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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.

**RECEIVER'S REPORT AND  
RECOMMENDATIONS ON  
CLAIMS PROCESS**

Case No. 2:11CV00099 BSJ

Judge Bruce S. Jenkins

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R. Wayne Klein, the Court-Appointed Receiver (the "Receiver") of U.S. Ventures, LC ("USV"), Winsome Investment Trust ("Winsome"), and the assets of Robert J. Andres ("Andres") and Robert L. Holloway ("Holloway") (the "Receivership Entities"), submits this Report on the status of the claims process and his recommendations on the treatment of the

claims of investors of USV and Winsome.

I.

PROCEDURAL HISTORY OF THE CLAIMS PROCESS

On May 21, 2012, the Court approved the Receiver's request to begin the claims process. The Court approved the claim form, procedures to govern the claims process, and the timetable for completing the claims process.

The Receiver undertook to advertise the availability of the claims process and to make the claim forms easily accessible to all potential claimants in the following manner:

- On May 22, 2012, the Receiver posted information on the claims process on the website created for this case at <http://www.kleinutah.com/index.php/receiverships/us-ventures>.

The website posting included a cover letter from the Receiver (attached as Exhibit 1), the claim form (in both .pdf and Excel formats), and copies of the instruction sheet and guidelines. Between May 22, 2012 and July 31, 2012, there were 1,380 visits to this website;

- On May 22, 2012, the Receiver sent copies of the cover letter, claim form, instruction sheet, and guidelines to 486 potential claimants via electronic mail. Notice of the claim form was sent to each person who had been identified by the Receiver as a potential claimant based on questionnaires sent out previously and calls, e-mails, and letters sent to the Receiver;
- On May 22, 2012, the Receiver mailed out copies of the cover letter, claim form, instruction sheet, and guidelines to 29 potential investors for whom the Receiver did not have e-mail addresses;
- Notice of the claims process was published in the national newspaper USA Today. The

notice was published once a week for three weeks, on May 29, June 4, and June 11, 2012.

A copy of the notice published in USA Today is attached as Exhibit 2.

- The Receiver sent out additional copies of the claim form documents in response to telephone calls, e-mails, and written requests sent to the Receiver after the initial distribution of the claims notices.

## II.

### NUMBER OF CLAIMS RECEIVED, TIMELINESS

A total of 143 claim forms were submitted to the Receiver. One additional claim form was received, but it was by an investor who was providing information only; he was not seeking any recovery. No claims were filed by vendors or business creditors.

The Court had set a deadline of July 31, 2012 for submission of claim forms. Claim forms that were mailed by this date were deemed timely, even if received after July 31, 2012. Of the 143 claims, 131 were submitted before the deadline and 12 were submitted after the deadline. In each of these 12 cases, the claimant indicated it had not been aware of the claims process in time to submit a claim before the July 31, 2012 deadline. The Receiver is recommending that all these late-filed claims be considered as timely and evaluated on their merits.

These 143 investor submissions asserted \$36,434,250.20 in claims against the receivership fund. The Receiver is recommending that 70 of the claims be accepted in the amounts listed in the claim forms, 48 claims be approved at amounts lower than the amounts sought in the claim forms, and 25 claims be rejected in their entirety. If the Receiver's recommendations are adopted, these 118 allowable claims will total \$16,946,216.58 in total allowable claims.

From the beginning, the Receiver has been cognizant that the recovery for valid claimants

would be maximized by both increasing the amount of funds recovered and reducing the number and size of valid claims. As noted in prior reports to the Court and in motions for approval of settlements, the Receiver has entered into many settlement agreements that have involved the other party agreeing not to submit claims against Receivership assets. This has substantially reduced the amount of valid claims, thereby increasing the percentage amount that each valid claim can be paid from assets recovered by the Receiver.

