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Court-Appointed Receiver of U.S. Ventures, LC,
Winsome Investment Trust, and the assets of Robert
J. Andres and Robert L. Holloway*

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

R. WAYNE KLEIN, the Court-Appointed
Receiver of U.S. Ventures LC, Winsome
Investment Trust, and the assets of Robert J.
Andres and Robert L. Holloway,

Plaintiff,

vs.

CLAYTON LYNN BALLARD, CAROL D.
BALLARD, and RIO SYSTEMS, INC.

Defendants.

Case No.

**COMPLAINT TO AVOID
FRAUDULENT TRANSFERS, FOR
CONSTRUCTIVE TRUST AND
OTHER PROVISIONAL REMEDIES
AND FOR DAMAGES**

Plaintiff R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of U.S. Ventures LC ("US Ventures"), Winsome Investment Trust ("Winsome"), and all of the assets of Robert J. Andres ("Andres") and Robert L. Holloway ("Holloway") (collectively the

"Receivership Defendants"), by and through his undersigned counsel, states and alleges as follows:

NATURE OF THE PROCEEDING

1. The Receivership Defendants had been operating a classic Ponzi scheme since at least 2005 by obtaining funds from investors through violation of the federal commodities laws and using the funds from investors to pay bogus returns to earlier investors. In the course of the Ponzi scheme, the Receivership Defendants made material misrepresentations and omissions, misappropriated funds, and committed fraud as a commodity pool operator, all in violation of the Commodity Exchange Act ("CEA").

2. On January 24, 2011, the Commodity Futures Trading Commission (the "CFTC") filed a Complaint against US Ventures, Winsome, Andres, and Holloway in United States District Court for the District of Utah, Case No. 2:11CV00099 BSJ (the "CFTC Action"). This suit alleges, among other things, that US Ventures, Winsome, Andres, and Holloway operated an investment program in violation of the registration, licensing, and anti-fraud requirements of the federal commodities laws. In essence, the CFTC alleges that the Receivership Defendants engaged in a Ponzi scheme whereby over \$50 million was fraudulently taken from investors.

3. On January 25, 2011, the Receiver was appointed to act as receiver in connection with the CFTC Action.

4. On February 2, 2011, the Receiver filed a Notice of Receivership with the Southern District of Texas pursuant to 28 U.S.C. § 754.

5. The instant action is brought by the Receiver as part of his continuing duty to: (i)

recapture and return investor funds that were sent to US Ventures and Winsome and then diverted by the Receivership Defendants in the course of their massive Ponzi scheme, and (ii) avoid fraudulent transfers, seek a constructive trust, and obtain other provisional remedies and recover damages.

THE DEFENDANTS

6. Defendant Clayton Lynn Ballard ("Ballard") assisted Andres in operating the Winsome Ponzi scheme. He solicited investors to participate in Winsome and received compensation from Winsome for the investors he solicited. Ballard also caused Winsome to pay substantial amounts to him and to others on his behalf relating to a variety of investment programs that Ballard was pursuing with Winsome. Some of these investment programs were being promoted by RIO Systems, Inc. Ballard is president of RIO Systems.

7. Defendant Carol D. Ballard ("Carol Ballard") is the wife of Ballard. Carol Ballard received substantial payments from Winsome without having made any investment in Winsome. Some of these payments were described as "tuition," "distribution," or "profit."

8. Defendant RIO Systems, Inc. ("RIO Systems") is a Texas corporation with its principal place of business in Houston, Texas. Ballard is the President and 100% owner of RIO Systems.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this lawsuit because this lawsuit is ancillary to the CFTC Action and the appointment of the Receiver by this Court.

10. This Court has personal jurisdiction over the defendants in this matter pursuant to

28 U.S.C. § 754 and 28 U.S.C. § 1692.

11. Venue is proper in this Court under 28 U.S.C. §1391.

THE RECEIVER, STANDING, AND STATUS OF THE CFTC ACTION

12. On January 25, 2011, in the CFTC Action, the District Court entered an Order Granting Plaintiff's [CFTC'S] *Ex Parte* Motion for Statutory Restraining Order. This Order included the appointment of a Receiver ("Order"). The Receiver was appointed as receiver of US Ventures and Winsome, together with any business entities owned by any Receivership Defendant. Pursuant to that Order, the Receiver was to take control of the funds, assets, and property of the Receivership Defendants wherever situated, and is fully authorized to pursue this action against Defendant.

13. Since the filing of the CFTC's action, defaults have been entered against Holloway and US Ventures; preliminary injunctions have been entered against all defendants in that action.

THE FRAUDULENT PONZI SCHEME

U S Ventures

14. US Ventures was a Utah limited liability company headquartered in Salt Lake City, Utah that was run by Holloway. US Ventures claimed to be engaged in the trading of commodity futures in a manner that generated high investment returns for investors, with returns averaging 1% per day. US Ventures claimed to have very few days with losses; many investors were told there had been only one day of losses since the inception of trading.

