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Court-Appointed Receiver

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

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

SEVENTH STATUS REPORT OF
R. WAYNE KLEIN, RECEIVER

FOR PERIOD JUNE 16, 2012
TO SEPTEMBER 15, 2012

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 Seventh Status Report for the period of June 16, 2012 through September 15,

2012 (the “Reporting Period”).

I. INTRODUCTION

1. The past quarter has seen a heavy focus on three aspects of the receivership: the claims process, finally securing the ability to review most of the documents on the Winsome computer hard drive, and litigation (including settlements).

2. Ten settlements during the past three months should result in substantial additions to the balance of the Receivership bank account.

3. The deadline for filing claims has now passed. The Receiver has completed his initial evaluation of the claims that have been submitted and is in the process of notifying investors of the Receiver’s planned recommendations regarding those claims.

II. LITIGATION DEVELOPMENTS

4. Since the creation of the Receivership, the Receiver has filed 86 lawsuits seeking recovery of funds paid out improperly. Dealing with these lawsuits is consuming significant time of the Receiver and almost all of the time of the Receiver’s counsel. The various lawsuits filed by the Receiver are at many different stages. Some of these stages are described in more detail below.

5. Substantial time has been spent in ordinary litigation matters such as analyzing answers to the complaints, submitting initial disclosures and reviewing initial disclosures by defendants, court hearings on the status of lawsuits, agreeing on scheduling orders, sending discovery requests and analyzing responses, filing amended complaints, opposing various types of motions, and filing liens against real estate owned by defendants. In some cases, the litigation has been made more difficult because the defendants are representing themselves and have been

making frivolous arguments, such as sending the Receiver “notes” or “bills of exchange” and declaring the debt paid in full. Courts do not accept these types of arguments, but this tactic is requiring that we spend additional time responding to these filings.

6. Sadly, the Receiver is discovering that a relatively high percentage of defendants that he has sued lack the ability to repay the amounts they received from Winsome or US Ventures. In most cases, these are defendants who refused to respond to requests from the Receiver for information about their dealings with Winsome, thereby forcing the Receiver to file suit in order to get information from them. In several instances, the defendants have filed for bankruptcy in recent years or filed for bankruptcy after being sued by the Receiver. The Receiver is carefully scrutinizing all claims of financial hardship and has rejected many assertions of an inability to pay.

7. The Receiver has identified at least one other significant lawsuit that he intends to bring. The attorneys for that target have requested additional time to evaluate the Receiver’s claim. The Receiver has been providing documents to the attorneys showing the basis for the Receiver’s claim.

8. Developments in certain significant stages of litigation are described below:

A. Lawsuits Settled

9. Since June 16, 2012, the Receiver has reached settlement agreements with ten defendants or groups of defendants. On July 27, 2012, the Court approved seven of these settlement agreements:

- a. Mazen Abdulbaki received \$50,000.00 from Winsome. He demonstrated that \$25,000.00 of this amount was repayment of an investment made by Abdulbaki’s

father. Abdalbaki avoided service of the summons for several months, but later reached a settlement with the Receiver. Abdalbaki has agreed to repay \$20,000.00 to the Receiver.

b. William Smith, an attorney, received \$7,500.00 on behalf of his son. Smith repaid the full \$7,500.00 to the Receiver.

c. Summa Stelly was an overpaid investor. Summa Stelly provided sworn financial information to the Receiver demonstrating an inability to repay the full amount of his overpayment. Stelly will repay a total of \$7,500.00 to the Receiver.

d. Stephen Stelly also was an overpaid investor. Stephen Stelly provided sworn financial information to the Receiver demonstrating an inability to repay the full amount of his overpayment. Stelly also will repay a total of \$7,500.00 to the Receiver.

e. Robert and Jenny Suttman, Georgette Suttman, and Total Health & Fitness have repaid the Receiver \$22,000.00. The \$10,000.00 paid by Total Health and Georgette represents a return of the full amount they received. For Robert and Jenny Suttman, the Receiver's agreement to accept \$12,000.00 in settlement reflects their demonstrated inability to pay more and their representation that they will have to borrow the money to pay this settlement.

f. The Receiver has dismissed his lawsuit against Steven Hoskins based on Hoskins' financial condition and demonstrated inability to pay – demonstrated by a recent bankruptcy discharge. Hoskins did provide documents and information that will assist the Receiver in his efforts against others.

g. The lawsuit against Pat Winans was dismissed based on her personal net worth of a negative \$800,000.00. Winans provided numerous documents and substantial

other information regarding transactions by Magna PinPoint and Elgin Clemons.

