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U.S. DISTRICT COURT

IN THE 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.

**ORDER DENYING MOTION TO  
CORRECT/CLARIFY ACTIONS OF  
RECEIVERSHIP**

Case No. 2:11-CV-00099-BSJ

District Judge Bruce S. Jenkins

On January 17, 2017, Defendant Robert J. Andres' Motion to Correct/Clarify Actions of Receivership was filed with the court.<sup>1</sup> After the court granted their respective motions for extension of time to file responses,<sup>2</sup> R. Wayne Klein, the Court-Appointed Receiver (the "Receiver) and Plaintiff United States Commodity Futures Trading Commission ("CFTC") each filed oppositions on February 2, 2017.<sup>3</sup> Andres filed replies to the CFTC's and Receiver's oppositions on February 21, 2017 and February 27, 2017, respectively.<sup>4</sup>

<sup>1</sup> (CM/ECF No. 453).

<sup>2</sup> See Order Granting an Enlargement of Time to Respond to Def. Robert J. Andres' Mot. to Correct/Clarify Actions of Receivership, (CM/ECF No. 455); Order (CM/ECF No. 457).

<sup>3</sup> Opp'n to Def. Robert J. Andres' Mot. to Correct/Clarify Actions of Receivership, (CM/ECF No. 458); Pl. U.S. Commodity Futures Trading Commission's Resp. in Opp'n to Def. Robert J. Andres' Mot. to Correct/Clarify Actions of Receivership, (CM/ECF No. 460).

<sup>4</sup> Def. Robert J. Andres' Reply to Pl. U.S. Commodity Futures Trading Commission's Resp. to Def. Robert J. Andres' Mot. to Correct/Clarify Actions of Receivership, (CM/ECF No. 462) [hereinafter Reply to CFTC's Opposition]; Def. Robert J. Andres' Reply to Receiver R. Wayne Klein's Opp'n to Def. Robert J. Andres' Mot. to Correct/Clarify Actions of Receivership, (CM/ECF No. 465) [hereinafter Reply to Receiver's Opposition].

As clarified in his reply briefs,<sup>5</sup> Andres' Motion seeks to modify the amounts and nature of the penalties, restitution, and injunctive relief ordered against him in the court's June 6, 2014 Default Judgment,<sup>6</sup> pursuant to Fed. R. Civ. P. 60(b)(6).<sup>7</sup> Under Rule 60(b)(6), the court can grant relief from a final judgment for any "reason that justifies relief," where the Rule 60(b) motion requesting such relief is "made within a reasonable time."<sup>8</sup> "[A] district court may grant a Rule 60(b)(6) motion only in extraordinary circumstances and only when necessary to accomplish justice."<sup>9</sup>

Andres' Motion neither raises extraordinary circumstances justifying relief under Rule 60(b)(6) nor was filed within a reasonable time. Andres made no effort to participate in this case during the three year period between his being served with the Complaint and the court's entry of the June 6, 2014 Default Judgment. Further, for two and a half years, Andres took no action to address or respond to the Default Judgment, until he filed his Motion earlier this year. Andres offers no explanation for his inaction, and his Motion raises no arguments seeking to justify relief from the Default Judgment that were not available to him from the case's beginning. As such, Andres' Motion does not qualify for relief under Rule 60(b)(6).

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<sup>5</sup> See Reply to CFTC's Opposition, *supra* note 4, at 5; Reply to Receiver's Opposition, *supra* note 4, at 4.

<sup>6</sup> (CM/ECF No. 358).

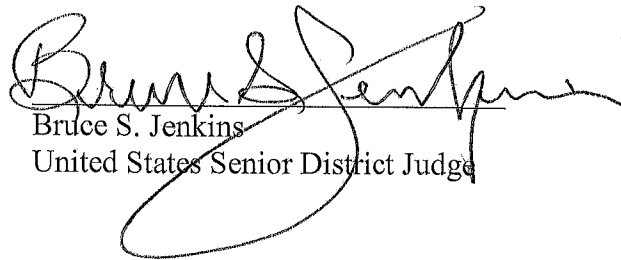
<sup>7</sup> The court notes that Andres' Motion also seeks relief related to matters beyond the scope of this case, Andres' standing, and the court's jurisdiction. As such, the court will not address these matters further.

<sup>8</sup> Fed. R. Civ. P. 60(b)-(c).

<sup>9</sup> *Cashner v. Freedom Stores, Inc.*, 98 F.3d 572, 579 (10th Cir. 1996) (citing *Lyons v. Jefferson Bank & Trust*, 994 F.2d 716, 729 (10th Cir.1993)).

Having so determined, the court hereby DENIES Andres' Motion to Correct/Clarify  
Actions of Receivership.

DATED this <sup>TA</sup> 26 day of June, 2017.

  
Bruce S. Jenkins  
United States Senior District Judge