### III.

#### RECEIPT AND PROCESSING OF CLAIMS

The Receiver processed the claims, as they were received, as follows:

1. Claims were date-stamped when received.
2. A unique claim number was assigned to each claim received, based on the sequence in which the claim was received.
3. Summary information from each claim was entered into a tracking sheet. This summary includes the claim number, information on the claimant, and the amount of the claim.
4. An e-mail was sent to the claimant notifying the claimant that the claim had been received and identifying the claim number for that claim. The claim number is to allow each claimant to identify its claim without knowing the identity of the other claimants.
5. The claim was assigned to an analyst who first verified whether the claim form was complete. If the claim form lacked required signatures, omitted necessary responses, or included claims for an investment made through another person or entity, the claimant was requested to submit a corrected claim form. Sixty-nine claimants were notified that their forms required corrections or supporting documentation. In the end, 16 claimants did not provide the necessary corrections or supplemental documentation. These were

primarily prison inmates or claimants who invested through third party marketers and were unable to provide documents showing funds were sent to Winsome or USV. These claims are among those recommended for rejection.

#### IV.

#### DETERMINATION OF QUALIFYING CLAIMS

Claim forms were analyzed to determine whether the claimant had made a qualifying investment in USV or Winsome. The Receiver is recommending that 25 non-qualifying claims be rejected for the reasons described below. These claims, totaling \$8,017,668.29, can be grouped in five general categories:

1. No Dealings with Winsome or USV: Three claims were submitted by persons who had no dealings with Winsome or USV. These claimants are all inmates in state prisons. It appears that these inmates learned about the claims process from the notice published in USA Today. The Receiver was unable to match any of the investment amounts or dates claimed by these inmates with records of USV or Winsome. He was unable to find any investment payments by any of them to USV or Winsome. None of these claimants submitted any bank records. Notably, some of these inmates claimed to have made investments after the date that the companies had already been closed by order of this Court and long after they had both ceased taking investments. Despite these claims being submitted under oath, they have every indicia of being completely fraudulent.
2. Dealings were not Winsome/USV Investment Transactions: Three claims were rejected because these claimants' dealings were not investment transactions with Winsome or USV. These include claims based on personal loans made to Andres, business dealings a claimant had with a friend of Andres, and a company that paid an advance fee to

Winsome for a loan.<sup>1</sup>

3. Third Party Marketers: Five claims are recommended for rejection because these claims are from persons who participated in promoting the scheme. These third party marketers solicited investments from others. These are people who took money from investors, promising to forward the money to Winsome, were paid commissions by Winsome, or were listed in joint venture agreements as solicitors who would receive a share of profits allocated to investors.<sup>2</sup> Such conduct not only facilitated the scheme, but violated the securities and commodities laws. As a result, the Receiver recommends that they not be allowed to participate in any recovery.
4. Investors whose Money was not Forwarded by Third Party Marketers: In instances where investors sent money to third party marketers, but the third party marketers did not send those funds on to USV or Winsome, the Receiver is recommending rejection of those claims. There are 12 claims in this category. The rationale for this rejection is that if none of those investors' funds came into Winsome or USV, the recoveries obtained on behalf of Winsome and USV should not be used to compensate the investors for monies that were retained by the third party marketers. Put differently, these investors should pursue their claims against the third party marketers who took their money. This same rationale is being used to reduce the claims of those investors who sent money to third

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<sup>1</sup> In addition to this not being an investment transaction, documents recovered by the Receiver indicated this claim was satisfied by the claimant agreeing to look to another person for satisfaction of any debt.

<sup>2</sup> Notwithstanding the rejection of claims by third party marketers, investors whose investments were actually sent to USV or Winsome through the third party marketers will be treated as allowable claimants. The claims process required those investors to submit proofs of claim directly. This was designed to prevent third party marketers from keeping some or all of the recoveries paid by the receivership or reallocating the distributions from the receiver. Where third party marketers attempted to submit claims on behalf of investors, the Receiver required the claim forms to be resubmitted with the signatures of the investors whose funds were at issue.

party marketers and the third party marketers forwarded only a portion of those funds to USV or Winsome.