15. US Ventures never registered any of its investment offerings under the securities

laws or commodities laws. Neither Holloway nor US Ventures was registered with the National Futures Association during this time period, as required. Neither Holloway nor US Ventures was licensed to sell securities during this time period.¹

16. Beginning in February 2005 and continuing through April 11, 2007, Holloway and US Ventures sold securities in the form of investment contracts, profit participation agreements, and interests in a commodity pool to investors. Holloway and US Ventures also acted as commodity pool operators and commodity trading advisers for the funds raised from investors. During this time period, Holloway and US Ventures raised over \$27 million from investors.

17. Holloway and US Ventures opened and maintained nine commodity futures trading accounts in the name of US Ventures with three Futures Commission Merchants (“FCM”).

18. US Ventures was to receive 30% of the net trading profits for each day that US Ventures earned profits. However, US Ventures was responsible to cover trading losses out of its own funds on days where trading resulted in losses.

19. Despite representations to investors that the commodities trading rarely resulted in losses, over 40% of the trading days resulted in losses. The average losses on unprofitable trading days were significantly greater than the average gains on profitable days. As a result, the aggregate losses exceeded the aggregate profits earned.

20. US Ventures sent \$25.9 million to brokerage accounts at the three FCMs.

¹ Holloway had been licensed to sell a limited range of securities between 1981 and 2001.

Between February 2005 and April 2007, US Ventures lost \$10,186,494.62 in commodities trading. The remaining \$15,731,483.38 was withdrawn, almost all of it to pay distributions and returns of principal to investors.

21. Notwithstanding these losses, US Ventures paid itself commissions and paid distributions to investors based on reports of profits during this time period. Account statements were prepared and sent to investors reporting consistent profits. Investors were given daily reports by US Ventures showing that the trading had never incurred losses during the time the investors were in the investment pool.

22. Of the twenty five months in which commodity futures were traded, twenty had losses. Four of the first five months of trading resulted in losses for the month. At least as early as November 2005, US Ventures was insolvent, owing investors significantly more than the value of holdings in its brokerage accounts.

23. Despite incurring significant trading losses, US Ventures reported profits to investors. Many investors withdrew funds from US Ventures, either as profit distributions or withdrawals of their investments. Because US Ventures was not making a profit, these payments to investors were made from the investment principal of existing investors or from amounts that were sent to US Ventures by other investors.

24. This means that US Ventures was operating as a Ponzi scheme from at least November 2005.

Winsome Investment Trust

25. Winsome described itself as a private trust, headquartered in Houston, Texas.

Winsome was run by Andres, who had complete and sole authority over the trust.

26. Andres and Winsome solicited individuals and entities to send funds for participation in a commodity futures pool that Winsome said it managed or controlled. Some of the participants (investors) were told that US Ventures was doing the trading; others were led to understand that Winsome would be conducting the commodities trading.

27. Much of the money gathered by Winsome was received from third-party marketers – individuals who solicited others and were paid commissions for bringing in investors or were paid a percentage of the profits the investors were reported to have earned.

28. Between October 2005 and April 2007, Andres and Winsome collected over \$42 million from investors – either directly or through third-party marketers.

29. In mid-2006, Andres and Holloway reached an agreement that as Andres raised additional funds from investors, Andres would no longer send those funds to US Ventures. Under this arrangement, US Ventures agreed to change its accounting records to reflect the receipt of investments in the amounts reported by Andres to Holloway – even though Andres was no longer sending money to US Ventures or Holloway.

30. Out of the more than \$42 million Winsome received from investors before April 2007, Winsome sent \$24.7 million to US Ventures. The remainder was retained by Andres and Winsome. This money was used to make distribution payments to other investors, for other investment programs being pursued by Andres and Winsome, and for the personal uses of Andres.

SEC Lawsuit, Asset Freeze

31. On April 11, 2007, the SEC filed a lawsuit in U.S. District Court in Utah against Novus Technology and other defendants. The SEC lawsuit named US Ventures and Holloway as relief defendants. At the request of the SEC, the court entered orders freezing the assets of Holloway and US Ventures. *SEC v. Novus Techs., LLC*, No. 2:07-CV-00235 (D. Utah, filed Apr. 11, 2007).

32. The freeze of US Ventures assets applied to its bank accounts and FCM brokerage accounts. At that time, the bank accounts had aggregate balances of less than \$500.00 and the brokerage accounts had aggregate negative balances – meaning all the money had been lost in trading, paid out to investors, or used to pay personal expenses.

Winsome Investments After April 2007

33. After the assets of US Ventures were frozen by the Court in April 2007, US Ventures ceased conducting any commodities trading. Winsome, however, continued to solicit and accept funds from investors (directly and through third-party marketers). Investors were told a variety of stories, including representations that commodities trading was still taking place and that Winsome had other investment projects it was pursuing.

