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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

TENTH STATUS REPORT OF  
R. WAYNE KLEIN, RECEIVER

FOR PERIOD APRIL 16, 2013  
TO JULY 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 Tenth Status Report for the period of April 16, 2013 through July 15, 2013

(the “Reporting Period”).

## I. INTRODUCTION

1. The past three months have seen significant litigation developments, several settlements, delays in the claims process caused by objections filed by two claimants, and developments in the criminal case. The claims process is discussed in Section II. Notable litigation developments are discussed in Part III. Settlements during the Reporting Period are discussed in Section IV. A financial summary is included in Section V.

## II. CLAIMS PROCESS

2. On December 20, 2012 the Receiver filed his “Report and Recommendations on Claims Process” (“Claims Report”). (Docket No. 233).

3. 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, an entity that also is in receivership. The receiver for RCH2 asserted that \$435,000.00 sent to US Ventures by an entity named Springridge, LLC should count towards the claim of RCH2. RCH2 showed that Springridge was under the control of the operator of the RCH2 Ponzi scheme and that almost all of the funds sent to US Ventures from Springridge came from investors. The Receiver reached a settlement with RCH2 by which the Receiver would agree that 75% of the payments from Springridge to US Ventures be allowed as a claim. This agreement was approved by the Court on May 21, 2013. This objection has been resolved.

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. Penedo further claims that Winsome is responsible for the debts of RIO Systems and therefore should pay this amount to Penedo, even though the refinery was never built. The Court held an evidentiary hearing on June 6, 2013 to hear testimony from Penedo and arguments on whether Winsome is responsible for the debts of RIO Systems. The Court has not issued a ruling on the validity of Penedo's claims. Separately, the Receiver has sued Penedo for a return of payments that Winsome paid to him. On May 8, 2013 Penedo filed a motion for partial summary judgment in that separate lawsuit.

c. Zaman Ali: Ali, a marketer for Winsome, objected to the Receiver's recommendation that Ali not be paid any funds. Ali asserts 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 Ali's 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. The Court held a hearing on May 20, 2013. At the conclusion of the hearing, the Court ordered Ali to provide accounting records to the Court and the Receiver showing what funds Ali had raised from others and whether those funds were sent to Winsome. Ali subsequently provided some documents, but not enough to answer questions raised by the Receiver. The Receiver filed with the Court a notice summarizing the deficiencies in Ali's information. The Receiver is waiting for the Court to determine whether Ali's information was sufficient and whether to allow Ali's claim.

4. During the past three months, the Receiver has been contacted by six investors

wanting to file claims. In several instances, the investors claimed not to have known about the claims process. Another investor was told by the person who solicited his investment that the claimant should not make a claim and that solicitor would obtain recovery for him. One of the new putative claimants is the mother of two people being sued by the Receiver for recovery of improper payments. Another investor indicated that he had paid a third party to submit a claim on his behalf, but discovered that no claim had been filed. In each of these cases, the Receiver told the investors that notice had been given of the claims process by mail, email, notice on the Receivership website, and publication in the USA Today newspaper. The investors were told that the Receiver could not consider their claims and that they would have to petition the Court to allow them to file a claim, despite the claims deadline having passed on July 31, 2012 and the claims process being concluded. As of July 15, 2013, none of these investors have filed petitions with the Court seeking to be allowed to submit late claims.

5. The Receiver has been working with the CFTC to determine the best distribution methodology to recommend to the Court. When the Court has ruled on the two remaining objections, the Receiver will propose a distribution plan to the Court. When the plan has been approved, the Receiver can make an initial distribution of funds to claimants.

### **III. LITIGATION DEVELOPMENTS**

6. 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. Twenty-six of these cases remain in litigation. Prosecuting these lawsuits 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. Significant progress has been made during the Reporting Period on the lawsuits

that remain pending. This includes the following developments:

a. King, King & Jones: The Receiver filed a lawsuit seeking to recover \$25,000.00 that Winsome paid to this Georgia law firm for the criminal defense of Enrique Baca. On April 19, 2013, both the Receiver and the law firm filed motions for summary judgment. On July 22 (after the end of the Reporting Period), the judge assigned to that case held a hearing and granted summary judgment to the Receiver. The Receiver expects that this ruling will assist him in lawsuits that he has filed against two other law firms with similar facts.

