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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

**FIRST FEE APPLICATION FOR  
RECEIVER AND COUNSEL**

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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 First Fee Application for the Receiver and Counsel for the period of January 25, 2011 through April 30, 2011 (the "Fee Application Period").

## **BACKGROUND**

1. This action commenced on January 24, 2011 with the filing of an enforcement action by the Commodity Futures Trading Commission (CFTC) alleging that US Ventures, Winsome, Andres, and Holloway were operating fraudulent commodity investment programs in violation of federal commodities laws.
2. The following day, the Court entered various orders, including an “Order Granting Plaintiff’s *Ex Parte* Motion for Statutory Restraining Order . . . and Other Equitable Relief” [Document No. 15]. Pursuant to this Order, Wayne Klein was appointed as Receiver over the Receivership Entities.
3. Since imposition of the Statutory Restraining Order in January, the Court has entered a variety of additional orders against the defendants, imposing preliminary injunctions and entering defaults.
4. On April 15, 2011, the Court entered an order approving the appointment of accounting staff and counsel for the Receiver [Document No. 51].
5. The Receiver has filed one Status Report with the Court, dated March 25, 2011 (“Initial Report”) [Document No. 47]. The Initial Report describes the work performed by the Receiver to date in performing a financial analysis of the Receivership Entities and investigating their activities. A copy of this report is also available on the Receiver’s website, [www.kleinutah.com](http://www.kleinutah.com).

## **SERVICES PERFORMED**

1. During the Fee Application Period, the Receiver, the Receiver’s professionals, and counsel for the Receiver have focused their efforts in three primary areas: reconstructing

the financial transactions of the Receivership Entities, investigating the activities of the defendants, and establishing the proper legal foundation to recover funds.

2. As described in the Initial Report, the Receiver has identified over 50 bank accounts held or controlled by the defendants. Most of the records relating to these bank accounts have been obtained by the CFTC and provided to the Receiver. The Receiver has been using these records to reconstruct the financial activities of the Receivership Entities. This information is being used to identify the sources and uses of monies that passed through the Receivership Entities. Further analysis of these financial records is expected to reveal possible avenues of recovery. Ongoing analysis of the banking and brokerage records of the Receivership Entities is expected to provide evidence that can be used to demonstrate that the Receivership Entities were insolvent from an early date, that payments were being made in a Ponzi-type manner (using funds from some investors to pay distributions to other investors), and that account statements sent to investors were fictitious.
3. The investigation efforts have proceeded on multiple fronts:
  - a. Deposition testimony has been taken from Holloway and Andres. Depositions of a number of other persons are planned in the coming months;
  - b. Subpoenas have been issued to a variety of parties, seeking documents relating to multiple aspects of the investment scheme;
  - c. The Receiver invited investors to complete questionnaires and has been analyzing information and documents provided by those investors;
  - d. The multi-level nature of the investment program is being examined, including: i) efforts to identify the third-party marketers through which each investor

participated in Winsome and USV, and ii) the financial transactions of the third-party marketers;

- e. Many letters have been sent to investors, third-party marketers, recipients of funds, affiliated persons and entities, financial institutions, and others – seeking information about the operations and financial transactions of the Receivership Entities. A significant number of these have failed to respond to the inquiries. This means the Receiver will be required to issue subpoenas for the information and take depositions – lengthening the investigation process and the cost;
- f. The Receiver has been coordinating with receivers in other cases, including the receiver in the related litigation involving Novus Technologies and the Canadian receiver of a large third-party marketer; and
- g. Providing assistance and information to various federal government agencies other than the CFTC as well as several state law enforcement agencies.

- 4. Legal efforts have included filing notices of the receivership with federal courts in other states, issuing subpoenas, analyzing contracts signed by Receivership Entities, and researching legal theories the Receiver can use to recover assets that have already been identified.
- 5. Other efforts have included depositing minor bank balances recovered from other banks into a bank account for the Receivership and communicating with investors.

#### **REQUEST FOR COURT APPROVAL OF FEES AND EXPENSES**

- 6. The Order Granting the Statutory Restraining Order [Document No. 15] provides:

The Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver, are entitled to reasonable compensation

for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by, or in the possession or control of, or which may be received by the Defendants. The Receiver shall file with the Court and serve on the parties, including the Commission, periodic requests for the payment of such reasonable compensation, with the first such request filed no more than one hundred and twenty (120) days after the date of this Order. The Commission may object to any part of a request within thirty (30) calendar days of service of a request. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

Appointment Order at p. 14, ¶ 33.