5. No Documentation Provided: Two claims were rejected because the claimants provided no documentation supporting their claims. The Receiver sent two notices to these claimants that documentation was needed, but none was provided.

V.

ANALYSIS OF QUALIFYING CLAIMS

Claims that appeared to be from qualifying claimants were analyzed to determine the amount of legitimate claim. This involved the following steps:

1. The amount on the claim form was compared to the bank records reconstructed by the Receiver. If the claimant's records of payments to and from USV or Winsome matched the records of the Receiver, the claim amount was deemed validated. In one case, the Receiver accepted the amounts of the claim higher than the amount shown on the Receiver's records because the claimant submitted bank records showing that certain payments shown on the company's bank records (but listed under a different name) were made for the claimant's benefit.
2. The claim form required that amounts paid to the claimant as distributions, interest or profits were to be deducted from the amount of investment principal sent to USV or Winsome. Deductions were required for distributions from USV, Winsome, or third party marketers. In cases where the claimant did not deduct distribution payments, the Receiver is recommending a reduced claim amount that reflects these payments to the claimants.
3. Some claimants included promised profits or accrued interest as part of their claim. The

Receiver deducted these from the amount of the claim as set forth in the court-approved guidelines applicable to the claims process.

## VI.

### NOTICES TO CLAIMANTS

1. If the claim analysis confirmed that the claim amount was accurate, the Receiver sent a notice to the claimant confirming the claim amount.
2. If the claim analysis revealed that the claim amount was not justified, the Receiver sent notice to the claimant that the Receiver intended to recommend a lower claim amount. These notices explained the reasons for the reduction in the claim amount.
3. Claimants were given the option to accept the lower claim amount – which 32 claimants have accepted. Another 16 “reduced” claimants have not responded.
4. In a few cases, the Receiver entered into discussions with claimants in an effort to reach agreement on the treatment of certain claims.

## VII.

### SPECIAL CHALLENGES IN ANALYZING CERTAIN TYPES OF CLAIMS

The number and size of investment amounts submitted to USV or Winsome through third party marketers presented special challenges to the Receiver in making his recommendations to the Court because not all investment funds paid to third party marketers were forwarded to USV or Winsome for investment. The Receiver used the following approach in dealing with these situations:

1. Traceable Investments: If the Receiver was able to determine that the funds paid by the claimant to the third party marketer were forwarded to USV or Winsome by the third party marketer, the claimant was given full credit for the investment amount. An



investment amount was deemed traceable if the same amount that was paid by the claimant to the third party marketer was paid by the third party marketer to USV or Winsome within a short time after the claimant sent its funds to the third party marketer.

2. Pro Rata Allocation: In many instances, only a portion of the claimant's funds were forwarded by the third party marketer to USV or Winsome. Often, funds from multiple investors were collected by the third party marketer before any funds were sent to USV or Winsome and only a portion of those funds were forwarded for investment. In these instances, the Receiver was unable to determine whose money was forwarded to USV or Winsome. As a result, the Receiver gave each claimant credit for its pro rata share of the funds actually sent to USV or Winsome.
3. No Funds Forwarded: As noted above, there were instances where claimants sent money to third party marketers, but none of the money was forwarded to USV or Winsome. The Receiver is recommending that none of the claims for these amounts be accepted.
4. Distributions by Third Party Marketers: Distributions of profits or interest were paid by USV, Winsome, and several third party marketers. Any distributions paid to claimants were deducted from the principal amounts invested, regardless of the source of the distributions.

## VIII.

### CLASSIFICATION OF CLAIMS

The attached spreadsheet, marked as Exhibit 3, shows each claim – by claim number. This includes the claim amount, classification, and recommended “Allowable Claim Amount” of each claim. An unredacted copy of Exhibit 3, containing the names of the claimants, is being provided to the CFTC.

