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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

U.S. COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

vs.

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 MOTION REQUESTING
ORDER APPROVING: (1) PUBLIC
SALE OF OUTSTANDING
JUDGMENTS AND RESIDUAL
RECEIVERSHIP ASSETS; (2)
METHOD AND FORM OF
PUBLICATION NOTICE; AND (3)
PUBLIC AUCTION PROCEDURES
AND MEMORANDUM IN SUPPORT**

Case No. 2:11CV00099 BSJ

The Honorable Bruce S. Jenkins

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 Motion Requesting Order Approving: (1) Public Sale of Outstanding Judgments and Residual Receivership Assets; (2) Method and Form of Publication Notice; and (3) Public Auction Procedures and Memorandum in Support.

I. FACTUAL BACKGROUND

1. The U.S. Commodity Futures Trade Commission filed this action on January 24, 2011,¹ and the Receiver was appointed on January 25, 2011.²

2. The Court has directed and authorized the Receiver to, among other things, do the following: exercise the full powers of an equity receiver; assume control of all assets of the defendants; collect all monies owed to the defendants; initiate legal actions to preserve and increase the assets of the defendants; make agreements advisable in discharging his duties as Receiver; and manage all receivership assets, including all acts incidental that the Receiver deems appropriate.³

3. Pursuant to these duties, the Receiver filed numerous lawsuits to recover property of the Receivership Estate and obtained judgments against defendants, and he has recovered funds from many of those judgments, which recoveries have been summarized in the various status reports filed by the Receiver.⁴

4. A significant number of those lawsuits were against persons associated with defendant Robert Andres who assisted him in promoting the fraudulent investment scheme or solicited investors as “third-party marketers.” Most of the judgments against these affiliated persons were default judgments.⁵

¹ Docket No. 1 (Complaint).

² Docket No. 15 (Order Appointing Receiver).

³ *Id.* at 8-10.

⁴ Declaration of R. Wayne Klein, ¶ 3, attached as Exhibit A (“Klein Decl.”).

⁵ *Id.* at ¶ 4.

5. With one exception,⁶ these judgments were assigned to SM Financial Services Corporation (“SM Financial”) for collection. SM Financial is a New Jersey company specializing in the collection of judgments obtained in receivership and bankruptcy actions. Most of these judgments were assigned on October 20, 2015, with a few assigned after that date. The Receiver chose to retain SM Financial because SM Financial agreed to advance all costs of further investigation and collection costs and pay to the Receivership Estate 50% of the net amounts collected (after repayment of collection costs). Thus, the Receivership Estate would benefit from any successful collection efforts without bearing any costs for unsuccessful collections. This was particularly important to the Receiver because the Receiver believed most of these judgments had low probability of recovery.⁷

6. SM Financial has succeeded in collecting amounts on some of these judgments.⁸ Some of these were partial collections, reflecting recovery of the few executable assets of the defendants; a few recoveries were more substantial. The recoveries from the efforts of SM Financial are shown in the table below:⁹

⁶ The exception was the collection efforts against the Georgia law firm King, King & Jones, which was pursued by Georgia counsel retained by the Receiver.

⁷ Klein Decl. at ¶ 5.

⁸ The Receiver also obtained recoveries on judgments not sent to SM Financial for collection, such as from Forres McGraw, Ravkind & Associates, and David Jones.

⁹ Klein Decl. at ¶ 6.

Judgment Defendant	Net Recovery¹⁰	Notes
Warren Chiu, Winnie Chiu, PacificWin	\$5,800.00	Currently making monthly payments of \$400 (\$200 to Receivership).
Nancy Howe/Leo Renaud	\$1,885.60	Exhausted bank levies, 2018 bankruptcy filing; no assets.
Nicole Adams	\$2,225.30	Net settlement payment.
Lisa Pham	\$517.75	Recoveries from sheriff levies.
Linh Nguyen	\$7,146.38	Net settlement payment.
Kathryn Payton	\$21,771.08	Net settlement payment.
Total	\$39,352.51	