7. This Application is being submitted pursuant to these provisions.

**Application Summary and Billing Methodology**

8. Through this Application, the Receiver, on behalf of himself, Klein & Associates, PLLC, and Manning Curtis Bradshaw & Bednar, LLC, the Receiver's legal counsel, is requesting approval of compensation for services provided to and reimbursement of expenses incurred for operation of the Receivership Estate between January 25, 2011 and April 30, 2011 in the amounts described below.
9. Summary invoices reflecting the services rendered by the Receiver and Klein & Associates, PLLC and expenses incurred are attached as Exhibit 1. Summary invoices reflecting the services rendered by Manning Curtis Bradshaw & Bednar, counsel for the Receiver, and expenses incurred are attached as Exhibit 2. Detailed invoices describing the work performed by the Receiver, Klein & Associates, and Manning Curtis on a daily basis, as well as detailed lists of expenses incurred, are provided to the CFTC and will be filed with the Court under seal as referenced in Exhibit 3. The detailed invoices are not being made public because they include investment and personal information about

investors, describe negotiating stances and legal theories being pursued by the Receiver, identify persons providing assistance to the Receiver, and reference investigative information of governmental agencies.

10. The Applicants' services are billed on an hourly-rate basis.

- a. Although the Receiver's standard hourly rate is \$350, by agreement with the CFTC, the Receiver's hourly rate has been capped in this case at \$250.
- b. The standard hourly rates of analysts and other employees of Klein & Associates, PLLC range from \$60 to \$120. The professionals and paraprofessionals who have billed time to this case, and their rates are:

<b>Name</b>	<b>Profession</b>	<b>Hourly Rate Billed</b>
James Shupe	Accountant	\$120
Rendell Etherington	CPA	\$120
Keith J. Williams	Analyst	\$75
Ben Hawker	Analyst	\$60

- c. Manning Curtis has also agreed to discount its standard rates for time spent working on this case. The following Manning Curtis professionals who have billed time to this case, and the hourly rates they are billing for this case are summarized as follows:

<b>Name</b>	<b>Position</b>	<b>Hourly Rate Billed</b>
LeGrand Curtis	Partner	\$275
David Castleberry	Partner	\$195
Aaron Garrett	Associate	\$170

- d. In rendering services and incurring expenses, the Applicants have endeavored to use the most economical means and methods that are available and appropriate under the circumstances.

**Specific Requests**

The Receiver

11. From January 25, 2011 through April 30, 2011, the Receiver, who himself is an attorney, rendered 271.5 hours of administration, investigative, and legal services to the Receivership Estate, for total fees of \$67,875.00.<sup>1</sup> The services rendered by the Receiver are described in his invoices with regard to the tasks accomplished. The services rendered are summarized above and in Exhibit 1, and are fully detailed in the invoices provided to the CFTC and to the Court under seal.

Klein & Associates, PLLC

12. During this Reporting Period, four employees of Klein & Associates, PLLC have assisted with the case, spending 717.7 billable hours assisting the Receiver. Additional time was spent that was not billed to the Receivership.<sup>2</sup> The Receiver seeks compensation of \$74,425.50 for this billable time – time billed at an average rate of \$103.70 per hour. The services rendered by Klein & Associates are summarized above and in Exhibit 1, and are fully detailed in the invoices submitted to the Court and government plaintiffs.

Manning Curtis Bradshaw & Bednar LLP

13. During this Reporting Period, three attorneys at Manning Curtis have provided legal services on the case, spending 44.5 billable hours providing legal services for the Receiver and the Receivership Entities. Manning Curtis seeks compensation of \$9,692.50 for this time. The services rendered by Manning Curtis are among those

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<sup>1</sup> This does not include an additional 43.4 hours of time that were not billed, valued at \$10,850.00.

<sup>2</sup> Another 40.8 hours of work were performed by two of these employees, but not billed. This work is valued at \$4,038.00.

summarized above and in Exhibit 2, and are fully detailed in the invoices submitted to the Court and the CFTC.

