually

paid to the Receivership Entities by the person making the Claim, ii) the Claimant failing to deduct distributions paid by the Receivership Entities, iii) the Receiver's belief that the Claimant had business affiliations with US Ventures or Winsome, assisted in promoting the investment program, or was on notice of problems with the companies, such that the claimed amount should be discounted, or iv) the presence of other factors indicating that the Claim amount should be reduced.

c. "Rejected" Claims will be those where: i) the Receiver believes the Claim knowingly contains false information, ii) the Claimant is an investor who has already received a return of the full principal amount invested, iii) the Claim is by a person who had a substantial role in promoting the investment program, iv) the Claim is for debts not related to the operation of the Receivership Entities, such as personal loans to Defendants, or v) other situations where it would not be proper to use the assets of the Receivership Estate to pay the Claim.

8. Notice of Preliminary Allowable Claim Amount. When the Receiver has finished his review of the completed Proof of Claim Forms and documentation submitted by Claimants, the Receiver will notify each Claimant electronically of the Receiver's determination of the "Preliminary Allowable Claim Amount." For Claims where the Receiver intends to recommend a reduced Claim amount or reject the Claim, a Notice similar to Exhibit C will be sent to the Claimant. Claimants will be able to indicate acceptance of the Receiver's recommendation. Claimants who disagree with the Receiver's determination of the Preliminary Allowable Claim Amount will be allowed thirty (30) days from the date the Notice is sent to submit additional documentation to support the amount of their Claim or to seek to persuade the

Receiver that his determination should be modified.

9. Review of Supplemental Information. The Receiver will review any documentation and information submitted in response to his notice of the Preliminary Allowable Claim and compile a list of recommended Allowable Claim Amounts.

10. Recommendation to the Court. The Receiver will file with the Court his recommendation of the Allowable Claim Amount for each Claimant, send an electronic copy to all Claimants, and post a copy on the website.

11. Claimant Objections Filed with the Court. Claimants who disagree with the Receiver's recommendation to the Court of the Allowable Claim Amount will have thirty (30) days from the time the Receiver's recommendations are filed with the Court to file an objection to the Receiver's recommendation. Any Claimant who fails to file a timely objection with the Court will be deemed to have consented to the Allowable Claim Amount as recommended by the Receiver.

12. Court Resolution of Objections. The Receiver will suggest to the Court a process the Court might use to resolve the objections, in light of the number and nature of objections expected or actually filed. Possible options include a hearing at which Claimants can argue their objections, making rulings based on written submissions, or referral to a special master.

13. Determination of Final Allowable Claim Amounts. When the Court has ruled on the objections, the Receiver will file a Final Claims Summary which will report, as to each Claim number, the final Allowable Claim Amount. This Final Claims Summary will also be posted on the Receiver's website. The Final Claims Summary amounts will be used by the Receiver in making pro-rata distributions of assets he has recovered in the Receivership.

14. Distribution of Funds. The Receiver will seek Court approval of a distribution plan. When the plan is approved, the Receiver will begin making payments to allowable Claimants. It is expected that the Receiver will make distributions in stages, depending on the pace at which remaining funds are recovered and litigation is completed.

#### PROPOSED TIMETABLE

The Claims procedure outlined above involves a number of steps and time periods for each step. It is hoped the Claims procedure can be completed according to the following timetable:

- **April 30, 2012:** Deadline for submission of Proof of Claim Forms.
- **May 31, 2012:** Receiver will have notified Claimants of any deficiencies in their Proof of Claim Forms and give an opportunity to supply missing information.
- **June 10, 2012:** Deadline for submission of information identified by Receiver as missing.
- **June 30, 2012:** Completion of initial review of Proof of Claim Forms by the Receiver. Receiver will send notice of Preliminary Allowable Claim Amounts to each Claimant.
- **July 31, 2012:** Deadline for Claimants to submit any additional documentation in response to notice by the Receiver that the Preliminary Allowable Claim Amount is reduced or rejected.
- **August 31, 2012:** Receiver will file with the Court a report listing the Allowable Claim Amounts recommended by the Receiver.
- **September 30, 2012:** Deadline for Claimants to file with the Court any

objections to the Receiver's list of Allowable Claim Amounts.

- **November 30, 2012:** Receiver will file with the Court a proposed process for resolving the objections and a proposed distribution plan, to be implemented when the list of Allowable Claims is finalized.
- **December 31, 2012:** Goal for completion of Court review of, and ruling on, objections and on the proposed distribution plan. This will result in a final list of Allowable Claims and permission for the Receiver to begin making distributions.

This timetable might be advanced if the Receiver is able to complete some tasks before the deadline. If the number or complexity of Claims is overwhelming, the target dates may need to be extended.

#### CONCLUSION

WHEREFORE, the Receiver Wayne Klein asks this Court to approve the foregoing Claims procedure and enter the Order attached hereto as Exhibit D.

DATED this 7th day of March, 2012.

**MANNING CURTIS BRADSHAW & BEDNAR LLC**

/s/ David C. Castleberry

David C. Castleberry

Aaron C. Garrett

Attorneys for Receiver for FFCF Investors, LLC, Ascendus Capital Management, LLC and Smith Holdings, LLC



**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of March, 2012, I caused to be served in the manner indicated below a true and correct copy of the attached and foregoing **RECEIVER'S MEMORANDUM IN SUPPORT OF MOTION FOR APPROVAL OF PROOF OF CLAIM FORM AND CLAIM REVIEW PROCESS** upon the following:

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