34. Between April 11, 2007 and December 10, 2010, Winsome collected an additional \$33,752,843.91 from investors.

35. When the CFTC filed suit against Andres, Winsome, Holloway, and US Ventures on January 24, 2011, the bank and brokerage accounts for the defendants had aggregate account values of less than \$1,000.00.

36. At the time that the US Ventures commodities trading program was halted by the asset freeze, US Ventures owed more than \$30 million to Winsome. Winsome owed at least this amount to its investors. Because US Ventures had no assets and its commodities brokerage accounts had net negative values, Winsome's share of the value of the US Ventures trading account was zero. This means US Ventures had liabilities of more than \$30 million and zero assets.

37. Because the vast majority of Winsome's assets during the period from October 2005 to April 2007 consisted of a derivative interest in the value of the US Ventures commodities trading accounts and because the net value of these accounts declined steadily, culminating in a complete loss of all account value by April 2007, Winsome owed more to its investors than the value of Winsome's interest in US Ventures. This resulted in Winsome's US Ventures investment having negative equity at least as early as November 2005.

38. As noted above, Winsome took from investors at least another \$33,752,843.91 after April 2007. Winsome owed returns of principal to these investors as well as the interest or profit participations reported to investors in periodic account statements.

39. To the extent the investor funds were used to make distribution payments or returns of principal to other investors or were used by Andres for personal uses, these expenditures did not result in Winsome acquiring or holding any assets.

40. To the extent the investor funds were used in other investment projects pursued by Andres and Winsome, those investment projects did not result in tangible assets or payments to Winsome, meaning the expenditures resulted in decreases in the net worth of Winsome, rather

than increases. For example:

a. Andres caused Winsome and related companies to spend at least \$6.4 million in an effort to purchase several companies related to Aerospace Consulting Corp. After paying more than \$4.2 million directly for the purchase of Aerospace, Winsome was found in default and declared to have forfeited any interest in the company.

b. More than \$2.3 million was spent for a privately-funded project in Mexico called National Infrastructure Development Master Plan and for efforts to receive approval to build an oil refinery in Guatemala. These projects were being pursued in conjunction with RIO Systems, a company controlled by Ballard. Winsome has not received any of the \$20.2 million Ballard and RIO Systems Inc. promised it relating to these projects.

c. Over \$3 million was spent to free up an inheritance for Cindy Moore, which supposedly was being improperly withheld. Moore promised Winsome \$24.8 million for its help in securing the release of the large inheritance. Winsome has received no benefit from these payments.

d. In an August 2006 balance sheet, Winsome claimed an ownership interest in 100,000 acres of land in the Bahamas, precious metals, collections of coins and stamps, and 500 metric tons of gold. Winsome and Andres expended investor funds to acquire interests in these assets, but has none of these assets and has demonstrated no rights to these assets – to the extent they even exist.

e. Winsome and Andres paid over \$1.1 million of investor funds to companies that promised licensing rights and access to contracts valued at \$100 million.

Winsome has no assets to show for these expenditures.

f. At least \$140,000.00 was spent by Winsome trying to claim \$500 million in “U.S. Treasury Checks” that the Federal Reserve Bank of New York was supposedly holding for a Wilfredo Saurin. An interest in these funds was supposedly transferred from Saurin to another individual named Antonio Yu, and from Yu to Winsome. There is no reasonable basis to believe this money is being held by the Federal Reserve and Winsome has no demonstrable claim to the funds.

g. Winsome paid more than \$680,000.00 at the request of Jerome Carter and for a Mexican company named Grupo Corporativo. Winsome was promised a 1/6th interest in a 1% commission on an €800 million transaction and possibly other benefits. No commission was received and no assets are owned or possessed by Winsome resulting from these expenditures.

h. More than \$800,000.00 was spent trying to secure a loan through a company named Magna Pinpoint. The loan was variously described as resulting in Winsome receiving \$10 million, \$50 million, or \$200 million. None of these funds ever came to Winsome.

i. Over \$4.7 million of investor funds was spent trying to secure the release of \$550 million supposedly impounded by British and European Commission authorities. Winsome was to have been the custodian of these funds when they were released from impound. No funds were ever delivered to Winsome from this endeavor.

j. Winsome paid \$250,000.00 as an advance fee to a supposed wealthy businessman from Dubai, to secure a \$20 million loan to Winsome. Winsome never received any funds from the advance fee it paid.

k. Andres expended over \$160,000.00 of investor funds to open a restaurant in Las Vegas. The restaurant was never opened and these expenditures yielded no assets for Winsome.

41. In total, Winsome spent over \$35 million of investor monies for commodities trading at US Ventures or for investment projects (like those described in the prior paragraph) that were being pursued separately by Andres. None of the \$35 million spent by Andres and Winsome resulted in any assets for Winsome.

42. Notwithstanding that these projects resulted in the loss of \$35 million, Andres and Winsome continued to issue account statements to investor showing that their account values were increasing. Thus, Winsome was liable to investors for the more than \$35 million in investor funds that were lost in these investment projects and for interest and accumulated profits on those investment funds.