Expenses

14. The Receiver has advanced expenses of \$4,019.70 related to the work of the receivership. Manning Curtis has advanced expenses related to litigation in the amount of \$805.96. Exhibits 1 and 2 show the details of the expenses for which reimbursement is sought.

Summary

15. Total fees and expenses requested are as follows:

	<u>Fees</u>	<u>Expenses</u>	<u>Total</u>
a. Receiver and Klein & Associates	\$142,300.50	\$4,019.70	\$146,320.20
b. Manning Curtis	<u>\$ 9,692.50</u>	<u>\$ 805.96</u>	<u>\$ 10,498.46</u>
c. <i>Total</i>	<i><b>\$151,993.00</b></i>	<i><b>\$4,825.66</b></i>	<i><b>\$156,818.66</b></i>

**CONCLUSION**

The Receiver respectfully submits this Application Seeking Court Approval of Fees and Expenses related to US Ventures, Winsome Investment Trust, Robert Holloway, and Robert Andres. Based on the description of work performed in this Application and the Initial Report to the Court, the Receiver requests that the Court enter the proposed Order attached hereto as Exhibit 4, approving the fees and expenses incurred by the Receiver and his professionals as set forth herein, and authorizing the Receiver to pay such amounts as a cost of administering the Receivership Estate – when the Receiver has recovered funds for the Receivership Estate.



Pursuant to paragraph 32 of the order appointing the Receiver, the Court should wait thirty days before ruling on this application, to give the CFTC an opportunity to determine whether it wishes to express any objections.

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

DATED this 20<sup>th</sup> day of May, 2011.

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

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of May, 2011, I caused to be served in the manner indicated below a true and correct copy of the attached and foregoing **FIRST FEE APPLICATION FOR RECEIVER AND COUNSEL** upon the following:

VIA FACSIMILE  
 VIA HAND DELIVERY  
 VIA U.S. MAIL  
 VIA FEDERAL EXPRESS  
 VIA EMAIL  
 VIA ECF

Kevin S. Webb  
James H. Holl, III  
Gretchen L. Lowe  
U.S. Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581  
[kwebb@cftc.gov](mailto:kwebb@cftc.gov)  
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VIA FACSIMILE  
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 VIA EMAIL  
 VIA ECF

R. Wayne Klein  
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VIA FACSIMILE  
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 VIA FEDERAL EXPRESS  
 VIA EMAIL  
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Robert L. Holloway  
7040 Avenida Encinas #104-50  
Carlsbad, CA 92011  
[vribob@gmail.com](mailto:vribob@gmail.com)

VIA FACSIMILE  
 VIA HAND DELIVERY  
 VIA U.S. MAIL  
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 VIA ECF

Robert J. Andres  
10802 Archmont Dr.  
Houston, TX 77070  
Rja0418@gmail.com

/s/ Valerie Merritt

**EXHIBIT 1 - RECEIVER INVOICE SUMMARY****Receiver/Klein & Associates**

**DATE:** April 30, 2011  
**CLIENT:** US VENTURES/WINSOME RECEIVERSHIP

**Summary of Services:**

Professional	Hours	Rate	Amount
Wayne Klein	271.50	250.00	67,875.00
James Shupe	293.20	120.00	35,184.00
Rendell Etheringt	201.50	120.00	24,180.00
Keith Williams	112.10	75.00	8,407.50
Ben Hawker	110.90	60.00	6,654.00
<b>Total</b>	<b>989.20</b>		<b>142,300.50</b>

<b>Amount Waived</b>	<b>14,888.00</b>
<b>Total Fees Requested</b>	<b>142,300.50</b>
<b>Expenses</b>	<b>4,019.70</b>
<b>Total Fees and Expenses</b>	<b>146,320.20</b>

<b>Value of Non-Billed Time and Waived Fees</b>	<b>14,888.00</b>
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**EXPENSES**

