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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

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

**FOR PERIOD JULY 16, 2014  
TO OCTOBER 15, 2014**

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

hereby submits this Fifteenth Status Report for the period of July 16, 2014 through October 15, 2014 (the “Reporting Period”).

## **I. INTRODUCTION**

1. Significant progress was made in this case on multiple fronts during the past three months. The criminal cases were concluded with the conviction of Robert Holloway. Sentencing for both Holloway and Andres is set for December 2014. All claim challenges have now been denied by the Court. Distributions checks have been mailed to victims. One of the four pending litigation cases was resolved with a settlement and the Receiver was granted summary judgment in a second case. One of the cases on appeal was decided—in a manner favorable to the Receivership—at the end of the prior Reporting Period. The remaining litigation and appeal cases are moving forward and efforts are being made to collect on several judgments the Receiver obtained previously.

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

## **II. CRIMINAL PROSECUTIONS**

3. On August 21, 2013, Robert Andres entered a guilty plea to one count of wire fraud in the U.S. District Court of Utah. His sentencing will be imposed on December 19, 2014.

4. The criminal trial of Robert Holloway began July 29, 2014 and concluded August 6, 2014 with convictions on all counts. Holloway’s conviction included four counts of wire fraud and one count of filing a false tax return. Holloway’s sentencing hearing will be December

17, 2014. Holloway is expected to remain incarcerated until his sentencing; the judge overseeing his criminal trial has denied motions to release Holloway pending his sentencing.

### **III. CLAIMS PROCESS**

5. The Receiver filed his “Report and Recommendations on Claims Process” (“Claims Report”) on December 20, 2012. (Claims Report, Doc. No. 233.) Five objections were filed with the Court. The objection of RCH2 was resolved by agreement with the Receiver and approved by the Court. The Court subsequently denied the other four objections. These objections, by Roberto Penedo, Zaman Ali, Susan Johnson, and Hamlin/Bottorf, asserted claims totaling \$5,116,642.00.

6. Between May and August 2014, six additional investors contacted the Receiver, requesting that they be able to submit claims for monies they invested with Winsome or with various third-party marketers. The amount these investors sought to claim totaled \$833,995.00. The Receiver informed these investors that the claims deadline had passed. None of these filed motions asking the Court to overrule the Receiver’s decision.

7. The Receiver mailed distribution checks in early July to 118 investors whose claims were approved by the Court. As of October 15, 2014, \$1,605,643.75 of those claim checks have been cashed. Another seven distribution checks, totaling \$28,668.45, have not yet been cashed. The Receiver has begun contacting those investors to determine why they have not cashed their distribution checks.

8. In light of the denial of the denial of the claim objections and the favorable litigation rulings that the Receiver continues to obtain, the Receiver expects there will be sufficient funds to make a second distribution to investors. However, because one of the claim

denials is still on appeal (in the amount of \$4 million) and because the Receivership Estate is making substantial progress toward winding down the Receivership, the Receiver expects to recommend that a second and final distribution be made at the time the Receivership Estate is terminated. The Receiver hopes that can occur by mid-2015—assuming no more appeals are filed.

9. The amount of the next distribution will depend on whether the Receiver wins judgments in the lawsuits he has filed which are still in litigation, how much he succeeds in collecting from judgments previously won against defendants, how the pending appeals are decided, and whether additional appeals are filed (and how they are decided). The Receiver notes that funds for the second distribution will be allocated to claimants using only the rising tide methodology, meaning funds will be directed to those claimants who received the lowest amounts of distributions from US Ventures or Winsome. This means that some claimants will not receive any funds from the second distribution.

#### IV. SETTLEMENTS

10. There was one new settlement reached during the Reporting Period. The settlements was approved by the Court.

a. Michele Petty: The Receiver sued Michele Petty on December 2, 2012, seeking the return of \$51,000.00 paid to her by US Ventures when she was not an investor. Petty acknowledged that the payments to her were for personal legal services she provided to Holloway. In a settlement agreement dated September 8, 2014, Petty agreed to pay \$45,000.00 to the Receivership Estate and waive any claims against the Receivership Estate.

