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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.

Case No. 2:11CV00099 BSJ

NINTH STATUS REPORT OF  
R. WAYNE KLEIN, RECEIVER

FOR PERIOD DECEMBER 16, 2012  
TO APRIL 15, 2013

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R. Wayne Klein, the Court-Appointed Receiver (the “Receiver”) of 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”), hereby submits this Ninth Status Report for the period of December 16, 2012 through April 15,

2013 (the “Reporting Period”). This Reporting Period covers four months, instead of three, due to significant developments that occurred during the weeks following March 15, 2013, which ordinarily would have been the end of the reporting period.

## **I. INTRODUCTION**

1. The past four-month period has seen a conclusion of the claims evaluation process. It has also seen the Receiver’s report to the Court on the results of the claims process and the filing of three objections that seek credit for almost \$5 million in additional claims. This is discussed in Section II of this report.

2. During the Reporting Period there were a number of lawsuits filed by the Receiver where the defendants filed motions seeking summary judgment or dismissal of the lawsuits against them. These resulted in rulings in favor of the Receivership. The Receiver also obtained entry of several large default judgments against three defendants. These are discussed in Section III.

3. Several of the largest lawsuits filed by the Receiver were settled during the Reporting Period. These settlements will bring substantial funds into the Receivership Estate and should shorten the time the Receivership needs to remain open. These settlements are described in Section IV.

## **II. CLAIMS PROCESS**

4. On December 20, 2012 the Receiver filed his “Report and Recommendations on Claims Process” (“Claims Report”). (Docket No. 233). Highlights from the Claims Report are:

a. 143 claims were submitted to the Receiver. These submissions asserted \$36,434,250.20 in claims.

b. After reviewing the claims, the Receiver recommended that 70 claims be accepted in the amounts asserted, 48 claims be approved at amounts lower than claimed, and 25 claims be rejected in their entirety. This would result in 118 allowable claims in the amount of \$16,946,216.58.

5. The Claims Report was posted on the Receivership website and copies were sent to all Claimants. Anyone objecting to the Receiver's recommendations had until January 22, 2013 to file objections with the Court. As many as 41 Claimants could have filed objections.

6. Three objections were filed with the Court. No distributions can be made to investors until these objections are resolved by the Court. The three filed objections were:

a. RCH2: The Receiver recommended an allowable claim of \$2,988,538.00 for RCH2, LLC. RCH2's claim is being pursued by the court-appointed receiver of a different Ponzi scheme, whose promoters had ties to Robert Holloway. RCH2 believes that \$435,000.00 sent to US Ventures by an entity named Springridge, LLC should count towards the claim of RCH2. The Receiver believes that RCH2's control over Springridge was not proven and that the funds that would be used to make payments on this claim should go to investors in US Ventures and Winsome, not the victims of RCH2. The Court has held two hearings on this dispute and another hearing on RCH2's claim is set for May 20, 2013.

b. Roberto Penedo: Penedo has asserted a claim for \$4,615,000.00 from the Receivership Estate. He claims that he entered into a contract with a company named RIO Systems Inc. that planned to build a refinery in Guatemala and that Penedo was promised a 1% interest in the value of the refinery, \$4,000,000 in cash, and reimbursement for travel expenses totaling over \$600,000. Penedo further claims that the RIO Systems contract was assigned to

Winsome and, therefore, Winsome is responsible for all payments owed to Penedo. The Receiver countered that documents show that the contract was never assigned to Winsome and that the refinery was never built. Moreover, the Receiver had sued Penedo a year earlier, seeking recovery of \$962,000.00 that was paid to Penedo by Winsome. The depositions of Penedo and the owner of RIO Systems have been taken. An evidentiary hearing on Penedo's claim is set for June 6, 2013.

c. Zaman Ali: Ali, a marketer for Winsome, objected to the Receiver's recommendation that he not be paid any funds. Ali seeks to assert a claim for \$100,000.00 that he sent to Winsome. The Receiver believes that Ali should not recover any funds from the Receivership Estate because his objection was filed too late, he failed to provide documents requested by the Receiver that were needed to evaluate his claim, and Ali may have received more than \$100,000.00 from Winsome and other investors, making him an *overpaid* investor. A hearing on Ali's claim is set for May 20, 2013.

