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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

**THIRTEENTH STATUS REPORT OF  
R. WAYNE KLEIN, RECEIVER**

**FOR PERIOD JANUARY 16, 2014  
TO APRIL 15, 2014**

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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 Thirteenth Status Report for the period of January 16, 2014 through April 15, 2014 (the "Reporting Period").

## **I. INTRODUCTION**

1. The criminal trial of Robert Holloway has been postponed until July 2014. During the Reporting Period, the Receiver continued to oppose the two objections filed by claimants wanting a share of the distribution fund and urged the Court to allow him to send out an initial distribution now, without needing to wait for resolution of these objections. The Receiver also opposed the motion by Susan Johnson seeking to have her newly-filed claim approved. There was significant progress in litigation filed by the Receiver, with the number of cases in active litigation now down to eight. The Receiver obtained several significant judgments during the quarter and closed some litigation cases. However, three new appeals were filed during the quarter, bringing the number of cases on appeal to four.

2. The status of the criminal case is discussed in Section II. The claims process is discussed in Section III. Settlements during the Reporting Period are discussed in Section IV. Litigation developments and appeals are discussed in Section V. A financial summary is included in Section VI.

## **II. CRIMINAL PROSECUTIONS**

3. On August 21, 2013, Robert Andres entered a guilty plea to one count of wire fraud in the U.S. District Court of Utah. His sentencing was originally scheduled for January 7, 2014, but has been postponed until after conclusion of the trial of Robert Holloway.

4. The criminal trial of Robert Holloway was originally set to begin October 8, 2013. Because his criminal defense attorney withdrew from representing Mr. Holloway, his trial

was postponed to allow him time to obtain new counsel (which has occurred) and to allow his new attorney to prepare for trial. The trial is scheduled to begin July 8, 2014.

### III. CLAIMS PROCESS

5. Report Issued: On December 20, 2012 the Receiver filed his “Report and Recommendations on Claims Process” (“Claims Report”). (Claims Report, Doc. No. 233.)

6. Objections: Three objections were filed with the Court.

a. The objection of RCH2 was resolved by agreement with the Receiver and was approved by the Court.

b. Roberto Penedo filed an objection, asking the Court to grant his claim of \$4,615,000.00. The Receiver had filed a separate lawsuit against Mr. Penedo, seeking the return of \$197,000.00 paid to Penedo by Winsome. That lawsuit was pending before Judge Nuffer. On March 3, 2014, Judge Nuffer issued a decision granting summary judgment to the Receiver in the amount of \$197,000.00. The Receiver provided a copy of this judgment to the Receivership Court. On March 7, 2014, the Court issued a provisional order denying Penedo’s claim. The Receiver was directed to provide draft findings to the Court, which he has done. On April 1, 2014, Penedo filed an appeal of the Court’s provisional order denying his claim.

c. Zaman Ali filed an objection, asking the Court to grant his claim of \$100,000.00. On March 7, 2014, the Court issued an order requiring Ali to submit financial information supporting his claim and to respond to questions posed by the Receiver. Ali provided limited information and one bank document to the Court on March 26, 2014. On April 4, 2014, the Receiver filed a response, asserting that the information filed by Ali did not satisfy the requirements of the Court order. The Receiver’s response also set forth the reasons he



believes Ali's claim should be denied. The matter has been fully submitted to the Court.<sup>1</sup>

7. Motion to Allow Initial Distribution: On November 8, 2013, the Receiver filed a motion proposing a plan of distribution. Receiver's Motion Proposing Plan of Distribution and Memorandum in Support, Doc. No. 306. In his motion, the Receiver proposed: i) making an initial distribution of \$2.3 million to valid claimants, ii) adoption of a distribution methodology to use in allocating the \$2.3 million among the claimants, and iii) that the initial distribution be approved now, without waiting for resolution of the objections filed by Penedo (including his new appeal) and by Ali. The Receiver's distribution plan included holding funds in reserve to be paid to Penedo and Ali if their objections were upheld, while allowing immediate distribution of funds to all the other valid claimants.

a. One claimant, the RCH2 Receiver, has filed a "response" with the Court (Doc. No. 311), asserting that the available money should be distributed using only the rising tide methodology.

b. The Court held a hearing on February 4, 2014 on the Receiver's motion to allow a distribution and to consider RCH2's response. The Court took the matter under advisement and has not yet ruled on what distribution methodology should be used, the amount to be distributed initially, and whether partial, initial distributions can be made at this time (without waiting for the objections to be resolved).