## V. LITIGATION DEVELOPMENTS

11. The Civil Enforcement Action by the CFTC. This case started on January 24, 2011 when the U.S. Commodity Futures Trading Commission (“CFTC”) filed a civil lawsuit against Robert Andres, Robert Holloway, US Ventures, and Winsome. The civil case concluded on April 21, 2014, when the Court entered final judgments against the defendants.

12. Overview of Receivership Litigation. Since creation of the Receivership, the Receiver has filed 88 lawsuits seeking the recovery of funds paid out improperly or damages for improper conduct. One of these cases remains in litigation. An additional four litigation cases are on appeal.<sup>1</sup> Prosecuting these lawsuits and defending the appeals is consuming most of the limited amount of time that the Receiver is spending on this case and almost all of the time that Receiver’s counsel is spending on this case.

13. Significant Litigation Rulings During the Quarter. One significant ruling was issued by Courts considering the pending litigation cases during the Reporting Period. This ruling has advanced the litigation in this matter:

a. Ravkind & Associates. On August 27, 2014, the Court granted summary judgment to the Receiver against this Texas law firm. The Court ruled that the payments by Winsome were actually fraudulent because Winsome received no benefits from these payments. On September 2, 2014, the Court entered judgment for the Receiver for \$50,000.00.

14. Current Litigation. The status of the four lawsuits that remained as of the beginning of the Reporting Period are:

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<sup>1</sup> A fifth appeal has been filed by Roberto Penedo regarding the denial of his claim in the claims process.

a. Georges, Lou: The Receiver sued Georges on January 18, 2012 seeking to recover \$186,291.00 in payments he received from US Ventures and Winsome. Georges filed a motion to dismiss the lawsuit, which the Court denied. On August 26, 2014, the Receiver filed a motion for summary judgment against Georges. The deadline for filing summary judgment motions passed without Georges also seeking summary judgment. Georges has not opposed the Receiver's motion, and the motion was granted by the Court after the end of the Reporting Period. The Receiver has been asked to prepare a proposed order granting the motion.

b. Petty, Michele: Petty signed a settlement agreement with the Receiver, which the Court has approved. When she pays the settlement amount, the lawsuit against her will be dismissed.

c. Ravkind Associates: The Court granted the Receiver's motion for summary judgment against Ravkind on August 27, 2014 and entered judgment on September 2, 2014 for the full \$50,000.00 sought in the Receiver's lawsuit. The Receiver will now commence collection efforts.

d. Widmark, Peter: On December 2, 2011, the Receiver sued Widmark seeking to recover \$291,000.00 in payments he received from Winsome. In June 2013, the Court denied Widmark's motion to dismiss. On September 30, 2014, both the Receiver and Widmark filed motions for summary judgment. The Court has vacated the trial dates during the time the Court is evaluating the cross motions for summary judgment. The Receiver is presently preparing an Opposition to the Motion for Summary Judgment filed by the Widmarks.

15. Collection Efforts. The Receiver has hired collection professionals in other states to collect on judgments that have been entered in favor of the Receivership. This sometimes

requires hiring private investigators to locate assets that might be seized. In the case of William Cornelius, the Receiver hired a law firm in Texas to record the judgment with the Texas courts. Cornelius has filed papers opposing the Receiver's efforts and trying to re-litigate the judgment that was entered by the federal court in Utah. The Receiver expects that the Texas courts will honor the judgment that previously was entered.