10. On September 14, 2012, the Court approved three additional settlements:

a. The Receiver has entered into a settlement agreement with Elgin Clemons pursuant to which Clemons will sell his home and pay 87.5% of the net proceeds from the sale of the home to the Receivership. It is hoped that this will bring as much as \$400,000.00 to the Receivership Estate. As part of the settlement, the Receiver will dismiss his lawsuit against Clemons.

b. John and Annette Bassett have agreed to repay \$13,000.00 to the Receiver. The Receiver agreed to accept less than the \$18,000.00 Bassetts was overpaid based on the financial condition of the Bassetts.

c. The Receiver has recommended that his lawsuit against Ken Bussa be dismissed based on Bussa's demonstrated inability to pay. Bussa provided documents and information that will be helpful to the Receiver.

11. Significant work went into these settlements and this effort is ongoing as part of settlement discussions with other defendants. This includes structuring settlement offers and counter offers, drafting the terms of settlement agreements, reminding defendants of payment deadlines, reviewing hardship affidavits, and revoking a prior settlement agreement where the defendant failed to make payments due.

12. The Receiver also received payments during the quarter from settlements reached previously. These are listed in the financial summary later in this report.

B. Motions to Dismiss, Motion to Intervene

13. As mentioned in the preceding status report, twelve defendants or groups of

defendants filed motions to dismiss the Receiver's lawsuits against them. Two of these motions were argued at a hearing in May. On June 15, 2012, the court hearing the Cornelius motion issued an order denying Cornelius' motion and holding that the Receiver may proceed with the litigation in the Utah federal district court. On June 18, 2012, the same judge issued another order denying Nina Abdulbaki's motion to dismiss.

14. As a result of these rulings, most of the other defendants who had filed motions to dismiss have withdrawn their motions, enabling the Receiver and his counsel to avoid spending more time opposing these motions.

15. Roberto Penedo withdrew his motion to dismiss, but then filed a motion to intervene in the CFTC's lawsuit. Penedo says he seeks to intervene because he wants to file suit against other parties that the CFTC has not sued – because Penedo asserts that these other parties owe him money. Penedo also wants to require the Receivership Estate to pay him millions of dollars in commissions he says he is owed for his work trying to develop a \$7 billion refinery project in Guatemala. While Penedo acknowledges that he had no written contract with Winsome and that the refinery was never built, he nonetheless asserts that Winsome should be required to pay him commissions based on the supposed value of the refinery if it had been completed.

C. Defaults

16. A number of defendants have been served with the lawsuit and summonses, but have not appeared in the litigation, filed answers, or communicated with the Receiver. In these cases, the Receiver has filed motions asking the Court to enter defaults or default judgments against the defendants. These are listed in the following table:

Defendant	Type of Order	Date Entered
M&K Venture	Default Judgment	7/23/12
Ryan Runia	Default Judgment	7/23/12
Houston Zero Cold Storage	Default Judgment	7/26/12
Nicole Adams	Default judgment	8/10/12
Kathy Grady	Default certificate	07/17/12
Wings Over the World/Harper	Default certificate	07/18/12
Linh Nguyen	Default certificate	07/17/12
Jerome Carter	Default certificate	07/17/12
Lisa Pham	Default certificate	08/27/12
Garry Smith	Default certificate	08/23/12
MME Group	Default certificate	08/23/12

D. Judgment on the Pleadings

17. As described in the prior report, on March 12, 2012, the Receiver filed a motion for judgment on the pleadings against Connie Patterson. That motion is still pending before the court.

E. Dismissals

18. One defendant, Aman Abraham, was able to demonstrate that an investment sent to Winsome by another person was for Abraham's benefit. The Receiver has dismissed Abraham from the lawsuit that was filed against him and others. In another case, the Receiver has agreed to dismiss Rex Shaffner from a lawsuit against Rex and his brother, Keith, based on information from Rex showing that he was not a recipient of funds sent to Keith, their mother, or a company operated by Keith.

F. Service of Process

19. For some defendants, process servers have been unable to personally serve the defendants. This has required the Receiver to publish notice of the summons in a newspaper in

the area where the defendants are believed to live. In at least one instance, this has resulted in a defendant's attorney finally agreeing to appear in the litigation. In other instances, there has been no response and the Receiver has asked the judges to enter defaults against the defendants.