43. Because expenditures for these investment programs yielded no assets or tangible benefit, these expenditures exacerbated Winsome's negative equity position. The insolvency that began in November 2005 as a result of losses by US Ventures was significantly worsened by these investment projects.

44. As a result, Winsome initially became insolvent at least as early as November 2005 and its insolvency significantly worsened as time passed. At every point after November 2005, Winsome's liabilities exceeded its assets.

Winsome Operated as a Ponzi Scheme

45. As described above, Winsome received significant amounts of money from

investors. It did not send all the investor money to US Ventures or use the funds for other investment projects.²

46. At least as early as December 5, 2005, Winsome began making distribution payments to investors.

47. Many of these distribution payments were not paid out of funds that Winsome received from US Ventures and were not paid with profits that Winsome had earned from other investment projects. As a result, these distributions could have been paid only with funds given to Winsome by other investors.

48. US Ventures lost money in its commodities trading activity every month between October 2005 and April 2006. Despite this, US Ventures and Winsome paid distributions to investors during this time period. Because US Ventures had lost money, these distributions could have come only from the principal investment amounts of investors or from funds provided by new investors.

49. Between March 2006 and July 2008, there were more than one hundred instances in which Winsome paid funds to investors where the monies used for those payments could have come only from other investors.

**IRREVOCABLE PROMISE OF RIO SYSTEMS TO
PAY ANDRES FOR SERVICES AND PAYMENTS IT RECEIVED**

50. On or about December 4, 2004, RIO Systems, acting through its Board of Directors, irrevocably agreed to pay \$20,000,000.00, without reservation, to Andres for services

² Substantial amounts were converted by Andres or diverted to other uses.

Andres performed on behalf of RIO Systems.

51. On or about December 4, 2004, RIO Systems, acting through its Board of Directors, irrevocably agreed to pay \$256,000.00 to Andres for amounts advanced to RIO Systems or paid on behalf of RIO Systems by Andres.

52. On or about September 9, 2005, Andres filed a UCC Financing Statement with the Texas Secretary of State to secure the debt of \$20,256,000.00 that RIO Systems owed to him.

53. While on or about February 22, 2006, the UCC Financing Statement referenced in the preceding paragraph was terminated by Andres with a UCC Financing Statement Amendment that was filed with the Texas Secretary of State, the underlying obligation of RIO Systems to pay Andres \$20,256,000.00 has not been satisfied.

TRANSFERS RECEIVED BY DEFENDANTS

54. During the period from August 22, 2005 through September 30, 2010, the Defendants Ballard and Carol Ballard received direct payments from Winsome and were the beneficiaries of payments to others by Winsome in the aggregate amount of \$2,109,350.62. Further, Defendant RIO Systems received payments from Winsome and was the beneficiary of payments to others by Winsome in the amount of \$1,531,758.05.

55. Ballard received at least \$459,774.57 in payments directly from Winsome as follows:

a. On August 22, 2005, a check (#1005) in the amount of \$450.00 drawn on the account of Winsome at Bank of America.

b. On December 19, 2005, a check (#1012) in the amount of \$4,915.75

drawn on the account of Winsome at Bank of America.

c. On January 19, 2006, a check (#1007) in the amount of \$9,337.50 drawn on the account of Winsome at Bank of America.

d. On January 24, 2006, a check (#1017) in the amount of \$2,000.00 drawn on the account of Winsome at Bank of America.

e. On February 2, 2006, a check (#1016) in the amount of \$5,105.00 drawn on the account of Winsome at Bank of America.

f. On February 17, 2006, a check (#1022) in the amount of \$5,286.00 drawn on the account of Winsome at Bank of America.

g. On March 2, 2006, a check (#1025) in the amount of \$4,065.00 drawn on the account of Winsome at Bank of America.

h. On March 17, 2006, a check (#1029) in the amount of \$6,592.75 drawn on the account of Winsome at Bank of America.

i. On April 5, 2006, a check (#1031) in the amount of \$8,775.50 drawn on the account of Winsome at Bank of America.

j. On April 20, 2006, a check (#1033) in the amount of \$5,780.75 drawn on the account of Winsome at Bank of America.

k. On May 19, 2006, a check (#1035) in the amount of \$2,293.84 drawn on the account of Winsome at Bank of America.

l. On June 5, 2006, a check (#1037) in the amount of \$2,622.48 drawn on the account of Winsome at Bank of America.

m. On October 19, 2006, a check (#1042) in the amount of \$6,000.00 drawn on the account of Winsome at Bank of America.

n. On October 19, 2006, a check (#1043) in the amount of \$7,500.00 drawn on the account of Winsome at Bank of America.

o. On November 22, 2006, a check (#1048) in the amount of \$5,400.00 drawn on the account of Winsome at Bank of America.

p. On December 5, 2006, a check (#1050) in the amount of \$7,200.00 drawn on the account of Winsome at Bank of America.

q. On December 13, 2006, a check (#1053) in the amount of \$3,500.00 drawn on the account of Winsome at Bank of America.