16. Appeals. Five appeals have been filed by defendants. Four of these seek to overturn judgments entered against them. One of the appeals has already been decided in the Receiver's favor.

a. King & King & Jones. On July 14, 2014, the Tenth Circuit Court of Appeals affirmed the summary judgment entered in favor of the Receiver in the amount of \$25,000.00. The Receiver has commenced efforts to collect this judgment.

b. William Cornelius, Cornelius & Salhab. On February 25, 2014, Cornelius appealed the \$89,845.73 judgment entered against him and his law firm. The Receiver filed his appeal brief on September 2, 2014. On September 9, 2014, the CFTC filed a brief in support of the Receiver's legal arguments. On September 19, 2014, Cornelius filed his final reply brief. The briefing is now completed and parties are awaiting a date for oral argument or a ruling based on the written briefs.<sup>2</sup>

c. Roberto Penedo (Judgment). On March 31, 2014, Penedo appealed the \$197,000.00 judgment against him. On September 29, 2014, this appeal was consolidated with Penedo's appeal of the denial of his claim (discussed below). A briefing schedule was set after

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<sup>2</sup> As noted above, Cornelius has commenced litigation in Texas in an attempt to halt the Receiver's collection efforts.

the conclusion of the Reporting Period, and Penedo's opening brief will be due on December 1, 2014.

d. Roberto Penedo (Claim Denial). On April 1, 2014, Penedo filed an appeal of the Court's order denying Penedo's claim. This appeal has been consolidated with Penedo's appeal of the judgment against him. Accordingly, in future reports, the two appeals will be discussed together.

e. Terry Harper. On June 23, 2014, Harper filed an appeal of the judgment entered against him. The final brief was filed by Harper on October 20, 2014, after the end of the Reporting Period. No oral argument has been requested. The Receiver is now awaiting a ruling by the appeals court.

## **VI. FINANCIAL REPORT**

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

17. A total of \$13,480.76 was recovered for the Receivership Estate during the Reporting Period. The money came from the following sources:

<b>Category</b>	<b>Amount</b>
Settlement Recoveries	\$13,453.37
Bank: Interest Earned	\$27.39
<b><i>Total</i></b>	<b><i>\$13,480.76</i></b>

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

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

<b>Category</b>	<b>Amount</b>
Collection Fees, Expenses	\$8,443.73

Tax Preparation, Filing Fees	\$4,129.17
Deposition, Asset Search	\$576.86
<b><i>Total</i></b>	<b><i>\$13,149.76</i></b>

19. On October 3, 2014, the Court approved the fee application of the Receiver and his counsel for work during the five-month period from April 2014 through August 2014. Fees for the Receiver were \$42,322.00; fees and expenses for counsel for the Receiver were \$89,173.37.

20. The Receivership bank account balance, as of October 15, 2014, was \$850,423.59. This amount includes \$28,668.45 in distribution checks that have not yet been cashed.

#### **VII. OTHER**

21. During the Reporting Period, the Receiver responded to multiple inquiries from investors, primarily inquiries regarding the initial distribution payments and the prospects and timing for future distributions.

#### **VIII. NEXT STEPS**

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

- a. Continue prosecuting the remaining lawsuit filed by the Receiver that is still in litigation. This is expected to mostly involve responding to the summary judgment motion filed by Widmark and responding to arguments by Widmark. The Receiver will also prepare an order granting the motion for summary judgment decided in his favor against Georges;

- b. Defend the three appeals that are pending; and

c. Continue efforts to collect on judgments already granted in favor of the Receivership.

**IX. CONCLUSION**

The Receiver respectfully submits this Fifteenth Status Report for the period from July 16, 2014 through October 15, 2014. The Receiver verifies under penalty of perjury that the foregoing is a true and correct summary of information he has discovered to date in his investigation and actions taken during the Reporting Period.

DATED this 27<sup>th</sup> day of October, 2014.

  
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WAYNE KLEIN, Receiver

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing **FIFTEENTH STATUS REPORT OF R. WAYNE KLEIN, RECEIVER FOR PERIOD JULY 16, 2014 THROUGH OCTOBER 15, 2014** to be served in the method indicated below to the Defendants in this action this 27th day of October, 2014.

\_\_\_ VIA FACSIMILE  
\_\_\_ VIA HAND DELIVERY  
x VIA U.S. MAIL  
\_\_\_ VIA FEDERAL EXPRESS  
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/s/ Melissa Aguilar

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