G. Criminal Charges

20. The Receiver learned that Andres was re-arrested in early July for violating the terms of his pre-trial release. After a hearing several days later, Andres was released from custody. His release was subject to a number of additional conditions, including not contacting Winsome investors and not soliciting money from others.

21. The Receiver has assisted criminal investigators who are gathering information about Andres and Holloway. The Receiver has also provided information to a number of other criminal investigative agencies that are investigating the conduct of other persons who dealt with Andres or Holloway.

III. INVESTIGATION

A. Access to Computer Records

22. On August 17, 2012, the Receiver finally obtained access to the records of Winsome found on the hard drive of a computer in the possession of Andres. This concluded a fight that the Receiver had been battling since August 23, 2011, when the Receiver first secured a copy of the hard drive.

23. During that one-year period, Andres had been asserting that a large number of those records could not be reviewed by the Receiver because they reflected privileged legal communications between Andres and his clients. The Receiver reviewed multiple versions of the list of computer files and e-mails that Andres claimed were privileged, agreeing that a small

number of the files were privileged or not relevant.

24. After multiple exchanges of legal arguments, presentations of extensive lists of privileged documents, and court hearings, and the Receiver's investigation into Andres' relationships with the persons identified in the documents and e-mails, Andres finally agreed to withdraw his objection to the Receiver's review of files on the hard drive. The Receiver believes this consent was given to avoid Andres having to testify at a hearing about his relationship with the persons identified in the documents. In return, the Receiver has agreed not to access any files that have been designated as privileged by mutual agreement and that if his review identifies that some documents are privileged, he will cease his review and treat those additional documents as privileged.

25. The Receiver expects that these documents will shed additional light on the investment activities of Winsome and other schemes in which he participated. It is hoped that these documents will also assist the Receiver in lawsuits he has filed against third party marketers and affiliated persons.

B. Investigative Efforts

26. The Receiver analyzed records regarding Magna PinPoint and Elgin Clemons, which documents were provided by Pat Winans as part of her settlement with the Receiver. These documents and information showed a more complete picture of Clemons' trips to London and the supposed role of Al Abbar in the payments Winsome sent to London. Unfortunately, this information appears to support the preliminary conclusions of the Receiver that the Al Abbar activities were a scam perpetrated on Clemons and Winsome and the documents do not identify any assets likely to be recovered.

27. Some of the documents that the Receiver extracted from the Winsome computer had pictures of a large stone described as a “Giant Rare Natural Ruby.” These documents stated that the ruby was valued at \$5.7 billion and that Andres was holding it as the trustee for Winsome. This was consistent with other documents created by Andres that claimed that Winsome owned precious gems with significant value. The Receiver obtained information from the Hong Kong jeweler who supposedly had appraised the ruby. The jeweler informed the Receiver that he had inspected the stone and issued a report, but that the report he issued was not consistent with the claims being made by Winsome. The jeweler said the item shown in the Winsome pictures was not a natural ruby, but was artificially grown and had man-made carvings. The jeweler said the stone was owned by a person that has no known connection with Winsome or Andres.

28. The Receiver interviewed Arnel Cruz, an early owner of US Ventures and a business partner of Robert Holloway. Cruz provided the Receiver with some additional information about the operations of US Ventures and Holloway. The Receiver is still in litigation with Cruz. The interview did not identify any potential assets or recoveries and Cruz insists that he is destitute.

29. In connection with litigation against defendants, the Receiver has obtained and reviewed bank records for many individuals and companies. Among these were bank records from the Grace Foundation, a recipient of substantial funds from Winsome. These have been reviewed to determine how the funds from Winsome were spent and to search for potential avenues for recovery.

30. Ursula Andres provided documents and information to the Receiver showing how

the more than \$300,000.00 she received from Winsome was spent. Most of the money was used for personal expenses and work performed on the home she shares with Andres.

31. Interestingly, the Receiver has been contacted by a number of outside parties regarding defendants that the Receiver has sued. These parties have provided information that several of the persons sued by the Receiver are suspected of being involved in other fraud schemes or questionable transactions. It is not yet known if this information will be of use in the Receiver's litigation against these defendants.

32. The Receiver has obtained many documents from investors as part of the claims process. These documents are being reviewed for possible use in litigation against other defendants or for assistance to the CFTC or criminal prosecutors.

