

1 Logan D. Smith (SBN 212041)
lsmith@mcnamarallp.com
2 McNamara Smith LLP
655 West Broadway, Suite 900
3 San Diego, California 92101
Telephone: 619-269-0400
4 Facsimile: 619-269-0401
Attorneys for Receiver,
5 *Thomas W. McNamara*

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

PLCMGMT LLC, dba PROMETHEUS
LAW, JAMES A. CATIPAY, and
DAVID A. ALDRICH,

Defendants.

Case No. 2:16-cv-02594-TJH (FFMx)

**RECEIVER AND PLAINTIFF
SEC'S JOINT STATUS REPORT**

Judge: Hon. Terry J. Hatter, Jr.
Ctrm.: 9B

1 **I. PROCEDURAL BACKGROUND**

2 The SEC filed its complaint against three defendants: PLCMGMT LLC,
3 dba Prometheus Law (“Prometheus”), James A. Catipay (“Catipay”), and David A.
4 Aldrich (“Aldrich”) on April 15, 2016 (see Dkt. No. 1), asserting claims for
5 violations of Sections 5(a) and (c) and 17(a) of the Securities Act of 1933
6 (“Securities Act”), 15 U.S.C. §§ 77e, q(a), and Sections 10(b) and 15(a) of the
7 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78j(b), 78o(1),
8 and Exchange Act Rule 10b-5, 17 C.F.R. § 240.10b-5. The same day that it filed
9 the complaint, the SEC filed a motion for preliminary injunction, seeking
10 appointment of a receiver, asset freezes and other ancillary relief. *See* Dkt. No. 7.
11 On April 26, 2016, the Court permanently appointed receiver Thomas McNamara
12 (“the “Receiver”) over Prometheus by consent. *See* Dkt. No. 20.

13 On May 27, 2016, the Court entered judgment against defendant Catipay, by
14 his consent, providing injunctive relief. *See* Dkt. Nos. 37, 42. On December 7,
15 2017, the Court entered final judgment, including injunctive and monetary relief
16 against defendant Catipay, following the SEC’s motion. *See* Dkt. No. 107. On
17 September 15, 2016, the Court entered final judgment against defendant Aldrich,
18 by consent, for both injunctive and monetary relief. *See* Dkt. No. 70. Both of the
19 individual defendants pled guilty in parallel criminal actions and were sentenced to
20 jail time and monetary relief. *See USA v. James Catipay*, Case No. 3:16-cr-02453-
21 JAH (S.D. Cal.) (“Catipay Dkt.”), Dkt. Nos. 5-6, 12, 26; *USA v. David Aldrich*,
22 Case No. 3:16-cr-02688-JAH (S.D. Cal.) (“Aldrich Dkt.”), Dkt. Nos. 4-5, 10, 21,
23 26.

24 On October 28, 2019, the SEC filed the Receiver’s consent to injunctive
25 relief on behalf of the sole remaining defendant, Prometheus. *See* Dkt. No. 126.
26 The consent states that the monetary relief against the receivership entity, if any,
27 will be determined by noticed motion. The judgment was entered by the Court on
28 October 31, 2019. *See* Dkt. No. 128. With the entry of the consent judgment

1 against Prometheus, the liability of all three defendants has now been resolved, as
2 well as the injunctive relief against all three defendants. The monetary relief
3 against defendants Catipay and Aldrich has been previously determined by the
4 Court, and thus the sole remaining issue to be determined in the litigation is the
5 monetary relief, if any, against the receivership entity.

6 **II. CURRENT STATUS OF THE ACTION**

7 As reflected in the numerous status reports filed by the Receiver, the most
8 significant remaining asset held by the Receivership Estate is its interest in the
9 attorney fees generated from a mass tort case portfolio (primarily involving a drug
10 known as Risperdal), the cases for which were sourced with Prometheus investors'
11 funds. For a long while, the reason this receivership has remained open is to wait
12 for the resolution of the cases within this mass tort case portfolio. The Receiver
13 has no control over the outcome of these cases as the Estate is not a client of the
14 law firm, Paglialunga & Harris ("P&H"), which is handling the portfolio; the
15 Receivership Estate's sole interest in the outcome of these cases is its entitlement
16 to a percentage of the fees collected by P&H as a result of the cases' resolution.

17 The Receiver has remained in contact with P&H and attorneys from another
18 firm, Sanders Phillips Grossman (the "Sanders Firm," which previously handled a
19 part of the Risperdal settlement negotiations and still manages a handful of other
20 tort cases), throughout this process and has, at a high-level, been kept apprised of
21 ongoing negotiations regarding the settlement of the Risperdal cases, which
22 represent the vast majority of the cases within the portfolio.