1. Initial “Allowed” Claims Sixty-nine claims were for amounts that were the same as shown on the Receiver’s records. These claims total \$3,876,044.66.
2. Later “Allowed” Claims One additional claim had initially been classified as “Rejected” but was later changed to “Allowed,” based on documentation provided by the claimant showing eligibility for the entire amount. This claim totals \$30,000.00.
3. “Reduced” Claims Accepted by Claimant There are 32 claims where the Receiver notified the claimants that he intended to recommend a reduced amount of claim and the claimants have submitted written acceptances of the Receiver’s preliminary determination. These 32 claims originally totaled \$15,075,030.17. The reduced claim amounts that these claimants have accepted total \$7,739,981.29, a reduction of \$7,335,048.88.
4. “Reduced” Claims Where the Claimant has not Responded and Might Contest the Determination Sixteen other claims had claimed \$9,435,507.08. The Receiver notified these claimants that he intended to recommend to the Court that \$5,300,190.63 of these claims be deemed allowed. This is a reduction of \$4,135,316.45. It is expected that some of these claimants will contest the Receiver’s recommendation.
5. “Rejected” Claims Twenty five claims were submitted, totaling \$8,017,668.29, which the Receiver has determined to reject. It is not known how many of these claimants will file objections with the Court.

IX.

SUMMARY OF VALID CLAIM AMOUNTS

The following chart summarizes the claim amounts submitted and the Receiver’s recommendation to the Court.

<b>Category</b>	<b>Claim Amount</b>	<b>Receiver Recommendation</b>	<b>Reduction</b>
Initial "Allowed"	3,876,044.66	3,876,044.66	0.00
Later "Allowed"	30,000.00	30,000.00	0.00
"Reduced" Accepted	15,075,030.17	7,739,981.29	7,335,048.88
"Reduced" No Response	9,435,507.08	5,300,190.63	4,135,316.45
"Rejected"	8,017,668.29	0.00	8,017,668.29
<b>Total</b>	<b>36,434,250.20</b>	<b>16,946,216.58</b>	<b>19,488,033.62</b>

X.

#### OBJECTIONS AND PROCEDURE FOR RESOLUTION OF OBJECTIONS

As noted above, there could be as many as 41 objections to the Receiver's recommendations to the Court. The Receiver recommends the following procedure for resolving the objections.

1. Deadline for Filing Objections The claims procedure approved by the Court on May 21, 2012 (Doc. No. 157) included a requirement that those objecting to the Receiver's recommendation of an "Allowable Claim Amount" have thirty (30) days to file an objection with the Court. At the same time the Receiver files this Report with the Court, he will email or mail a copy of the Report to all claimants and post a copy on the receivership website. The claimants are being notified that any objections need to be filed before that deadline.
2. Reply by the Receiver The Receiver requests that he be allowed thirty (30) days following the Deadline for Objections to file a response to each of the objections.
3. Recommendation of Procedure for Resolving Objections When the Receiver files his response to the objections, he will also include a recommendation for the Court on a procedure for addressing the objections. This may include suggesting that the Court make decisions on the written submissions, appoint a special master, or set a date and

time for a hearing at which it can accept evidence and hear oral argument on the objections.

4. Recommended Distribution Plan The Receiver is working with the CFTC to develop a recommended distribution plan that will set forth the manner in which distribution payments will be made.
5. Final Approval After the Court has ruled on the objections and approved the distribution plan, a proposed order will be submitted to authorize the Receiver to begin making payments to claimants.

XI.

CONCLUSION

The Receiver respectfully submits this Report and Recommendations on Claims Process.

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

DATED this 20<sup>TH</sup> day of December, 2012.

  
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WAYNE KLEIN, Receiver

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing **RECEIVER'S REPORT AND RECOMMENDATION ON CLAIMS PROCESS** to be served in the method indicated below to the Defendant in this action this 20th day of December, 2012.

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

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