r. On December 22, 2006, a check (#1052) in the amount of \$6,000.00 drawn on the account of Winsome at Bank of America.

s. On December 28, 2006, a check (#1055) in the amount of \$2,000.00 drawn on the account of Winsome at Bank of America.

t. On January 8, 2007, a check (#1057) in the amount of \$5,500.00 drawn on the account of Winsome at Bank of America.

u. On January 9, 2007, a check (#1060) in the amount of \$1,500.00 drawn on the account of Winsome at Bank of America.

v. On January 19, 2007, a check (#1058) in the amount of \$7,500.00 drawn on the account of Winsome at Bank of America.

w. On February 7, 2007, a check (#1063) in the amount of \$8,500.00 drawn

on the account of Winsome at Bank of America.

x. On February 14, 2007, a check (#1065) in the amount of \$1,500.00 drawn on the account of Winsome at Bank of America.

y. On February 20, 2007, a check (#1066) in the amount of \$7,500.00 drawn on the account of Winsome at Bank of America.

z. On February 27, 2007, a check (#1068) in the amount of \$7,500.00 drawn on the account of Winsome at Bank of America.

aa. On March 1, 2007, a check (#1070) in the amount of \$9,500.00 drawn on the account of Winsome at Bank of America.

bb. On March 23, 2007, a check (#1073) in the amount of \$1,200.00 drawn on the account of Winsome at Bank of America.

cc. On March 30, 2007, a check (#1078) in the amount of \$7,500.00 drawn on the account of Winsome at Bank of America.

dd. On April 10, 2007, a check (#1080) in the amount of \$4,500.00 drawn on the account of Winsome at Bank of America.

ee. On May 1, 2007, a check (#1081) in the amount of \$5,000.00 drawn on the account of Winsome at Bank of America.

ff. On May 9, 2007, a check (#1082) in the amount of \$2,500.00 drawn on the account of Winsome at Bank of America.

gg. On May 14, 2007, a check (#1083) in the amount of \$500.00 drawn on the account of Winsome at Bank of America.

hh. On May 16, 2007, a check (#1084) in the amount of \$2,500.00 drawn on the account of Winsome at Bank of America.

ii. On June 25, 2007, a check (#1092) in the amount of \$7,500.00 drawn on the account of Winsome at Bank of America.

jj. On June 29, 2007, a check (#1095) in the amount of \$5,000.00 drawn on the account of Winsome at Bank of America.

kk. On July 20, 2007, a check (#1098) in the amount of \$3,000.00 drawn on the account of Winsome at Bank of America.

ll. On July 30, 2007, a check (#1099) in the amount of \$5,000.00 drawn on the account of Winsome at Bank of America.

mm. On August 22, 2007, a check (#1045) in the amount of \$2,000.00 drawn on the account of Winsome at Bank of America.

nn. On September 24, 2007, a check (#1000) in the amount of \$3,000.00 drawn on the account of Winsome at Bank of America.

oo. On October 29, 2007, a check (#1106) in the amount of \$6,000.00 drawn on the account of Winsome at Bank of America.

pp. On November 23, 2007, a check (#1108) in the amount of \$5,000.00 drawn on the account of Winsome at Bank of America.

qq. On February 19, 2008, a check (#1117) in the amount of \$4,000.00 drawn on the account of Winsome at Bank of America.

rr. On March 5, 2008, a check (#1118) in the amount of \$4,000.00 drawn on

the account of Winsome at Bank of America.

ss. On March 6, 2008, a check (#1119) in the amount of \$3,000.00 drawn on the account of Winsome at Bank of America.

tt. On March 20, 2008, a check (#1124) in the amount of \$6,000.00 drawn on the account of Winsome at Bank of America.

uu. On March 26, 2008, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Bank of America.

vv. On April 3, 2008, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Bank of America.

ww. On April 10, 2008, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Bank of America.

xx. On April 22, 2008, an electronic transfer in the amount of \$7,500.00 from the account of Winsome at Bank of America.

yy. On May 1, 2008, an electronic transfer in the amount of \$10,000.00 from the account of Winsome at Bank of America.

zz. On May 12, 2008, a check (#1132) in the amount of \$7,500.00 drawn on the account of Winsome at Bank of America.

aaa. On May 12, 2008, an electronic transfer in the amount of \$2,500.00 from the account of Winsome at Bank of America.

bbb. On May 19, 2008, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Bank of America.

ccc. On May 27, 2008, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Bank of America.

ddd. On June 4, 2008, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Bank of America.

eee. On June 9, 2008, an electronic transfer in the amount of \$2,500.00 from the account of Winsome at Bank of America.

fff. On June 12, 2008, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Bank of America.

ggg. On June 13, 2008, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Bank of America.

hhh. On June 27, 2008, an electronic transfer in the amount of \$2,500.00 from the account of Winsome at Bank of America.

iii. On July 2, 2008, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Bank of America.

jjj. On July 8, 2008, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Bank of America.