23 The Receiver first reported on the case portfolio in late 2016. *See* ECF
24 No. 71. The cases progressed slowly through the system, and it was not until
25 February 2020, that the Receiver was first informed that settlement discussions
26 were occurring between the parties on the Risperdal cases, though counsel at the
27 Sanders Firm expressed that he believed the prospects for a settlement were low at
28 that time. *See* ECF No. 130 at 2. In late 2020, the Receiver reported to the Court

1 that settlement negotiations were progressing and a written offer was expected
2 soon. ECF No. 149 at 2. The Receiver was able to report in June 2021 that a
3 settlement had been reached as to the Risperdal cases in the Prometheus mass tort
4 portfolio, though the settlement was lower than previously anticipated. ECF No.
5 156 at 2-3.¹ In his next report to the Court, the Receiver conveyed P&H counsel's
6 estimate that distributions might be made on the Risperdal settlements within 60 to
7 90 days (*i.e.*, by the end of 2021). ECF No. 162 at 2-3.

8 Unfortunately, and as the Court is aware, this prediction dramatically
9 underestimated the amount of time it would take to finalize the settlement. The
10 updates which the Receiver has managed to obtain from counsel for P&H, Jim
11 Harris, have continued to push out the funding date for the Risperdal settlements;
12 in March 2022, in his most recent report to the Court, the Receiver conveyed
13 Harris's estimate that payments could begin to be made within 60 days—that is,
14 beginning in June 2022. *See* ECF No. 168 at 2-3. That did not occur. The
15 Receiver has since periodically requested updates from Harris, who has provided
16 only modest information about the progression of the Risperdal settlement funding.

17 Throughout this process the Receiver has struggled to get basic information
18 from Harris and P&H about the cases and settlement timeline, and when estimates
19 have been provided, they have been consistently and substantially inaccurate. *See*,
20 *e.g.*, ECF No. 162 at 2-3. For this status report, we asked Harris to prepare a
21 statement directly outlining for the Court the posture of the remaining cases. *See*
22 Declaration of Thomas W. McNamara, Ex. 1. In his statement, Harris for the first
23 time has provided a deadline by which all claimants must sign the settlement
24 agreements: June 30, 2023. Harris indicates that 81 clients have executed the
25 agreements; another 65 have not yet signed and are not likely to do so prior to the
26 deadline. The Receiver understands that any claims not finalized by this date will

27 _____
28 ¹ The settlement figure for the Prometheus portfolio was confidential and not shared
with the Receiver.

1 not be part of the settlement and will almost certainly never be settled.
 2 Accordingly, once the Estate has been paid its portion of the attorney’s fees by
 3 P&H for the claims which are finalized by the deadline, which Harris has indicated
 4 should occur by the end of September of 2023, the Receiver intends to proceed
 5 with a final distribution to the investors, request the Court’s approval to abandon
 6 any remaining assets given the age of the case and their likely *de minimis* value,
 7 and ask the Court to terminate the receivership. The Receiver anticipates this
 8 being completed before the end of the year.

9 Among the SEC’s considerations in seeking monetary relief is the status of
 10 monies returned to investors, as compared with the amounts of investor losses.
 11 Given that the amounts returnable to investors through the receivership remain to
 12 be determined, the SEC anticipates awaiting further distributions prior to
 13 determining whether to seek any monetary relief against the receivership entity, or
 14 whether to forego such relief based on the distributions made to investors through
 15 the receivership.

16 Dated: March 9, 2023

MCNAMARA SMITH LLP

17
 18 By: /s/ Logan D. Smith
 Logan D. Smith
 Attorneys for the Receiver,
 19 Thomas W. McNamara

20
 21 SECURITIES AND EXCHANGE
 22 COMMISSION

23 By: /s/ Kathryn Wanner
 Kathryn Wanner
 24 David M. Rosen

25
 26
 27
 28

LOCAL RULE 5-4.3.4(a)(2)(i) CERTIFICATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Pursuant to L.R. 5-4.3.4(a)(2)(i), I, Logan D. Smith, attest that all signatories identified above, and on whose behalf the filing is submitted, concur in the filing’s content and have authorized the filing.

By: /s/ Logan D. Smith
 Logan D. Smith

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all participants in the case who are registered CM/ECF users.

/s/ Logan D. Smith
Logan D. Smith