b. Warren Chiu: On April 19, 2013, the Court ordered Warren Chiu and three other members of his family to provide documents and answers to interrogatories that had been requested by the Receiver. The Court ruled that requests for admission that had been propounded by the Receiver were deemed admitted. Two family members later obtained separate counsel and are complying with their discovery obligations. Warren Chiu and his wife have not provided documents mandated by the Court. The Receiver has filed a motion asking the Court to enter judgment against Warren and Winnie Chiu.

c. Judith Bassett: Bassett is a friend of Holloway who gave more than \$30,000.00 to Holloway before US Ventures was formed. Holloway used money from US Ventures to repay Bassett. On April 26, 2013, the Receiver filed a motion for summary judgment against Bassett.

d. Terry Harper: Harper solicited funds from investors for Winsome and received over \$500,000.00 from Winsome, including payments only the month before Winsome was sued by the CFTC. On May 14, 2013, the Court denied Harper's motion to dismiss the Receiver's lawsuit, ruling that the Court had jurisdiction over the lawsuit. On June 3, 2013,

Harper appealed this ruling to the Tenth Circuit Court of Appeals. On June 25, 2013 the Tenth Circuit dismissed Harper's appeal because it was not an appealable order. On July 12, 2013, Harper filed a document with the Court demanding that the Court "Clarify the Character of the Court's Jurisdiction." The Receiver has filed a response to Harper's new filing.

e. Patty Ison: The Receiver filed a motion on May 29, 2013 seeking summary judgment against Ison. The Receiver intends to pursue a default judgment against William Ison.

f. William Cornelius: On May 31, 2013, the Receiver filed a motion for summary judgment against William Cornelius, an attorney in Texas. The motion asks the Court to determine that the \$89,845.73 in legal fees and expenses that Winsome paid Cornelius to defend Jerome Carter against criminal charges did not result in any benefit to Winsome and that the legal fees need to be repaid.

g. Ursula Andres: The Receiver filed a motion for summary judgment against Ursula Andres, also on May 31, 2013. The motion argues that Mrs. Andres has already admitted that she did not provide any benefit to Winsome for the \$311,075.00 she received so judgment should be entered against her and in favor of the Receivership.

h. Peter Widmark: Widmark is an investor who received excess payments from Winsome. The Receiver sued Widmark to recover those funds. On June 13, 2013, the Court denied Widmark's motion to dismiss the Receiver's lawsuit. This lawsuit now moves to the discovery phase.

i. Clayton Ballard: On June 21, 2013 the Court entered a judgment in favor of the Receiver and against Ballard in the amount of \$577,592.57. This represents the total

amount Ballard received from Winsome. Ballard provided sworn statements demonstrating a financial inability to pay any of this judgment. Under the judgment, Ballard is required to provide regular reports to the Receiver of his income and to make payments to the Receivership if he acquires significant assets or income.

j. Roberto E. Penedo: On May 8, 2013, Defendant Roberto Penedo filed a Motion for Partial Summary Judgment against the Receiver. The Motion has been fully briefed. At this time, no hearing has been set by the Court. The Receiver will file his Motion for Summary Judgment once the Court enters its decision on Defendant's Motion.

7. Out of the 88 lawsuits filed by the Receiver, 26 remain in litigation. These cases are in varying stages of litigation. 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.

#### IV. SETTLEMENTS

8. Seven additional settlements were reached during the Reporting Period. These have all been approved by the Court:

a. Daniel Behles: On May 28, 2013, the Court approved a settlement agreement by which Behles has paid \$62,500.00 to the Receivership. Behles is an attorney that the Receiver sued in order to recover payments made to him by Winsome in connection with Behles' representation of Winsome relating to the purchase of Aerospace Consulting Corp.

b. Roxanne Tsakas: The Court approved a settlement with Tsakas for \$10,000.00. The Receiver had sued Tsakas for monies paid to her by Winsome when Tsakas was not an investor. Tsakas had received \$12,500.00. The Receiver settled for \$10,000.00

based on financial information from Tsakas showing an inability to pay the full amount. Half of the settlement amount has already been paid to the Receivership; the balance is due by the end of the year.

c. Halo TV & Film: Halo TV & Film is a religious organization that received significant charitable donations from Robert Holloway. Halo was able to demonstrate that it used the donations in its religious outreach programs and that it survives on low levels of contributions. Under the settlement agreement approved by the Court on May 28, 2013, Halo will pay \$15,000.00 to the Receivership. \$3,380.00 has already been received.

