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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 TO CLOSE
RECEIVERSHIP CASE, INCLUDING
APPLICATION FOR FEES AND
MEMORANDUM IN SUPPORT**

Civil No. 2:11-cv-00099-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 moves this Court to terminate the Receivership and approve the partial payment of fees earned by the Receiver and his counsel. The Receiver respectfully requests that the Court enter the proposed order attached hereto as Exhibit A. This Motion is supported by the Memorandum in Support contained herein.

MEMORANDUM IN SUPPORT

I. BACKGROUND AND RELIEF SOUGHT

1. The U.S. Commodity Futures Trade Commission filed this action on January 24, 2011¹ and the Receiver was appointed on January 25, 2011.²

2. The Receiver took control of the assets of the Receivership Defendants and closed its bank accounts. The Receiver initiated approximately 90 fraudulent transfer actions, seeking to recover funds for the Receivership Estate. These actions resulted in settlements and judgments. All of the settlement payments due have been collected and the judgments have all been collected, abandoned, or sold. The Receivership Estate obtained one parcel of real property in connection with a settlement. That property was sold with approval of the Court.

3. The Receiver has made diligent effort to identify and recover assets belonging to the Receivership Estate and has managed assets in the estate with that same diligent effort. With approval of the Court, three distributions have been made to allowed claimants. These are described below.

4. The Commodity Futures Trading Commission's ("CFTC") enforcement case has been concluded.³ Criminal charges brought by the United States were concluded against Robert Andres (with a plea agreement) and against Robert Holloway (with conviction following trial).

5. A receivership in this action is no longer necessary to preserve the property or to protect the rights of the parties involved in this action. After diligent efforts over the past eight years, the Receiver now believes there are no more assets that can be recovered for the

¹ Docket No. 1 (Complaint).

² Docket No. 15 (Order Appointing Receiver).

³ Docket No. 358 (Default Judgment and Permanent Injunction), filed Jun. 6, 2014

Receivership Estate. All assets of the Receivership Estate have been reduced to cash. The remaining cash in the Receivership Estate is insufficient to pay accrued liabilities of the Receivership Estate, so no additional distributions to claimants can be made. The Receiver knows of no good reason not to close the Receivership. This motion seeks the Court's permission to do so. As a result, the Receiver respectfully moves the Court to issue an order confirming the Receiver's final financial report and accounting, allowing the outstanding fees and expenses incurred in connection with administering the receivership to be paid, terminating the receivership in this action, and granting any other relief to which the Receiver is entitled.

II. PRIOR STATUS REPORTS

6. The Receiver has filed thirty status report with the Court covering the period from his appointment in January 2011 through December 31, 2018. These reports were filed on March 25, 2011 (Docket No. 47), June 21, 2011 (Docket No. 66), September 26, 2011 (Docket No. 74), December 29, 2011 (Docket No. 94), March 23, 2012 (Docket No. 124), June 22, 2012 (Docket No. 169), September 26, 2012 (Docket No. 216), December 26, 2012 (Docket No. 235), April 29, 2013 (Docket No. 261), August 9, 2013 (Docket No. 292), October 22, 2013 (Docket No. 303), February 10, 2014 (Docket No. 327), April 29, 2014 (Docket No. 347), August 12, 2014 (Docket No. 382), October 27, 2014 (Docket No. 402), January 29, 2015 (Docket No. 405), April 30, 2015 (Docket No. 418), July 28, 2015 (Docket No. 419); November 2, 2015 (Docket No. 424), February 9, 2016 (Docket No. 432), June 3, 2016 (Docket No. 435), on September 16, 2016 (Docket No. 443), December 9, 2016 (Docket No. 447), March 15, 2017 (Docket No. 467), June 22, 2017 (Docket No. 469), September 29, 2017 (Docket No. 479); December 26, 2017 (Docket No. 487), April 16, 2018 (Docket No. 492); August 31, 2018 (Docket No. 505); and January 9, 2019 (Docket No. 509). Copies of all the status reports are and have been available on

the Receivership website: <http://www.kleinutah.com/index.php/receiverships/us-ventures> .