### **III. LITIGATION DEVELOPMENTS**

7. Since the creation of the Receivership, the Receiver has filed 88 lawsuits seeking the recovery of funds paid out improperly or damages for improper conduct. Thirty-two of these cases remain in litigation. All the remaining lawsuits seek recovery of funds paid out improperly from US Ventures or Winsome. Prosecuting these lawsuits is consuming significant time of the Receiver and almost all of the time of the Receiver's counsel that is being spent on this case. Significant progress has been made during the Reporting Period on the lawsuits filed by the Receiver:

a. Default Judgments: Default judgments were obtained in three lawsuits

during the last four months. These judgments award significant damages to the Receivership Estate. However, collection is questionable. It is often the case that defendants cease defending themselves in lawsuits because they lack assets to pay an attorney or to satisfy a judgment. Nevertheless, the existence of the judgments will enable the Receiver to seize assets if any are found. The default judgments obtained were:

i. Keith Shaffner. A judgment in the amount of \$362,188.78 in favor of the Receivership was entered by the Court on February 27, 2013.

ii. Aishwariya Enterprises. On March 14, 2013, a default judgment in the amount of \$206,020.40 was granted in favor of the Receivership Estate.

iii. Nancy Howe, Leo Renaud. A judgment in the amount of \$2,279,187.71 was entered by the Court in favor of the Receivership.

b. Court Rulings: Many of the defendants being sued continue to fight the Receivership's lawsuits. During the Reporting Period, the courts considering these cases issued rulings on motions to dismiss or for summary judgment—all in favor of the Receivership Estate. These orders do not conclude the cases, but they allow the Receiver to move forward with the litigation. These orders were:

i. Connie Patterson. On December 21, 2012, a federal magistrate issued a decision recommending that the district court judge enter judgment in favor of the Receiver in his lawsuit against Patterson. The recommended order is awaiting action by the district judge. On February 11, 2013, the Receiver filed a motion for summary judgment against Patterson, as an alternative to the recommended judgment on the pleadings and identifying additional payments to Patterson that had been identified after

the lawsuit was filed. Both motions are pending before the Court.

ii. Ravkind & Associates. On January 11, 2013, the Court issued an opinion and order denying a motion to dismiss filed by Ravkind.

iii. Nina Abdulbaki. The Court entered an order on January 16, 2013 denying Abdulbaki's motion for summary judgment and approving a discovery plan requested by the Receiver. Abdulbaki subsequently entered into a settlement agreement with the Receiver.

iv. Terry Harper. On March 27, 2013, the Court entered an order denying Harper's motion to dismiss.

8. Presently, some defendants are in settlement discussions with the Receiver.

Others are claiming financial hardship. But, a number of the defendants indicate that they intend to continue litigating the claims and defenses at issue.

#### **IV. SETTLEMENTS**

9. Ten additional settlements were reached during the Reporting Period. Some of these are for significant amounts. These have all been approved by the Court:

a. John Cook/Barrington Capital: On December 30, 2012, a settlement agreement was signed with Cook pursuant to which Cook will pay \$12,000.00 to the Receiver and provide documents and information about his dealings with Winsome and others. Cook is making monthly payments to the Receivership. The settlement agreement is for an amount lower than demanded in the lawsuit against Cook based on representations by Cook that his financial information provided to the Receiver was accurate and complete, and that the documents and information he provided to the

Receiver were accurate and complete as well.