7. Eleven judgments were previously abandoned by the Receiver following collection efforts, when SM Financial was unable to locate the defendants or recoverable assets. These are listed in the table below.¹¹

Judgment Defendant	Reason
Al and Cherylynn Sellers	Unable to locate defendants or assets.
MME Group, Robert Righetti	Business closed, no bank accounts.
Aishwariya Enterprises	Company closed, no bank accounts.
Garry Smith	Defendant deceased, no assets.
M&K Ventures	Company closed, no bank accounts.
Nunzio Bruno	Bankruptcy filing; “no asset” estate.
William Ison	Defendant in prison; no assets.
Houston Zero Cold Storage	Business closed, no bank accounts.
Ryan Runia	2016 bankruptcy; “no asset” estate.
Clayton Ballard	Insufficient assets and income.
Lewis Scoggin	Insufficient assets and income.

8. An additional group of judgments was deemed by the Receiver to have a low probability of collection, but the judgments were assigned to SM Financial in the hope assets

¹⁰ The payments in this column are net amounts to the Receiver, after collection costs.

¹¹ Klein Decl. at ¶ 7.

could be recovered. Now, after three years of collection efforts, the Receiver has concluded the following judgments are uncollectable:¹²

Judgment Defendant	Reason
Jerome Carter	Andres friend for whom Winsome paid criminal legal defense fees. Unable to locate.
Katy Grady	Judgment domesticated in OK, unable to locate employer or bank accounts.
Jesus Enrique Baca Delgado	Andres friend for whom Winsome paid criminal legal defense fees. Unable to locate.
Khiem Allen Le	Judgment domesticated in CA. Judgment levies returned with no assets.
Keith Shaffner	Unable to locate defendant or assets.
Onti Management, Robert Cook	Judgment domesticated in Utah. Father and son have same name. Father insists son is proper defendant; son has mental deficiencies, no assets.
Connie Patterson	Co-conspirator with Andres. Judgment domesticated in TX. No bank accounts found. Patterson died in 2017; IRS has \$2 MM lien on estate.
Wings Over World Ministries, Terry Harper	Judgment domesticated in OH; unable to locate defendants or assets.
Mykal Pitts	Judgment domesticated in TX. No bank accounts or assets located.

9. After exhaustion of the collection efforts described above, four judgments remain that may still have the potential for recovery. These are:¹³

Judgment Defendant	Judgment Amount	Status/Notes
Warren & Winnie Chiu, PacificWin	\$1,041,570.63	Co-conspirators with Andres. Have been making \$400 monthly payments to SM Financial.
William Cornelius	\$89,845.73	Texas attorney who has filed multiple unsuccessful

¹² *Id.* ¶ 8.

¹³ *Id.* ¶ 9.

		lawsuits and motions and an appeal. He filed bankruptcy that was dismissed. He continues to defy efforts to collect.
King, King & Jones	\$25,000.00	Georgia court ruled David Jones was jointly and severally liable. Jones attempted to refinance home to pay settlement amount, could not get financing. Signed October 2018 secured promissory note promising to pay \$21,000 over three years. First payment of \$629.39 received 12/13/18.
Lou Georges	\$48,500.00	Employee of Defendant Robert Holloway. Claims impecuniosity.

II. LATE STAGE OF RECEIVERSHIP

10. These four judgments represent the only assets of likely value remaining in the Receivership Estate. All other litigation has been completed. Real estate that came into the Receivership Estate has been sold. Both individual defendants are currently serving prison sentences. Three distributions of funds have been sent to claimants. The U.S. Department of Justice has distributed the funds it had seized from Robert Holloway in a forfeiture action.¹⁴

11. Disposition of these uncollected judgments is the only matter to be resolved to allow the Receiver to submit a motion to close out the Receivership Estate.¹⁵

III. REQUEST TO SELL UNCOLLECTED JUDGMENTS AT AUCTION

12. On October 19, 2016, the Receiver filed a motion seeking Court approval to conduct an auction of the judgments where collection efforts were ongoing at that time.¹⁶ That motion was supplemented on November 30, 2016 with descriptions of supplemental proceedings

¹⁴ *Id.* ¶ 10.