8. Johnson Motion to Approve Late Claim: On January 21, 2014, investor Susan Johnson filed a motion asking the Court to approve her claim for \$301,642.00 (Doc. No. 318).

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<sup>1</sup> More information about these objections can be found in the Tenth Status Report and on the Receivership website.

The Receiver has opposed this motion, arguing that Johnson's claim was filed almost a year after the Claims deadline, she was a marketer for Winsome, and her claim form contained false information. The Court held a hearing on Johnson's motion on February 21, 2014. Supplemental information was provided by Johnson and the Receiver and the matter is now awaiting a ruling by the Court.

9. Summary: Many investors have expressed their strong desire that an initial distribution of funds be made now, as a significant number of investors are facing home foreclosure and other financial difficulties which would be ameliorated by the distribution of a portion of the funds in the Receivership Estate. The three objections that have been filed to the Receiver's recommendations on allowable claims, the challenge to the distribution methodology proposed by the Receiver, and the late-filed claim motion by Susan Johnson have all caused delays and have required the Receiver to spend efforts opposing these actions. The Receiver respectfully requests the Court to approve an initial, partial distribution of funds in a manner that allows funds to be sent to investors without needing to wait until the objections and Johnson's motion are concluded.

#### IV. SETTLEMENTS

10. There were no new settlements reached during the Reporting Period.

#### V. LITIGATION DEVELOPMENTS

11. Overview. Since creation of the Receivership, the Receiver has filed 88 lawsuits seeking the recovery of funds paid out improperly or damages for improper conduct. Eight of

these cases remain in litigation. An additional three litigation cases are on appeal.<sup>2</sup> Prosecuting these lawsuits and defending the appeals is consuming much of the time that the Receiver is spending on this case and almost all of the time that Receiver's counsel is spending on this case, albeit less time than in prior periods.

12. Significant Litigation Rulings During the Quarter. The Courts issued significant orders in several cases during the Reporting Period which will advance the litigation in these matters. These rulings include:

a. Cornelius, William; Cornelius & Salhab. On January 28, 2014, the Court denied a motion by this Texas attorney and his law firm to reconsider the summary judgment that was granted to the Receiver in December 2013. Judgment is in the amount of \$89,845.73 plus costs, fees, and interest. On February 5, 2014, Cornelius and his law firm filed an appeal of the judgment.

b. Petty, Michele. This Texas attorney filed an amended answer, new motions to dismiss, and a motion to be able to assert a cross claim against the Receiver. Petty's motion, filed on January 28, 2014, claims that the Receiver has no right to recover monies paid to her by Robert Holloway because Robert Holloway's assets were assigned to a receiver in a prior lawsuit brought by the SEC. The Receiver has filed an opposition to the newly filed motion to dismiss. The Receiver also filed a motion on February 17, 2014, to strike Petty's filings because they failed to adhere to Rule 15 of the Federal Rules of Civil Procedure, and also submitting evidence to the Court that no other receiver has the right to recover monies paid out

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<sup>2</sup> A fourth appeal has been filed by Roberto Penedo regarding the denial of his claim in the claims process.



by Holloway. The Receiver has submitted a Request to Submit on the newly filed motion to dismiss and also on his motion to strike in this case. These motions are pending before the Court.

