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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 SECURITIES AND EXCHANGE
COMMISSION,

16 Plaintiff,

17 v.

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

21 Defendants.

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

**RECEIVER'S STATUS REPORT
AND ACCOUNTING**

Judge: Hon. Terry J. Hatter, Jr.
Ctrm.: 17

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II.

RECEIVERSHIP ACTIVITIES

A. Defendants' Site

As directed and authorized by Section VIII(A) of the Preliminary Injunction, we took possession of the Prometheus office at 1130 S. Flower Street, #401, Los Angeles, California on April 27, 2016. The office is a work loft condominium of approximately 2,118 square feet, which has been configured to have one bedroom and an office environment comprised of six work stations with computers and telephones. No active operations were taking place, but we did find current business and financial records on site. One feature of this site that stood out was the presence of a very large recently-purchased 1,000 pound safe housed on the second floor – upon our arrival, that safe was open, unlocked, and empty.

Initial access was provided and coordinated by Catipay's then counsel, Tim Umbreit, and former Prometheus "funding manager," Michael Ewans. The premises were secured and a locksmith changed the locks. Mr. Ewans has since made himself readily available to the receivership team to respond to inquiries regarding Prometheus operations.

B. Bank Accounts

In response to the Preliminary Injunction Asset Freeze, the following accounts have been frozen:

Account Name	Bank	Account No.	Balance Frozen
PLCMGMT LLC (CA)	Wells Fargo	4489	\$25.08
PLCMGMT LLC (CA)	Wells Fargo	9686	\$62.59
James Catipay	JPMC	1931	\$24.18
James Catipay	JPMC	5529	\$450.00
James Catipay	JPMC	9071	\$26.98
James Catipay	Wells Fargo	5245	\$13.14
James Catipay dba James Catipay	Wells Fargo	2133	\$6.46

Account Name	Bank	Account No.	Balance Frozen
James Catipay	Wells Fargo	8065	\$37.00
Law Office of James Catipay	Wells Fargo	3531	\$16.00
Law Office of James Catipay	Wells Fargo	8115	\$15.96
David Aldrich / UFundLeads LLC	JPMC	9163	\$32,830.83
David Aldrich / UFundLeads LLC	JPMC	8625	\$4.34
David Aldrich	Wells Fargo	9431	\$180.76
Anna Aldrich	Washington Federal Bank	7558	\$101.53
Total			\$33,794.85

In addition to the funds in these accounts, Prometheus and Catipay have additional assets as described below.

C. Documents and Electronic Data

Upon taking possession of the premises, we confirmed that all hard copy documents on site were secure. A computer forensic team retained by the Receiver made images of all computers onsite. After the imaging process was completed, the computers and most of the hard copy documents were moved to the Receiver's office in San Diego. We commenced the review of this information in order to reconstruct the operational and financial picture and identify assets and/or claims against third parties.

D. Cooperation of Individual Defendants

At the outset, Mr. Catipay was overtly uncooperative and refused to communicate with me or my attorneys, except through intermediaries. When he finally made himself available by telephone, he either lied or deflected throughout our conversations. I found him to have zero credibility on any subject. For example, during a telephone call with me and my counsel on May 17, 2016, Catipay displayed his full range of deception:

- 1 • When asked how the balance in his Chase savings account decreased
2 from \$70,000 on April 16, 2016 to \$25,000 when he filed his financial
3 disclosures statement on May 10, 2016, he said he “blew through” the
4 money and had nothing to show for it, except that he did have cash on
5 hand of \$7,800. In response to our demand, he later sent that cash by
6 FedEx to the receivership.
- 7 • When asked generally where the investor money went, he said he
8 spent \$1.8 million for what he termed “personal uses” (i.e., tuition,
9 American Express bills, money to Beverly Palacio, redemptions,
10 commissions, and attorneys’ fees). He later stated that he spent a little
11 over \$1 million in cash over a one-year period – his practice was to go
12 to the bank, write checks for cash and spend the cash – no large
13 purchases, but he said he spent \$2,000-3,000 per day on female
14 escorts.
- 15 • Regarding his luxury Nissan GT-R vehicle, he admitted that he lied
16 about it in a previous call and that Prometheus money funded its
17 purchase – title was in the name of Beverly Palacio. Upon demand,
18 he also turned that car over to the receivership.
- 19 • When asked if he had ever owned a Lamborghini, he said, no, and
20 explained that a photo with him in a Lamborghini was just him in a
21 car that he washed as part of his job as an exotic car washer and
22 detailer. This is expressly contradicted by DMV records and his own
23 insurance records that he previously owned two Lamborghinis.
- 24 • When asked about \$2,500 monthly car payments to an apparent
25 girlfriend, he denied making such payments, but the girlfriend
26 confirmed that he did. She also confirmed that he used her name and
27 good credit to buy a Fisker luxury car.