b. Emmanuel K. Mbohi: Mbohi signed a settlement agreement on December 21, 2013. Under the settlement agreement, Mbohi will provide all documents in his possession relating to Winsome and Andres and provide any other assistance requested. The settlement agreement does not require Mbohi to make any payments to the Receivership Estate because Mbohi demonstrated that he has declared bankruptcy, owes tax liens, and is unemployed.

c. Luis Rodriguez/Convenient Solutions. Pursuant to a January 15, 2013 settlement agreement, Rodriguez agreed to provide all documents he has relating to Winsome and provide information requested by the Receiver. The Receiver will not require payment of any monies based on Rodriguez demonstrating he had declared bankruptcy and is financially unable to repay the amounts sought in the Receiver's lawsuit against him.

d. Joshua Carmody: On February 28, 2013, a settlement agreement was reached with Carmody pursuant to which he will provide documents relating to Andres, Winsome, and Carmody's dealings with Cindy Moore. Carmody provided verified information regarding chronic medical problems he faces that impair his ability to work and demonstrating a financial inability to pay any monies.

e. Duane Kilburg: A settlement agreement with Kilburg on March 18, 2013 resulted in Kilburg paying \$10,000.00 to the Receivership Estate as settlement of the Receiver's claims against him. In the settlement agreement, the Receiver agreed to give Kilburg partial credit for monies he loaned to Robert Holloway and investments he made

in a company that preceded US Ventures.

f. Russell Combs/Innovative Techknowledge Solutions: In a March 18, 2013 settlement agreement, Combs agreed to pay \$1,000.00 to the Receiver. Combs provided information to the Receiver demonstrating that he had been terminated from his job and lacked the income or assets to repay the amounts sought by the Receiver. Combs will make these payments monthly over the next year.

g. Wright, Lindsey & Jennings: The Receiver participated in a mediation with Wright, Lindsey & Jennings on March 18, 2013. This mediation followed the filing of a lawsuit by the Receiver and the exchange of voluminous documents. As a result of the mediation, the Receiver and WLJ signed a settlement agreement pursuant to which WLJ will pay \$1,750,000.00 to the Receivership.

h. American Express: American Express signed a settlement agreement on March 26, 2013. As part of that settlement, American Express has paid \$575,000.00 to the Receivership.

i. Nina Abdulbaki: On March 27, 2013 Abdulbaki signed a settlement agreement pursuant to which she will pay \$55,000.00 to the Receivership. A partial payment has been received and the balance is due on April 30, 2013.

j. Christine Walker Williamson: Williamson signed a settlement agreement on March 25, 2013 to settle the Receiver's lawsuit against her. She paid \$22,750.00 to settle the claim and has provided verified financial information demonstrating that she lacks the financial ability to pay the amount sought by the Receiver.

10. The Receiver is in the process of negotiating settlements with additional



defendants. As new agreements are signed, they will be submitted to the Court for approval.

#### **IV. FINANCIAL REPORT**

##### **A. Recoveries for the Receivership**

11. A total of \$678,513.86 was recovered for the Receivership Estate during the Reporting Period.

<b>Date</b>	<b>Source</b>	<b>Amount</b>	<b>Explanation</b>
12/19/12	Norbert Keeney	\$5,000.00	Final settlement payment
12/31/12	Wells Fargo Bank	\$5.57	Interest earned
1/8/13	John Bassett	\$500.00	Settlement payment 3 of 16
1/29/13	Sacred Site	\$576.77	Settlement payment 11 of 24
2/4/13	John Bassett	\$500.00	Settlement payment 4 of 16
1/31/13	Wells Fargo Bank	\$5.57	Interest earned
2/13/13	John Cook	\$1,000.00	Settlement payment 1 of 12
2/28/13	Wells Fargo Bank	\$4.22	Interest earned
3/1/13	South Oil/Mark Bush	\$35,000.00	Settlement payment 4 of 8
3/1/13	Sacred Site	\$576.77	Settlement payment 12 of 24
3/12/13	John Cook	\$1,000.00	Settlement payment 2 of 12
3/12/13	John Bassett	\$500.00	Settlement payment 5 of 16
3/19/13	Russell Combs	\$50.00	Settlement payment 1 of 12
3/19/13	Dwain Kilburg	\$10,000.00	Full settlement payment
3/28/13	Christine Williams	\$22,740.00	Full settlement payment
3/29/13	Wells Fargo Bank	\$4.96	Interest earned
4/3/13	Russell Combs	\$50.00	Settlement payment 2 of 12
4/3/13	Nina Abdulbaki	\$25,000.00	Settlement payment 1 of 2
4/8/13	American Express	\$575,000.00	Full settlement payment
4/12/13	John Cook	\$1,000.00	Settlement payment 3 of 12
	<b>Total</b>	<b>\$678,513.86</b>	