c. Penedo, Roberto. On March 3, 2014, the judge issued an opinion and order granting summary judgment to the Receiver in the amount of \$197,000. The ruling finds that Winsome had no obligation to make payments to Penedo and that the payments to him did not result in any benefit to the Receivership Estate. On March 31, 2014, Penedo filed an appeal of this judgment.<sup>3</sup>

d. Wings Over the World, Terry Harper. On March 5, 2014, a magistrate judge issued a report and recommendation that default judgment be entered against Terry Harper for disregarding numerous court orders requiring him to refrain from submitting frivolous filings, refusing to provide discovery, and failing to pay fees assessed by the court. The magistrate also recommended that multiple motions filed by Harper be stricken. On March 31, 2014, the district court issued an order adopting the magistrate's recommendations and granting default against Harper. The Court issued a default certificate on April 8, 2014. Default was previously entered against Wings Over the World. The Receiver will now ask the Court to enter default judgments.

e. McGraw, Forrest. On February 20, 2014, the Receiver filed a motion for summary judgment against McGraw. McGraw failed to respond and on April 1, 2014, the Court granted the Receiver summary judgment against McGraw. On April 15, 2014, the Court issued findings of fact and conclusions of law relating to the summary judgment granted against

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<sup>3</sup> As noted above in Part III and below in ¶14, Penedo also has appealed the denial of his claim objection.

McGraw. The same day, the Court issued a judgment against McGraw in the amount of \$123,598.00.

13. Current Litigation. The status of the remaining lawsuits are:

a. Chiu, Stephen; Chiu Jennifer: The Receiver's lawsuit against the Chius (and others) was filed on January 24, 2012. The Receiver previously obtained judgments against Warren and Winnie Chiu and PacificWin Investments, leaving only Jennifer Chiu and Stephen Chiu in the litigation.

b. Georges, Lou: The Receiver sued Georges on January 18, 2012 seeking to recover \$186,291.00 in payments he received from US Ventures. The Court denied Georges' motion to dismiss the lawsuit. The parties have extended discovery at the request of Georges because of issues with his health. A scheduling order is now in effect and the Receiver took the deposition of Georges on April 23, 2014 (after the close of the Reporting Period).

c. Harper, Terry: Suit was filed against Harper and Wings Over the World Ministries on January 9, 2012 seeking the recovery of moneys paid to them. The Receiver previously obtained a default certificate against Wings Over the World. During the Reporting Period, the court found Harper in default. The Receiver has submitted a default certificate against Harper and will soon file for default judgments on Harper and Wings.

d. McGraw, Forres: The Receiver filed suit against McGraw on January 20, 2012, seeking \$123,598.54 paid to McGraw for his role in preparing account statements sent to investors. The Court has granted summary judgment to the Receiver and entered judgment against McGraw.

e. Petty, Michele: The Receiver sued Petty on December 12, 2011, seeking



the recovery of \$51,000.00 paid to her by US Ventures for legal services she provided to Holloway. The Receiver is awaiting a ruling on Petty's most recent motion to dismiss the Receiver's lawsuit, the Receiver's motion to strike Petty's amended pleadings, and is also awaiting Petty to respond to discovery requests that she has failed to respond to within the timeframe required by the Federal Rules of Civil Procedure.

f. Pitts, Mykal. The Receiver sued Pitts on October 13, 2011 seeking to recover \$332,298.00 paid to him by Winsome. Pitts was served, but failed to answer. On April 6, 2012, a default was entered against Pitts. A default judgment has not yet been entered. Because it appears that Pitts is in the military, the Court has appointed an attorney to contact Pitts and represent him in responding to the Receiver's request for a default judgment. The Receiver has attempted to contact the court-appointed counsel without success, and has moved for default judgment on April 2, 2014.

g. Ravkind Associates: The Receiver sued this Texas law firm on January 9, 2012 to recover \$50,000.00 paid to the law firm by Winsome for the criminal defense of an associate of Andres. In January 2013, the Court denied Ravkind's motion to dismiss. Discovery is ongoing.

h. Widmark, Peter: On December 2, 2011, the Receiver sued Widmark seeking to recover \$291,000.00 in payments he received from Winsome. Widmark filed a motion to dismiss. On June 13, 2013, the Court denied Widmark's motion. Discovery is ongoing in this matter.