kkk. On July 11, 2008, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Bank of America.

lll. On July 22, 2008, a check (#104) in the amount of \$5,000.00 drawn on the account of Winsome at Chase Bank.

mmm. On July 22, 2008, a check (#105) in the amount of \$5,000.00 drawn on the

account of Winsome at Chase Bank.

nnn. On July 22, 2008, a check (#106) in the amount of \$5,000.00 drawn on the account of Winsome at Chase Bank.

ooo. On July 28, 2008, a check (#110) in the amount of \$6,000.00 drawn on the account of Winsome at Chase Bank.

ppp. On August 7, 2008, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Chase Bank.

qqq. On August 15, 2008, an electronic transfer in the amount of \$10,000.00 from the account of Winsome at Chase Bank.

rrr. On August 18, 2008, an electronic transfer in the amount of \$10,000.00 from the account of Winsome at Chase Bank.

sss. On August 21, 2008, an electronic transfer in the amount of \$10,000.00 from the account of Winsome at Chase Bank.

ttt. On August 28, 2008, an electronic transfer in the amount of \$10,000.00 from the account of Winsome at Chase Bank.

uuu. On September 3, 2008, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Chase Bank.

vvv. On September 9, 2008, an electronic transfer in the amount of \$3,000.00 from the account of Winsome at Chase Bank.

www. On September 17, 2008, an electronic transfer in the amount of \$6,000.00 from the account of Winsome at Chase Bank.

xxx. On October 2, 2008, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Chase Bank.

yyy. On October 24, 2008, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Chase Bank.

zzz. On November 3, 2008, an electronic transfer in the amount of \$3,000.00 from the account of Winsome at Chase Bank.

aaaa. On November 3, 2008, an electronic transfer in the amount of \$2,000.00 from the account of Winsome at Chase Bank.

bbbb. On November 7, 2008, an electronic transfer in the amount of \$3,000.00 from the account of Winsome at Chase Bank.

cccc. On November 7, 2008, an electronic transfer in the amount of \$2,000.00 from the account of Winsome at Chase Bank.

dddd. On November 17, 2008, an electronic transfer in the amount of \$15,000.00 from the account of Winsome at Chase Bank.

eeee. On January 13, 2009, an electronic transfer in the amount of \$2,500.00 from the account of Bear & Bull Strategies at Comerica Bank.

ffff. On March 30, 2009, a check (#149) in the amount of \$9,000.00 drawn on the account of Bear & Bull Strategies at Wells Fargo Bank.

gggg. On April 2, 2009, an electronic transfer in the amount of \$4,000.00 from the account of Bear & Bull Strategies at Comerica Bank.

hhhh. On September 15, 2009, an electronic transfer in the amount of \$7,500.00

from the account of Bear & Bull Strategies at Comerica Bank.

iii. On September 28, 2009, an electronic transfer in the amount of \$2,600.00 from the account of Bear & Bull Strategies at Comerica Bank.

jjjj. On October 13, 2009, a check (#1008) in the amount of \$300.00 drawn on the account of Bear & Bull Strategies at Comerica Bank.

kkkk. On December 15, 2009, an electronic transfer in the amount of \$2,200.00 from the account of Bear & Bull Strategies at Comerica Bank.

llll. On January 19, 2010, an electronic transfer in the amount of \$5,000.00 from the account of Bear & Bull Strategies at Comerica Bank.

mmmm. On March 16, 2010, an electronic transfer in the amount of \$1,700.00 from the account of Bear & Bull Strategies at Comerica Bank.

nnnn. On September 30, 2010, a check (#1010) in the amount of \$1,450.00 drawn on the account of Bear & Bull Strategies at Comerica Bank.

56. Carol Ballard received at least \$107,200.00 in payments directly from Winsome as follows:

a. On January 25, 2007, an electronic transfer in the amount of \$1,200.00 from the account of Winsome at Bank of America.

b. On January 29, 2007, an electronic transfer in the amount of \$64,000.00 from the account of Winsome at Bank of America.

c. On August 22, 2007, an electronic transfer in the amount of \$10,000.00 from the account of Winsome at Bank of America.

d. On November 28, 2007, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Bank of America.

e. On January 15, 2008, an electronic transfer in the amount of \$1,000.00 from the account of Winsome at Bank of America.

f. On January 25, 2008, an electronic transfer in the amount of \$500.00 from the account of Winsome at Bank of America.

g. On January 31, 2008, an electronic transfer in the amount of \$2,500.00 from the account of Winsome at Bank of America.

h. On March 31, 2009, an electronic transfer in the amount of \$10,500.00 from the account of Bear & Bull Strategies at Comerica Bank.

i. On July 27, 2009, an electronic transfer in the amount of \$5,000.00 from the account of Bear & Bull Strategies at Comerica Bank.

j. On September 15, 2009, an electronic transfer in the amount of \$7,500.00 from the account of Bear & Bull Strategies at Comerica Bank.