III. DEVELOPMENTS SUBSEQUENT TO THE MOST RECENT STATUS REPORT

7. Notable developments in the Receivership matter since December 31, 2018 include:

a. The Receivership estate received \$1,159.59 from collection efforts on outstanding judgments and a prior settlement agreement.

b. With approval of the Court,⁴ the Receiver held an auction of outstanding judgments and residual assets of the Receivership Estate. The auction was held February 26, 2019, generating \$18,500 in proceeds. The Receiver filed *Receiver's Notice of Public Sale Results* on February 27, 2019, reporting on the results of the auction.⁵

c. The two winning bidders at the auction paid the bid amounts to the Receivership Estate, with SM Financial paying \$11,000 and Argo Partners paying \$7,500.

d. The Receiver paid himself \$12,976 in fees that were approved by the Court on August 8, 2018⁶ (covering the period from July 1, 2017 to June 30, 2018). These fees had not been paid previously because the Receivership Estate lacked funds to pay the approved fees.

e. The Receiver has continued his so-far unsuccessful efforts to contact two claimants who failed to cash their distribution checks from the third distribution. Jerry K. Comeaux has an uncashed distribution check in the amount of \$1,350 and Joseph P.

⁴ Docket No. 511, filed Jan. 16, 2019.

⁵ Docket No. 513, filed Feb. 27, 2019.

⁶ Docket No. 503.

Asselin has an uncashed distribution check in the amount of \$135, for a total of \$1,485.

IV. PREVIOUS DISTRIBUTIONS TO CLAIMANTS

8. After engaging in a procedural process and substantive formula approved by the Court where claimants could make claims on the Receivership Estate that were either denied or allowed in full or in part by the Receiver and ultimately by the Court, the Receiver made three distributions to 118 allowed claimants totaling \$2,438,740.07 as follows:

a. On June 30, 2014, the Court approved an initial distribution of \$2,316,530.20 to 118 allowed claimants.⁷ This was divided into two tranches: \$1,000,004.65 to be distributed on a pro-rata basis to all 118 allowed claimants and \$1,316,525.55 using a rising-tide approach to 89 claimants who had received less than 15.1% return on their investments. Of this total, \$682,218 was held back pending resolution of two disputed claims. In the end, the Court denied both disputed claims and those funds were retained in the Receivership Estate.

b. On December 9, 2015, the Court approved a second distribution in the amount of \$603,605.44.⁸ This amount was distributed to 91 allowed claimants, using the rising-tide methodology, which brought the minimum recovery level to 19.2% of each of their net investment principal amounts.

c. On July 12, 2017, the Court approved a third distribution in the amount to \$200,822.43.⁹ This distribution was divided among 92 of the allowed claimants, using the rising-tide methodology. This distribution brought all investors to a minimum

⁷ Docket No. 367.

⁸ Docket No. 428.

⁹ Docket No. 472.

recovery level of 20.55%

d. Two of the checks from the third distribution, totaling \$1,485, have not been cashed by the claimants.

V. FINANCIAL REPORT

9. The table below shows the assets and liabilities of the Receivership Estate as of March 31, 2019.

Category	Amount
Cash in Receivership Accounts	\$12,000.19
Uncashed Distribution Checks	-\$1,485.00
Net Cash/Assets	\$10,515.19

10. The Receivership Estate has some unpaid liabilities and will incur additional expenses associated with terminating the Receivership Estate. These liabilities, in the sequence in which the Receiver proposes to pay them, are:

a. Unpaid Distribution Checks. The Receiver first will pay \$1,485 to the U.S. District Court Registry for the two distribution checks that have not been cashed, in the event the claimants present themselves in the future to collect amounts owed them.

b. Legal Fees. Manning Curtis, counsel for the Receiver, has incurred \$5,681.25 in billable fees for the period from July 1, 2018 through March 31, 2019.¹⁰ The Receiver proposes to pay this amount as the second priority of the funds remaining in the Receivership Estate. Manning Curtis has agreed to waive payment for fees it incurs for work finalizing this motion and the closing of the Estate;

c. Expenses Associated with Closing the Estate. To the extent that funds

¹⁰ Fees have been paid for services rendered through June 30, 2018.

remain after paying counsel fees, the Receiver proposes to pay the costs of preparing and filing tax returns for the Receivership Estate for 2018 and a closing tax return for 2019 from funds remaining in the Estate. The Receiver also proposes to pay any expenses associated with destruction of records in accordance with the document destruction plan proposed in this Motion.

d. Receiver Fees. The Receiver has incurred \$13,099.00 in billable fees for the period from July 1, 2018 to March 31, 2019. The Receiver expects there will be sufficient funds to pay only a portion of this amount.