¹⁵ *Id.* ¶ 11.

¹⁶ Docket No. 444.

undertaken by collection counsel on the various judgments.¹⁷ At a hearing on February 27, 2017 the Court struck the Receiver's motion at the request of the Receiver, to allow the Receiver to pursue additional collection efforts.¹⁸

13. In the two years since the filing of the November 30, 2016 supplemental information, SM Financial has sent an additional \$30,909.43 to the Receivership Estate. During that same two-year period, SM Financial and the Receiver have determined that the remaining judgments—other than the four listed above—are unlikely to result in any net recoveries for the Receivership Estate.¹⁹

14. In light of these four judgments being the last remaining assets in the Receivership Estate and the continuing cost of administering the Receivership Estate, the Receiver believes these final assets should be disposed, so the Receivership Estate can be terminated.²⁰

15. The Receiver has undertaken extensive efforts to identify potential buyers of these judgments at an auction. The Receiver has sought to obtain a stalking horse bid from a potential buyer other than SM Financial. While the Receiver hopes (and expects) SM Financial will bid at the auction, the Receiver recognized the potential conflict of interest in having SM Financial be the stalking horse bidder and the risk that SM Financial might be the only bidder. Such a result would reduce the Receiver's confidence that an auction would be effective at obtaining the

¹⁷ Docket No. 445.

¹⁸ Docket No. 468 (minute entry).

¹⁹ Klein Decl. at ¶ 13.

²⁰ *Id.* ¶ 14.

highest value for the remaining judgments.²¹

16. The Receiver researched potential buyers of judgments and inquired of them whether they would submit stalking horse bids for the uncollected judgments still in the Receivership Estate as well as the residual assets of the Receivership Estate—assignment of judgments previously abandoned by the Receiver and any other recoveries that might be due to the Receivership Estate after the Receivership is terminated. The Receiver provided information to the entities listed below, but was unsuccessful at getting any of them to submit bids:

- a. JudgmentBuy.com,
- b. JudgmentMarketplace.com,
- c. JudgmentBuyout.com (National Judgment Recovery Center),
- d. Millennium Settlements, Inc.,
- e. StrategicCapital.com,
- f. FairfieldFunding.com,
- g. GenexCapital.com,
- h. CBCSettlementFunding.com,
- i. JGWentworth.com,
- j. Litigation Finance Journal,
- k. Bentham IMF, or
- l. BurfordCapital.com.²²

²¹ *Id.* ¶ 15.

²² *Id.* ¶ 16.

17. Through the National Association of Federal Equity Receivers (NAFER), the Receiver identified Argo Partners as a potential buyer of judgments. Argo Partners, based in New York City, purchases claims and residual assets in bankruptcies, receiverships, and liquidations.²³

18. The Receiver provided documents to Argo Partners about the uncollected judgments, engaged in calls with representatives of Argo Partners to discuss the judgments, and authorized Argo Partners to contact SM Financial to obtain more information about the status of the collection efforts.²⁴

19. As a result of the information Argo Partners reviewed, Argo Partners has submitted an opening bid of \$5,000 for the uncollected judgments and residual assets of the Receivership Estate.²⁵

20. While the amount of this opening bid may be disappointing, the Receiver requests approval by the Court to hold an auction at which the judgments will be sold for the following reasons:

a. Collection efforts have been made on these judgments for at least three years and in some cases longer. As a result, the collectability of most of these judgments is doubtful;

b. Most of these judgments are five and six years old, making them more difficult to collect;

²³ *Id.* ¶ 17.

²⁴ *Id.* ¶ 18.