57. Ashley Ballard, who appears to be a relative of Ballard and Carol Ballard, received at least \$4,500.00 from Winsome as follows:

a. On October 11, 2007, an electronic transfer in the amount of \$1,500.00 from the account of Winsome at Bank of America.

b. On March 4, 2008, an electronic transfer in the amount of \$3,000.00 from the account of Winsome at Bank of America.

58. The Alabama law firm, Wright Lindsey & Jennings, received at least \$569,758.05

from Winsome. These payments were for legal services provided by the law firm to RIO Systems, a company controlled by Ballard. The payments were as follows:

a. On November 28, 2007, an electronic transfer in the amount of \$35,000.00 from the account of Winsome at Bank of America.

b. On March 4, 2008, an electronic transfer in the amount of \$110,000.00 from the account of Winsome at Bank of America.

c. On March 30, 2008, an electronic transfer in the amount of \$76,000.00 from the account of Winsome at Bank of America.

d. On April 16, 2008, an electronic transfer in the amount of \$348,758.05 from the account of Winsome at Bank of America.

59. On November 2, 2009, Winsome wired \$6,118.00 to GTC Bank to pay an invoice from Profesionales en Turismo, S.A. that was sent to Ballard. This payment was made from the Winsome-controlled bank account of Bear & Bull Strategies at Comerica Bank.

60. The entity, Fundacion Guatemalteco, received \$765,000.00 from Winsome. These payments were for the benefit of Ballard and his company, RIO Systems. The payments were as follows:

a. On October 27, 2006, an electronic transfer in the amount of \$75,000.00 from the account of Winsome at Bank of America.

b. On November 15, 2006, an electronic transfer in the amount of \$35,000.00 from the account of Winsome at Bank of America.

c. On November 29, 2006, an electronic transfer in the amount of

\$125,000.00 from the account of Winsome at Bank of America.

d. On December 22, 2006, an electronic transfer in the amount of \$100,000.00 from the account of Winsome at Bank of America.

e. On January 11, 2007, an electronic transfer in the amount of \$100,000.00 from the account of Winsome at Bank of America.

f. On February 26, 2007, an electronic transfer in the amount of \$65,000.00 from the account of Winsome at Bank of America.

g. On October 26, 2007, an electronic transfer in the amount of \$20,000.00 from the account of Winsome at Bank of America.

h. On November 28, 2007, an electronic transfer in the amount of \$40,000.00 from the account of Winsome at Bank of America.

i. On March 24, 2008, an electronic transfer in the amount of \$170,000.00 from the account of Winsome at Bank of America.

j. On May 7, 2008, an electronic transfer in the amount of \$35,000.00 from the account of Winsome at Bank of America.

61. Roberto E. Penedo, the person who controlled Fundacion Guatemalteco, received at least \$197,000.00 from Winsome. These payments were for the benefit of Ballard's company, RIO Systems. The payments were as follows:

a. On October 23, 2006, an electronic transfer in the amount of \$4,000.00 from the account of Winsome at Bank of America.

b. On February 7, 2007, an electronic transfer in the amount of \$7,500.00

from the account of Winsome at Bank of America.

c. On February 20, 2007, an electronic transfer in the amount of \$7,500.00 from the account of Winsome at Bank of America.

d. On March 2, 2007, an electronic transfer in the amount of \$9,000.00 from the account of Winsome at Bank of America.

e. On March 28, 2007, an electronic transfer in the amount of \$15,000.00 from the account of Winsome at Bank of America.

f. On April 4, 2007, an electronic transfer in the amount of \$10,000.00 from the account of Winsome at Bank of America.

g. On May 16, 2007, an electronic transfer in the amount of \$2,000.00 from the account of Winsome at Bank of America.

h. On July 3, 2007, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Bank of America.

i. On July 13, 2007, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Bank of America.

j. On July 26, 2007, an electronic transfer in the amount of \$6,000.00 from the account of Winsome at Bank of America.

k. On August 1, 2007, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Bank of America.

l. On August 21, 2007, an electronic transfer in the amount of \$20,000.00 from the account of Winsome at Bank of America.

m. On November 21, 2007, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Bank of America.

n. On January 22, 2008, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Bank of America.

o. On February 7, 2008, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Bank of America.

p. On February 7, 2008, an electronic transfer in the amount of \$1,000.00 from the account of Winsome at Bank of America.

q. On February 26, 2008, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Bank of America.

r. On March 4, 2008, an electronic transfer in the amount of \$5,000.00 from the account of Winsome at Bank of America.

s. On April 3, 2008, an electronic transfer in the amount of \$35,000.00 from the account of Winsome at Bank of America.

t. On May 27, 2008, an electronic transfer in the amount of \$10,000.00 from the account of Winsome at Bank of America.

u. On July 3, 2008, an electronic transfer in the amount of \$10,000.00 from the account of Winsome at Bank of America.

v. On July 3, 2008, an electronic transfer in the amount of \$10,000.00 from the account of Winsome at Bank of America.

w. On September 24, 2008, an electronic transfer in the amount of

\$10,000.00 from the account of Winsome at Chase Bank.