VI. REQUEST FOR COURT APPROVAL OF FEES AND EXPENSES

11. The Order Granting the Statutory Restraining Order provides:

The Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by, or in the possession or control of, or which may be received by the Defendants. The Receiver shall file with the Court and serve on the parties, including the Commission, periodic requests for the payment of such reasonable compensation, with the first such request filed no more than one hundred and twenty (120) days after the date of this Order. The Commission may object to any part of a request within thirty (30) calendar days of service of a request. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

Order at p. 14, ¶ 33 (dkt. # 15).

12. Manning Curtis Bradshaw & Bednar, PLLC has provided billable legal services to the Receiver from July 1, 2018 to March 31, 2019 totaling \$5,681.25. Exhibit B contains a summary of the fees and expenses incurred by Manning Curtis for each billing matter. Exhibit B also includes detailed invoices describing the work performed by Manning Curtis on a daily basis. The work performed by Manning Curtis is charged at a significantly reduced hourly rate.

Lead counsel for the Receiver charges an hourly rate of \$225 for work on this matter, and his regular hourly rate is \$390 per hour.

13. The Receiver has performed 47.5 hours of work and his staff at Klein & Associates have performed 10.2 hours of work from July 1, 2018 to March 31, 2019, resulting in fees of \$13,099.¹¹ The Receiver and his staff also performed an additional 2.4 hours of work on this case which was not billed, which work is valued at \$574.00. The Receiver's fee invoices are summarized in Exhibit C. A detailed time summary of the work of the Receiver and his staff is also included in Exhibit C.

VI. TERMINATION OF THE RECEIVERSHIP

14. The sale of the uncollected judgments at auction represented the last recovery expected by the Receiver. Accordingly, the Receivership Estate now can be closed. The Receiver asks the Court to enter the attached proposed order that provides the following regarding closure of the Receivership Estate:

a. Any interested party that wishes to take custody and control of the documents currently in the possession of the Receiver, and who demonstrates a legitimate interest in the documents and an intent to protect confidential information contained in those documents, has 30 days after the entry of the order terminating the Receivership Estate to make arrangements with the Receiver, at the interested party's own expense, to take control of the documents. If no qualifying party asserts a valid claim to the documents within 30 days after entry of the order closing the Receivership Estate, the

¹¹ The amounts paid to Klein and Associates, PLLC for the work of the Receiver and his staff are not the rates actually paid to the Receiver and his staff. The billed rates are higher than the amounts actually paid to the Receiver and his staff as the billed rates also cover operating expenses, overhead, non-billed work, and employee-related expenses.

Receiver is authorized to dispose of the documents after that date;

b. The Receiver will be discharged and the Receivership Estate will be closed;

c. The Receiver and his agents, acting within the scope of such agency (“Retained Personnel”), shall be entitled to rely on all outstanding rules of law and orders of this Court and shall not be liable to anyone for their good faith compliance with any order, rule, law, judgment, or decree. In no event shall the Receiver or Retained Personnel be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver or Retained Personnel nor shall the Receiver or Retained Personnel be liable to anyone for any actions taken or omitted by them except upon a finding by this Court that they acted or failed to act as a result of malfeasance, bad faith, gross negligence, or in reckless disregard of their duties;

d. The stay of litigation previously entered by this Court (Docket #15) shall remain in place to prevent further post-discharge expenses by the Receiver after entry of the order closing the Receivership Estate;

e. This Court shall retain jurisdiction over any action filed against the Receiver, his staff, and/or Retained Personnel based upon acts or omissions committed in their representative capacities;

f. The Receiver is allowed to take those ordinary actions that he deems advisable, in his discretion, in closing this matter, including filing final tax returns for the Receivership Entities, destroying records of the Receivership and Receivership Entities consistent with the order closing the Receivership Estate, and closing bank accounts of the Receivership Estate.

VII. CONCLUSION

For the reasons set forth herein, the Receiver requests that the Court enter the Proposed Order attached hereto as Exhibit A, which confirms the Receiver's final financial report and accounting, allows the outstanding fees and expenses incurred in connection with administering the receivership to be paid to the Receiver and his counsel, terminates the receivership in this action, and grants any other relief to which the Receiver is entitled. The CFTC has informed the Receiver that it supports this motion.

DATED this 10th day of April, 2019.

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 TO CLOSE RECEIVERSHIP CASE, INCLUDING APPLICATION FOR FEES AND MEMORANDUM IN SUPPORT** to be served in the method indicated below to the Defendants in this action this 10th day of April, 2019.

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

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