²⁵ *Id.* ¶ 19.

c. Because the stalking horse bid is lower than the amount of each of the four judgments the Receiver still believes are collectable, the Receiver believes each of the judgment debtors has a strong incentive to participate in the bidding—to buy the judgments that otherwise might cause the judgment debtors to pay more; and

d. SM Financial—who has the most information about the collectability of these judgments and who has an incentive to continue its efforts to collect on them—has indicated it will bid at the auction.²⁶

21. Because there are expected to be at least six persons or groups with incentives to bid at the auction, the Receiver believes the auction he is proposing will maximize the value of the judgments. The Receiver will send notice of the auction to the four defendants whose judgments are deemed most viable for future collection efforts, inviting them to participate in the auction. The auction will be designed to encourage bids for individual judgments. The Receiver proposes to sell the judgments in five parcels. The first four parcels represent the four judgments believed to have the highest value. The fifth parcel consists of the remainder of judgments and residual assets.²⁷

22. The Receiver believes it is in the best interest of the Receivership Estate to sell any residual assets that might come to the Receivership after it is closed (the “Residual Assets”), so that the Receivership can be wrapped up and this matter closed.²⁸

23. The Receiver also believes the ongoing administrative costs of the Receivership

²⁶ *Id.* ¶ 20.

²⁷ *Id.* ¶ 21.

²⁸ *Id.* ¶ 22.

Estate is a compelling reason to cease active operations of the Receivership Estate.²⁹

24. As of December 17, 2018, the Receivership Estate bank accounts have a total of \$8,312.42 in funds. However, the fees awarded by the Court to the Receiver for his work from July 1, 2017 to June 30, 2018 have not yet been paid, because the Receivership Estate lacks sufficient assets to make this payment.³⁰

MEMORANDUM IN SUPPORT

IV. APPLICABLE LAW

Title 28 U.S. C. § 2004 provides that personal property may be sold utilizing the same procedures used for real property under 28 U.S.C. § 2001, unless the court orders otherwise. 28 U.S.C. § 2004. 28 U.S.C. § 2001(a), in turn, provides that “[p]roperty in possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located” 28 U.S.C. § 2002 provides that notice of such a sale shall be “published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated.”

V. DISCUSSION

Pursuant to the above-cited statutes, the Receiver requests that the Court enter the proposed Order attached hereto as Exhibit B, authorizing the sale of the Judgments and Residual

²⁹ *Id.* ¶ 23.

³⁰ Docket No. 503, August 10, 2018. The fees awarded in this order to counsel for the Receiver have been paid.

Assets.

A. PROPOSED PUBLICATION.

To comply with the requirement of publication notice for public sales set forth in 28 U.S.C. § 2002, the Receiver seeks approval of the following method and form of publication notice of the proposed public sale: the Receiver will cause the notice below to be published in *The Salt Lake Tribune*, a newspaper published in Salt Lake City, Utah, once a week for a period of four weeks prior to the public sale (the “Publication Notice Time”). The Receiver will also cause this notice to be published in DailyDAC.com; a website catering to buyers of distressed bankruptcy and receivership properties.

R. Wayne Klein, Receiver for U.S. Ventures LC, Winsome Investment Trust, and all the assets of Robert J. Andres and Robert L. Holloway (the “Receiver”) in the civil case styled as *U.S. Commodity Futures Trading Commission v. U.S. Ventures LC, et al*, Civ. Case No. 2:11CV00099 BSJ (D. Utah) (“Civil Case”), gives notice of his intent to sell certain personal property consisting of 26 unsatisfied legal judgments held by the Receiver with face amounts totaling \$9,254,807.77 (the “Judgments”) and potential residual assets received after the close of the Receivership (the “Residual Assets”) through a public auction to the highest bidder payable in lawful money of the United States on the __ day of _____, 2019 at the hour of ____ at the Third District Court of Utah, 450 South State Street, Salt Lake City, UT 84111, or as may be continued from time to time by the Receiver (the “Auction”). The Judgments include the following, which shall be sold in five parcels (“Parcels”):

Judgment Defendant	Case # (District of Utah)	Judgment Amount
Parcel #1		
• William T. Cornelius and Cornelius & Salhab	2:11-cv-1159	\$89,845.73
Parcel #2		
• King & King & Jones; David Jones note (less \$629.39 paid)	2:12-cv-51	\$25,000.00
Parcel #3		
• Lou Georges	2:12-cv-76	\$48,500.00