62. In addition to the payments described above, the Receiver believes that Defendants received other amounts in excess of those amounts described above.

63. The Defendants did not provide reasonably equivalent value to Winsome in exchange for the transfers they received from these companies, including transfers made to others on their behalf.

FIRST CLAIM FOR RELIEF
**(For Avoidance and Recovery of Fraudulent Transfers
Against All Defendants)**

64. The Receiver restates and incorporates by this reference paragraphs 1 through 63 above, as though set forth herein in full.

65. The payments made by Winsome to Defendants during the period August 22, 2005 through September 30, 2010, which are more particularly described in Paragraphs 54 to 62 above, were made by Winsome with actual intent to hinder, delay, or defraud its investors. These investors mostly consist of innocent investors who gave money to Winsome and Andres believing the money was being invested profitably on their behalf. Those transfers were made without Winsome receiving reasonably equivalent value in exchange, when Winsome was either insolvent or had become insolvent as a result of such transfers.

66. The payments made by Winsome to Defendants are avoidable by the Receiver under applicable law, including Utah Code §§ 25-6-5, 25-6-6, and 25-6-8.

67. The Receiver is entitled to damages from Defendants Ballard and Carol Ballard in the amount of at least \$2,109,350.62, with interest as provided by Utah law from the date of each

payment, plus any additional amounts proven at the trial of this case.

68. To the extent any judgment against Defendants Ballard and Carol Ballard does not satisfy the full amount owed to the Receiver in this action for the fraudulent transfers outlined herein, and to the extent RIO Systems received or was the beneficiary of transfers made by Winsome, the Receiver is also entitled to damages from RIO Systems in the amount of at least \$1,531,758.05, with interest as provided by Utah law from the date of each payment, plus any additional amounts proven at the trial of this case.

SECOND CLAIM FOR RELIEF
(For Constructive Trust and Other Provisional Remedies
Against All Defendants)

69. The Receiver restates and incorporates by reference paragraphs 1 through 68 above, as though set forth herein in full.

70. By reason of the facts set forth above, Defendants were the recipient of monies wrongfully and fraudulently obtained by Andres, Winsome, and related companies, thereby diminishing the amounts available to pay the creditors of Winsome.

71. Defendants have been unjustly enriched as a result of the wrongful and fraudulent acts, to the detriment of the creditors of Winsome.

72. Accordingly, in equity, a constructive trust should be impressed upon the assets acquired by the Defendants with the monies transferred to them by Andres, Winsome, and related companies.

73. The Receiver also is entitled to one or more of the additional remedies provided for pursuant to Utah Code § 25-6-8(1)(b), and (c).

THIRD CLAIM FOR RELIEF
(Breach of Contract against RIO Systems)

74. The Receiver restates and incorporates by reference paragraphs 1 through 73 above, as though set forth herein in full.

75. A valid and existing contract exists between RIO Systems and the Receiver because the assets of Andres, including the right to receive \$20,256,000.00 from RIO Systems, have been placed under the control of the Receiver by the Order.

76. The Receiver has not breached any of the terms of the contract with RIO Systems.

77. The Receiver has attempted to contact both Ballard and RIO Systems by letter; however, these letters have been returned to the Receiver.

78. By not paying the Receiver \$20,256,000.00, RIO Systems has breached its obligation to the Receiver.

79. The Receiver has been damaged in the amount of \$20,256,000.00 as a direct consequence of RIO System's breach of its valid and existing contract with the Receiver.

PRAYER FOR RELIEF

WHEREFORE, the Receiver prays for judgment against Defendants as follows:

1. For judgment against Defendants Ballard, Carol Ballard, and RIO Systems for an amount equal to all payments received by them from Andres, Winsome, and related companies, which total is in excess of \$2,109,350.62, plus interest on each payment at the statutory rate from the date of such payment until judgment is entered.

2. For judgment against RIO Systems of an amount equal to all payments received by it from Andres, Winsome, and related companies, which total is in excess of \$1,531,758.05, plus interest on each payment at the statutory rate from the date of such payment until judgment is entered.

3. For judgment against Defendant RIO Systems in the amount of \$20,256,000.00 for its breach of contract, plus interest, costs, and attorneys fees, until judgment is entered and its liability to the Receiver is fully satisfied.

4. A judgment imposing a constructive trust in favor of the Receiver over all monies and assets obtained with those monies that Defendants received from Andres, Winsome, and related companies.

5. For post-judgment interest as allowed by Utah law.

6. For costs of suit, including reasonable attorney fees.

7. For such other and further relief as the Court may deem just and proper.

DATED this 24th day of August, 2011.

MANNING CURTIS BRADSHAW & BEDNAR LLC

/s/ David C. Castleberry

David C. Castleberry
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Investment Trust, and the assets of Robert J. Andres and
Robert L. Holloway*

Plaintiff: Wayne Klein, Court-Appointed
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