IV. CLAIMS PROCESS

A. Processing of Claims

33. On May 22, 2012, the Court approved the Receiver's proposed procedures for accepting and evaluating claims submitted by victims. The process approved by the Court included a deadline of July 31, 2012 to submit claims.

34. The Receiver has been processing claims as they are received. Information from the claim forms was compared to information the Receiver has compiled from records of Winsome and US Ventures and the forensic accounting compiled by the Receiver.

a. To the extent the amounts claimed in the claim forms are consistent with the records of the Receivership, the claimants were notified that the Receiver will recommend that their claims be allowed.

b. In a number of cases, claimants have been notified that the Receiver

intends to recommend that their claims be reduced from the amounts claimed for any of several reasons:

- i. The amounts claimed as having been sent to Winsome or USV could not be verified. The reasons may have been that the monies were sent to Andres or Holloway personally, not to one of the Receivership Entities, supposedly paid in cash and no bank records were produced to verify the transfer, or the claimant sent money to a third party marketer and the Receiver was unable to verify that the monies were forwarded from the marketer to US Ventures or Winsome;¹
 - ii. The claimant sought recovery of interest or profits on the investment, when the claims procedures provided that only the principal amount of the investment would be considered in determining the amount of allowable claims; or
 - iii. The claim form failed to list all payments that the investor received in distributions from Winsome or US Ventures.
- c. Where the Receiver's response to the claim indicates an intent to recommend a reduced amount of claim, the claimant is given an opportunity to agree

¹ In some instances, the Receiver was able to verify that payments made to a third party marketer were sent to Winsome based on the amount, timing, and isolated nature of transactions. In other instances, the Receiver had access to bank accounts of the third party marketer and could identify the application of monies received from investors. One third party marketer cooperated with the Receiver in identifying which payments to Winsome should be allocated to particular investors. In instances where the Receiver was not able to verify that all payments were forwarded, the Receiver will recommend that the claimant be allowed credit for that portion of funds sent to the third party marketer that actually was forwarded to Winsome. For example, if five investors each sent \$100,000.00 to a third party marketer and that marketer forwarded \$300,000.00 to Winsome during that same time period, the claimants will be allowed 60% of the amount paid to the marketer as credit towards the claim.

with the Receiver's recommendation in lieu of contesting the recommendation. Some of the claimants have signed forms agreeing to the Receiver's recommendation.

d. The Receiver has notified some claimants that he will be recommending that their claims be denied. These denials are generally for one of the following reasons:

i. The claims were made by third party marketers or other persons who received compensation for soliciting investors;

ii. The Receiver believed the claim forms knowingly failed to identify interest or dividend payments made to the investor and that the claim form was attempting to increase the amount of the claim;

iii. The claims were submitted by persons who had had no dealings with US Ventures or Winsome.

e. Some claim forms were mailed after the July 31, 2012 deadline. The Receiver will be evaluating the reasons for the late submissions and will make recommendations to the Court on whether the claims should be allowed, reduced, or denied. The Receiver will consider how late the claim was submitted and the reasons for the late submissions.

35. One of the consequences of placing an advertisement in USA Today about the availability of the claims process was that a number of claims were submitted by prison inmates, who appeared to have access to the USA Today newspaper. Some of these inmates sent copies of the newspaper advertisement with their claims. These claims were submitted despite the requirement that the claimants verify, under oath, that the claim information was accurate. These claims were easily identified as they all were mailed in envelopes clearly identifying them as

coming from a jail or prison. The Receiver sent notices to each of these inmates denying the claim for the reason that they had not provided verification of investment and because the Receiver had no record of any investment from them. Notably, this did not dissuade some of the inmates. Several of the inmate-claimants sent responses listing details of their supposed payments to US Ventures or Winsome, including supposed investment payments made after the Court had entered orders closing US Ventures and Winsome.

B. Status of Claims Review

36. The following chart summarizes the status of claims reviewed as of September 15, 2012.

Category	Number	Total
Claims mailed by the deadline	107	
Claims submitted after the deadline	34	
Total claims received as of September 15, 2012		141
Claims the Receiver recommends as allowed	59	
Claims the Receiver recommends be reduced	26	
Claims the Receiver recommends denial	8	
Total recommendations as of September 15, 2012		93
Claims still being processed	48	
	Amount	Total
Total amount of allowed claims	3,213,914.66	
Total amount of claims recommended for reduction ²	14,813,990.49	
Total amount of claims recommended for denial	5,163,821.29	
Total of claims as of September 15, 2012		23,191,726.44

37. At a later date, the Receiver will be submitting a separate report to the Court summarizing the results and including his recommendations to the Court.