d. Clayton and Carol Ballard: On May 28, 2013, the Court approved a settlement agreement with Clayton and Carol Ballard in which the Ballards will consent to a judgment against them in the amount of \$577,592.57. The judgment requires the Ballards to make payments to the Receiver each year that their combined assets and income exceed \$100,000.00 and to provide copies of tax returns to the Receiver each year.

e. James Crouse: On July 12, 2013, the Court approved a settlement agreement with Crouse. Crouse will pay \$7,500.00 to the Receivership. This is less than the \$11,000.00 in excess payments Crouse received on his investments. The Receiver agreed to settle for less than the full amount based on Crouse's demonstrated financial hardship. \$5,000.00 of the settlement amount has already been paid to the Receivership.

f. Lauren Bateman: In his lawsuit against Bateman, the Receiver alleged that she was paid \$17,200.00 without having invested in Winsome. Bateman demonstrated that these were investment distributions based on the principal amounts invested by other investors (who were overpaid) and that half of this money was paid to another person. Under the Court-



approved settlement agreement, Bateman must pay \$7,500.00 to the Receivership. This amount has been paid to the Receivership.

9. Lewis Scogin: Scogin was a third-party marketer who solicited funds for Winsome. He has consented to the entry of a \$1,116,317.78 judgment against him. He lacks the financial ability to repay these funds now and is required to provide ongoing information to the Receiver about his financial condition. If he later acquires assets or funds, he must provide payments to the Receivership. As a result of the July 12, 2013 approval of this settlement agreement, the Receiver is working with the defendant to have the Court enter judgment against him pursuant to the agreement between the parties.

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.

## **V. FINANCIAL REPORT**

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

11. A total of \$1,903,625.38 was recovered for the Receivership Estate during the Reporting Period.

<b>Category</b>	<b>Amount</b>
Settlement Recoveries	1,903,577.08
Bank: Interest Earned	48.30
<b>Total</b>	<b>1,903,625.38</b>

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

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

<b>Category</b>	<b>Amount</b>
Deposition Transcripts	1,217.45

Bank Fees	12.00
Outside Copying Costs	32.57
<b>Total</b>	<b>1,262.02</b>

13. On May 28, 2013, the Court approved payment of the fees and expenses of the Receiver for work performed for a thirteen-month period from February 1, 2012 to February 28, 2013. On June 12, the Court approved payment of fees and expenses of the Receivership attorney for work performed during the five-month period from August December 1, 2012 to April 30, 2012 and the fees and expenses of the Receiver for March and April 2013. These fees and expenses, totaling \$443,198.53 were paid during the quarter. All fees and expenses are paid through April 30, 2013.

14. The Receivership bank account balance, as of July 15, 2013, was \$2,738,216.29.

#### **VI. OTHER**

15. During the Reporting Period, the Receiver has provided information and assistance to officials from the U.S. Department of Justice who are prosecuting the criminal charges against Andres and Holloway. The Receiver has also provided information to other regulatory and law enforcement agencies.

16. The Receiver understands that Mr. Andres intends to plead to criminal charges at a hearing on August 21, 2013. The Receiver understands that trial is expected to proceed against Mr. Holloway in early October.

17. The Receiver has been preparing information needed to submit tax returns for the Receivership. The Receiver does not expect that any taxes will be due, but there will be tax preparation expenses.

**VII. NEXT STEPS**

18. The next steps the Receiver expects to pursue are:
- a. Resolve the two remaining objections to the claims process and present a distribution plan to the Court for approval. Then, make an initial distribution of funds to investors;
  - b. Continue prosecuting the lawsuits filed by the Receiver that are still pending; and
  - c. Assist prosecutors in the criminal trial of Holloway.

**VIII. CONCLUSION**

The Receiver respectfully submits this Tenth Status Report for the period from April 16, 2013 through July 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 9th day of August, 2013.

  
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WAYNE KLEIN, Receiver

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing **TENTH STATUS REPORT OF R. WAYNE KLEIN, RECEIVER FOR PERIOD APRIL 16, 2013 TO JULY 15, 2013** to be served in the method indicated below to the Defendant in this action this 9th day of August, 2013.

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