Parcel #4		
• Warren Wai Hung Chiu (less \$15,100 paid)	2:12-cv-116	\$767,570.63
• Winnie Chiu	2:12-cv-116	\$110,000.00
• Pacific Win	2:12-cv-116	\$164,000.00
Parcel #5		
• Al and Cherylyn Sellers	2:11-cv-950	\$144,200.00
• Connie Patterson	2:11-cv-723	\$1,966,417.00
• Houston Zero	2:11-cv-956	\$ 10,000.00
• Jerome Carter	2:11-cv-722	\$798,753.23
• Jesus Enrique Baca Delgado	2:12-cv-105	\$75,100.00
• Kathy Grady	2:12-cv-66	\$49,625.84
• Keith Shaffner	2:12-cv-16	\$362,188.78
• Khiem Allen Le	2:12-cv-77	\$127,244.82
• Lisa Pham	2:11-cv-1155	\$122,000.00
• MME Group /Robert Ruzzo Righetti	2:12-cv-78	\$483,000.00
• Mykal Pitts	2:11-cv-957	\$332,298.00
• Nancy Howe d/b/a Howe Financial and Leo Renaud	2:11-cv-1160	\$2,279,187.71
• Nunzio Bruno	2:12-cv-58	\$203,052.66
• Onti Management Group and Robert Quinton Cook	2:12-cv-117	\$25,355.00
• Ryan Runia	2:12-cv-79	\$82,071.40
• William Ison	2:12-cv-55	\$185,501.03
• Wings Over the World and Terry Harper	2:12-cv-23	\$335,470.07
• Aishwariya Enterprises	2:12-cv-70	\$206,020.40
• Garry Smith	2:12-cv-69	\$64,240.00
• M&K Ventures	2:12-cv-16	\$203,165.47
• Residual assets of the Receivership Estate	Not Applicable	Unknown

The Parcels will be sold at the Auction “as is” with no representations and warranties. Requests for additional information about the Judgments and Residual Assets (including additional amounts paid to the Receiver after the date of the motion) may be obtained upon request made to the Receiver’s counsel at: Manning Curtis Bradshaw & Bednar PLLC, attn: David Castleberry, 136 East South Temple, Suite 1300, Salt Lake City, Utah 84111; dcastleberry@mc2b.com.

The Receiver maintains that the above proposed method and form of publication notice is in accordance with 28 U.S.C. §§ 2001(a) and 2002 and, therefore, should be approved.

B. PROPOSED AUCTION PROCEDURE.

The Receiver requests that the Court enter an Order approving the following proposed procedures to govern the public sale of the Judgments:

- a. The Receiver may conduct an auction of the following Judgments held by the Receiver in this case and of any potential residual assets received by the Receivership during the existence of the Receivership or after the Receivership is closed (the “Residual Assets”) at the conclusion of the Publication Notice Time (the “Auction”) in accordance with these Auction Procedures:

Judgments:

Defendant	Case # (District of Utah)	Judgment Amount
Parcel #1		
• William T. Cornelius and Cornelius & Salhab	2:11-cv-1159	\$89,845.73
Parcel #2		
• King & King & Jones, David Jones note (less \$629.39 paid)	2:12-cv-51	\$25,000.00
Parcel #3		
• Lou Georges	2:12-cv-76	\$48,500.00
Parcel #4		
• Warren Wai Hung Chiu (less \$11,500 paid)	2:12-cv-116	\$767,570.63
• Winnie Chiu	2:12-cv-116	\$110,000.00
• Pacific Win	2:12-cv-116	\$164,000.00
Parcel #5		
• Al and Cherylyn Sellers	2:11-cv-950	\$144,200.00
• Connie Patterson	2:11-cv-723	\$1,966,417.00
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• Jerome Carter	2:11-cv-722	\$798,753.23
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• Khiem Allen Le	2:12-cv-77	\$127,244.82
• Lisa Pham	2:11-cv-1155	\$122,000.00
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• Mykal Pitts	2:11-cv-957	\$332,298.00
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• Ryan Runia	2:12-cv-79	\$82,071.40
• William Ison	2:12-cv-55	\$185,501.03
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• Aishwariya Enterprises	2:12-cv-70	\$206,020.40
• Garry Smith	2:12-cv-69	\$64,240.00
• M&K Ventures	2:12-cv-16	\$203,165.47
• Residual assets of the Receivership Estate	Not Applicable	Unknown