##### **B. Expenditures by the Receivership**

12. Expenditures from the Receivership bank account, for operating expenses of the Receivership, were:

<b>Date</b>	<b>Recipient</b>	<b>Amount</b>	<b>Purpose</b>
12/31/12	Media One	\$315.00	Publish summons on Onti Management

1/10/13	Stratos Legal	\$1,278.40	Ballard deposition transcript
2/6/13	Stratos Legal	\$363.35	Cornelius deposition transcript
2/21/13	Beck, Redden & Secrest	\$218.83	Ballard deposition exhibit copies
2/21/13	Stratos Legal	\$493.60	Halo Film deposition
2/22/13	Stratos Legal	\$663.25	Spencer depositions (Halo Film)
3/20/13	James Holbrook	\$2,100.00	Mediator fee: Wright Lindsey
3/11/13	Stratos Legal	\$1,020.25	Cornelius deposition exhibit copies
3/28/13	Wells Fargo Bank	\$15.00	Wire transfer fee
4/5/13	Viewpoint Bank	\$976.50	Document production from subpoena
	<b>Total</b>	<b>\$7,444.18</b>	

13. On January 24, 2013, the Court approved payment of the fees and expenses of the Receivership attorney for work performed during the four-month period from August 1, 2012 to November 30, 2012. Manning Curtis Bradshaw and Bednar's fees and expenses for this four-month period totaled \$121,881.11. This amount was paid on January 29, 2013.

14. On April 2, 2013, the Receiver filed an application for his fees and recovery of expenses incurred. This application was for the 13-month period from February 1, 2012 to February 28, 2013. The application seeks recovery of \$2,537.34 in expenses paid on behalf of the Receivership Estate and \$275,249.25 in fees for the Receiver and his staff.

15. The Receivership bank account balance, as of April 15, 2013, was \$1,277,689.44.

#### **V. NEXT STEPS**

16. The next steps the Receiver expects to pursue are:

a. Finalize the claims process and make an initial distribution of funds to investors. This requires:

i. Obtaining Court rulings on the validity of the three objections that have been filed, so the Receiver can know the total amount of valid claims;

- ii. Filing a distribution plan with the Court, seeking approval of a methodology for distributing the funds to investor; and
  - iii. Obtaining Court approval to make an initial distribution payment.
- b. Pursue the lawsuits filed by the Receiver that are still pending; and
  - c. Continue efforts to find additional targets that can be sued for the recovery of funds and file additional lawsuits if justified.

**VI. CONCLUSION**

The Receiver respectfully submits this Ninth Status Report for the period from December 16, 2012 through April 15, 2013.

The Receiver verifies under penalty of perjury that the foregoing is a true and correct summary of information he has discovered to date in his investigation.

DATED this 29<sup>th</sup> day of April, 2013.

  
\_\_\_\_\_  
WAYNE KLEIN, Receiver

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing **NINTH STATUS REPORT OF R. WAYNE KLEIN, RECEIVER FOR PERIOD DECEMBER 16, 2012 TO APRIL 15, 2013** to be served in the method indicated below this 29th day of April, 2013, addressed as follows:

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- VIA U.S. MAIL
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