² The Receiver will recommend that this amount be reduced substantially.

C. NEXT STEPS

38. By September 30, 2012, the Receiver expects to have completed his review of the claim forms, have notified claimants of his intended recommendations, and have reviewed supplemental submissions by claimants where the Receiver identified missing information.

39. October 31, 2012 is the deadline for submission of supplemental information by any claimants disputing the Receiver's claim evaluation.

40. The Receiver hopes to submit his recommendations to the Court of the final allowable claim amounts by November 30, 2012. After this filing, claimants will have until December 31, 2012 to file with the Court any objections to the recommendations filed by the Receiver.

V. FINANCIAL REPORT**A. Recoveries for the Receivership**

41. Additional funds were recovered into the Receivership Estate during the quarter. A total of \$121,820.05 was recovered by the Receiver and deposited into the Receivership bank account:

Date	Source	Amount	Explanation
6/22/12	Norbert Keeney	\$5,000.00	Partial payment of settlement
6/26/12	Summa Stelly	\$2,500.00	Partial payment of settlement
6/29/12	Wells Fargo Bank	\$2.82	Interest earned on bank account
7/2/12	J. Erving	\$25,000.00	Final settlement payment
7/13/12	Sacred Site Properties	\$1,153.54	Partial payment of settlement
7/13/12	William Smith Assoc.	\$7,500.00	Settlement payment
7/27/12	Stephen Stelly	\$2,500.00	Partial payment of settlement
7/31/12	Wells Fargo Bank	\$5.77	Interest earned on bank account
8/8/12	Mazen Abdulbaki	\$20,000.00	Settlement payment
8/15/12	Sacred Site Properties	\$1,153.54	Partial payment of settlement
8/21/12	Total Health	\$10,000.00	Settlement payment

8/21/12	Robert, Jenny Suttman	\$12,000.00	Settlement payment
8/31/12	Wells Fargo Bank	\$4.38	Interest earned
9/5/12	Mark Bush/South Oil	\$35,000.00	Partial payment of settlement
Total		\$121,820.05	

B. Expenditures by the Receivership

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

Date	Recipient	Amount	Purpose
6/26/12	American Express	\$7,640.36	Publish summons in TX, UT, CA, USA Today
6/26/12	Wells Fargo Bank	\$15.00	Wire transfer fee
7/2/12	Wells Fargo Bank	\$15.00	Wire transfer fee
7/23/12	Civil Action Group	\$1,250.00	Service of process – 5 defendants
7/27/12	Wells Fargo Bank	\$15.00	Wire transfer fee
Total		\$8,935.36	

43. On July 9, 2012, the Court approved an application by the Receiver for payment of his fees for the period from May 1, 2011 to January 31, 2012. The Receiver's fees and expenses for this nine-month period totaled \$362,244.50. This amount was paid on July 19, 2012.

44. On September 13, 2012, the Court approved an application by the law firm, Manning Curtis Bradshaw and Bednar for payment of its fees and expenses for the six-month period from February 1, 2012 to July 31, 2012. The approval was for \$204,034.50 in legal fees and \$4,382.52 in expenses. This amount will be paid in the next few weeks.

45. The Receivership bank account balance, as of September 15, 2012, was \$629,183.87.

VI. NEXT STEPS

46. The next steps the Receiver expects to pursue are:
- a. Continue the claims review process, including submitting to the Court the Receiver's recommendations on which claims should be allowed and in what amount;
 - b. Review the computer files, documents, and e-mails on the Winsome computer;
 - c. Pursue the lawsuits filed by the Receiver;
 - d. Continue efforts to find additional targets that can be sued for the recovery of funds and file additional lawsuits;

VII. CONCLUSION

The Receiver respectfully submits this Seventh Status Report for the period from June 16, 2012 through September 15, 2012.

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 25TH day of September, 2012.



WAYNE KLEIN, Receiver

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **SEVENTH STATUS REPORT OF R. WAYNE KLEIN, RECEIVER FOR PERIOD JUNE 16, 2012 TO SEPTEMBER 15, 2012** to be served in the method indicated below to the Defendant in this action this 26th day of September, 2012.

VIA FACSIMILE
 VIA HAND DELIVERY
 VIA U.S. MAIL
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