- b. The Receiver will facilitate reasonable requests for information by interested parties prior to the date of the Auction about the Judgments and Residual Assets (including additional amounts paid to the Receiver after the date of the motion) through his counsel of record.
- c. The Receiver will conduct the Auction. The assets to be sold at Auction will consist of five Parcels, each of which will be auctioned individually. The five Parcels are: i) Cornelius judgment, ii) King, King and Jones judgment, iii) Lou Georges judgment, iv) Warren Chiu, Winnie Chiu, and PacificWin judgments, and v) the remainder of judgments and residual assets.
- d. For each Parcel, the Auction shall proceed in rounds. Bidding at the Auction shall begin with the initial bid of \$1,000 in cash for each Parcel (which bid has been submitted by Argo Partners, as the “Stalking Horse Bidder”) and shall subsequently continue in \$250 minimum cash overbid increments. Bidding will continue until the Receiver determines that he has received the highest and best offer for each Parcel, at which time he will close the Auction, with the person making the last bid prior to the Receiver’s close of the Auction bound to purchase the Parcel at issue pursuant to the terms of the approved Auction Procedures (the “Successful Bidder”).
- e. Bids may be made in person or remotely via telephone or other remote communications means.
- f. Each person other than the Stalking Horse Bidder, wanting to bid at the Auction, must tender to the Receiver a bid deposit of \$1,000 for each Parcel on which the person intends to bid at least five (5) days before the date of the Auction and sign a form provided by the Receiver in which the bidder agrees to the terms of the Auction.
- g. Each bidder agrees that its last offer made is irrevocable until the date the sale of

the Parcel at issue closes to the Successful Bidder.

- h. In the event that the Successful Bidder's sale does not close, the bidder who made the next highest and best offer at Auction (the "Back-Up Bid") shall be deemed the Successful Bidder. The Receiver may repeat the same Back-Up Bid procedure provided herein to each bidder, in the order of the highest and best offers received at Auction.
- i. Within five (5) days after the close of the Auction, each Successful Bidder must:
 - (i) sign a purchase agreement to pay the bid amount in exchange for the Parcel bid upon; and
 - (ii) deliver to the Receiver payment in the full amount bid for the Parcel.
- j. Upon completion of the sale and after the conclusion of the public auction discussed below, the Receiver will file with the Court a "Notice of Sale Results," stating the purchase price that was obtained at public auction and reporting on the Net Sale Proceeds. The Notice of Sale Results will include evidence of the publication described above.

The Receiver submits that the proposed Auction Procedures are permitted under 28 U.S.C. §§ 2001(a) and 2002 and, therefore, requests that the Court approve the same.

VI. CONCLUSION

For the forgoing reasons, the Receiver respectfully requests that the Court approve the public sale of the remaining outstanding judgments in the manner described above.

DATED this 17th day of December, 2018.

MANNING CURTIS BRADSHAW
& BEDNAR, PLLC

/s/ David C. Castleberry

David C. Castleberry
Attorneys for R. Wayne Klein, Receiver

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **RECEIVER'S MOTION REQUESTING ORDER APPROVING: (1) PUBLIC SALE OF OUTSTANDING JUDGMENTS AND RESIDUAL RECEIVERSHIP ASSETS; (2) METHOD AND FORM OF PUBLICATION NOTICE; AND (3) PUBLIC AUCTION PROCEDURES AND MEMORANDUM IN SUPPORT** to be served in the method indicated below to the Defendants in this action this 17th day of December, 2018.

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

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/s/ David C. Castleberry