1/31/2011	297.50	U.S. District Court	Certified copies	Copies of complaint, receivership order
1/27/2011	100.00	Sentry West Ins.	Bond fee	Premium for receiver's bond for court
2/1/2011	95.36	DocuMart	Printing	Print documents provided by CFTC on CD
2/4/2011	1.03	Texas Sec. of State	Online access	Fee to access corporate filings
2/28/2011	18.16	DocuMart	Copies	Copies of documents provided by CFTC
3/2/2011	406.80	US Airways	Airfare	Travel to San Diego for Holloway deposition
3/4/2011	465.87	CheapoAir	Airfare	Travel to Houston for Andres deposition
3/7/2011	45.99	DocuMart	Copies	Copies of documents provided by CFTC
3/10/2011	174.60	Days Inn Hotel	Hotel	Hotel in San Diego for Holloway deposition
3/10/2011	15.00	Taxi	Taxi	Airport to hotel
3/14/2011	615.30	US Airways	Airfare	Travel to Houston for Andres deposition
3/15/2011	255.00	Beck, Redden, Secret	Legal Fees	Fees to file Notice of Receivership in Texas
3/15/2011	65.48	Howard Johnsons	Hotel	Hotel in Houston
3/18/2011	16.88	DocuMart	Copies	Copies of documents provided by CFTC
3/21/2011	241.50	DocuMart	Printing	Print documents from Fortis CD
3/23/2011	581.30	US Airways	Airfare	Travel to Houston for Andres deposition
3/21/2011	15.00	Yellow Cab	Taxi	Airport to hotel
3/23/2011	140.38	Howard Johnsons	Hotel	Hotel in Houston
3/22/2011	2.50	Houston Metro	Bus fare	Hotel to downtown
3/22/2011	87.00	Harris County Clerk	Filing fee	Copies of lien filings, file receivership order
3/28/2011	15.00	Yellow Cab	Taxi	Airport to hotel
3/29/2011	3.75	Houston Metro	Bus fare	Airport to hotel
3/30/2011	140.38	Howard Johnsons	Hotel	Hotel in Houston
4/11/2011	10.93	DocuMart	Copies	Copies of documents provided by CFTC
4/22/2011	59.00	P.H.	Hard drive	Cost of hard drive containing documents.
4/19/2011	50.00	Delta Airlines	Change fee	Fee to change airfare for canceled deposition
4/19/2011	99.99	Days Inn Hotel	Hotel	Hotel fee for canceled NY deposition
<b>Total</b>	<b>4,019.70</b>			

**EXHIBIT 2 - LEGAL FEES, EXPENSES**

**Manning Curtis Bradshaw & Bednar, LLC**

**January 25, 2011 - April 30, 2011**

**Legal Fees**

<i>Employee</i>	<i>Position</i>	<i>Rate</i>	<i>Hours</i>	<i>Amount</i>
LeGrand R. Curtis, Jr.	Partner	275.00	16.75	4,606.25
David C. Castleberry	Partner	195.00	14.75	2,876.25
Aaron C. Garrett	Associate	170.00	13	2,210.00
<b>Total</b>			<b>44.5</b>	<b>9,692.50</b>

**Expenses**

<i>Category</i>	<i>Amount</i>
Copies	31.00
Computer research	684.96
Shipping fees	90.00
<b>Total</b>	<b>805.96</b>
<b>GRAND TOTAL</b>	<b>10,498.46</b>

*Detailed invoices to be submitted under seal*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

U.S. COMMODITY FUTURES  
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Plaintiff,

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

Defendants.

Case No. 2:11CV00099 BSJ

**ORDER APPROVING RECEIVER'S  
APPLICATION FOR RECOVERY  
OF FEES AND EXPENSES**

The matter before the Court is the Receiver's Application Seeking Court Approval of Fees and Expenses (Application) filed by R. Wayne Klein, the Court-Appointed Receiver of US Ventures LC, Winsome Investment Trust, and the assets of Robert J. Andres, and Robert L. Holloway. The Court has reviewed the Application and the applicable law, and based thereon and for good cause shown,

IT IS HEREBY ORDERED that:

1. The Application is APPROVED.
2. The fees and expenses incurred by the Receiver and his professionals, as set forth in the Application, are reasonable and necessary, and may be paid as an expense of administering the receivership estate.
3. The Receiver is authorized to pay the Receiver, Klein & Associates, PLLC, and Manning Curtis \$151,993.00 in fees for services rendered for the benefit of the Receivership Estate

from January 25, 2011 through April 30, 2011, and \$4,825.66 as reimbursement of expenses paid on behalf of the receivership estate.

Dated this \_\_\_\_ day of June, 2011.

**BY THE COURT**

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The Honorable Bruce S. Jenkins  
United States District Judge