14. Appeals. Four appeals have been filed by defendants. Three of these seek to overturn judgments entered against them.

a. King & King & Jones. On September 12, 2013, this law firm filed an appeal of the \$25,000.00 judgment the Receiver obtained against it. All the appeal briefs have been filed and we are awaiting a ruling by the Tenth Circuit Court of Appeals.

b. William Cornelius, Cornelius & Salhab. On February 25, 2014, Cornelius filed a notice of appeal on the \$89,845.73 judgment entered against him and his law firm. Cornelius' appeal brief is due on April 28, 2014.

c. Roberto Penedo (Judgment). On March 31, 2014, Penedo appealed the judgment against him in the amount of \$197,000. Penedo's appeal brief is due on May 27, 2014.

d. Roberto Penedo (Claim Denial). On April 1, 2014, Penedo filed an appeal of the Court's provisional order denying Penedo's claim. On April 11, 2014, Penedo filed a motion with the District Court seeking certification that the order can be appealed. The appellate briefing schedule has not yet been set.

15. Collecting on Judgments. The Receiver engaged the services of an investigative firm to obtain information on 39 persons sued by the Receiver, in an effort to determine which defendants are likely to have sufficient assets to justify the Receiver spending time trying to collect on judgments he has obtained. To date, the work by the investigative firm has identified a number of defendants that may have assets that can be seized to help satisfy judgments obtained previously. The Receiver will have the investigative firm conduct additional searches for assets of these and other defendants so the Receiver can cost-effectively decide which judgments to pursue.

## VI. FINANCIAL REPORT

### A. Recoveries for the Receivership

16. A total of \$75,128.11 was recovered for the Receivership Estate during the Reporting Period. The money came from the following sources:

<b>Category</b>	<b>Amount</b>
Settlement Recoveries	\$75,068.61
Bank: Interest Earned	\$59.50
<b><i>Total</i></b>	<b><i>\$75,128.11</i></b>

### B. Expenditures by the Receivership

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

<b>Category</b>	<b>Amount</b>
Deposition transcript	\$576.70
Fee: Asset Search Firm	\$2,500.00
<b><i>Total</i></b>	<b><i>\$3,076.70</i></b>

18. On April 4, 2014, the Receiver and his counsel filed an application seeking approval for fees and expenses incurred by the Receiver and his counsel for work during the six-month period from October 2013 through May 2014. The Receiver seeks \$36,408.50 in fees; counsel for the Receiver seeks \$121,647.51 in fees and expenses.

19. The Receivership bank account balance, as of April 15, 2014, was \$2,712,810.08.

## VII. OTHER

20. During the Reporting Period, the Receiver responded to multiple inquiries from investors, primarily inquiries regarding when the initial payments distribution might be sent.



### **VIII. NEXT STEPS**

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

- a. Attempt to resolve any hurdles preventing payment of the initial distribution of funds to investors, including: i) seeking final determination of the objection by Zaman Ali, ii) seeking a ruling on Susan Johnson's motion to have her claim approved, iii) urging the Court to approve a distribution methodology (whether it is the methodology recommended by the Receiver or another methodology), and iv) urging the Court to allow the initial distribution to proceed despite Penedo's appeal of his claim denial (because the Receiver has reserved funds that can be paid to Penedo if his appeal is successful);
- b. Continue prosecuting the eight lawsuits filed by the Receiver that are still in litigation. This includes concluding discovery, defending against motions to dismiss, filing motions for summary judgment, and otherwise preparing for trial;
- c. Defend the four appeals that has been filed to date; and
- d. Assist prosecutors in the criminal trial of Holloway.

### **IX. CONCLUSION**

The Receiver respectfully submits this Thirteenth Status Report for the period from January 16, 2014 through April 15, 2014. 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 and actions taken during the Reporting Period.

DATED this 29<sup>th</sup> day of April, 2014.

  
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WAYNE KLEIN, Receiver

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing **THIRTEENTH STATUS REPORT OF R. WAYNE KLEIN, RECEIVER FOR PERIOD JANUARY 16, 2014 TO APRIL 15, 2014** to be served in the method indicated below this 29th day of April, 2014, addressed as follows:

☐ VIA FACSIMILE  
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