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- 1 • When asked about a series of \$10,000 wire transfers to China
2 Construction Bank, Catipay said he was just sending that money to his
3 girlfriend's mother in China after she gave him the \$10,000 in cash.
4 The girlfriend later confirmed to us that these wires were payments by
5 Catipay to help her pay a familial loan she secured to buy a
6 condominium in Monterey Park, California.

7 We have grave concerns that Catipay has significant amounts of cash in his
8 possession, as the explanations he offered about how he "blew" the money were
9 preposterous.

10 We have not spoken directly with Aldrich, who appears to have had no
11 involvement or relationship with Prometheus since February 2015. His counsel
12 has been generally cooperative and has assisted in securing answers to our
13 questions.

14 III.

15 THE UNIVERSE OF INVESTORS

16 Our review of Prometheus' records has generally confirmed the narrative set
17 out in the SEC's Complaint and evidence submitted in support of the Preliminary
18 Injunction. Given that Judgments have been entered as to both principals, we need
19 not revisit the details of the securities law violations alleged by the SEC except as
20 context for the receivership's pursuit of assets and the identification of investors.

21 The business "model" at the core of the Prometheus business has been well
22 documented and has been confirmed by our review of the materials onsite. In a
23 nutshell, Prometheus' mission, denominated "Legal Marketing," was to locate and
24 pre-qualify potential plaintiffs for mass tort cases against drug manufacturers and
25 then refer them to contingency fee counsel in return for a share of their
26 contingency fee. In its various iterations, this business embraced unlawful fee
27 splitting, fraud, and the sale of unregistered securities. As implemented, it also

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1 embraced the outright theft of more than \$5 million by Catipay and Aldrich who
2 diverted at least that much in investors' funds for their personal use.

3 The Catipay Law Firm and Prometheus entered into joint representation and
4 fee share agreements with the law firm Paglialunga & Harris ("P&H") whereby
5 Catipay/Prometheus supposedly managed the marketing and initial evaluation of
6 potential plaintiffs. P&H, in turn, would litigate the cases pursuant to retainer
7 agreements with qualified plaintiffs and then share 1/3 of its Net Fees with
8 Catipay/Prometheus.

9 To fund this search for potential plaintiffs, Prometheus went to market with
10 an "offering" riddled with red flags – "prepaid forward contracts" with guaranteed
11 returns of 100-300% that were to be secured by UCC-1 filings. This offering was
12 unlawful in structure (unregistered security) and implementation (sales pitch based
13 on overt fraud). Prometheus has never had any financial capacity to deliver on
14 even the bare minimum of its promised returns. As of the date of the Receiver's
15 appointment, Prometheus had received no fee share payments and had cash assets
16 in bank accounts totaling only \$87. And nearly 50% of the investor funds
17 deposited to Prometheus were squandered by the principals.

18 Based on our review of internal Prometheus records¹, we have confirmed the
19 rough universe of investors in Prometheus and have built a database with contact
20 information as to each which can serve as the foundation for a future claims
21 process.

22 We have identified 257 individual investors who placed \$10.8 million with
23 Prometheus, plus \$1,190,000 invested by Prometheus Capital Partners ("PCP"), an
24 investment partnership based in Denver, Colorado, for a total of \$12,034,169.
25 Prometheus was not provided the details as to the sources of PCP's investment so
26 we do not have individual investor names underlying the PCP investment.

27 _____
28 ¹ We should note that Prometheus did maintain a detailed running schedule
of investors which has proven to be reasonably reliable.

1 In general, as funds were received, Prometheus internally allocated them
2 into \$10,000 increments (a limited number were \$5,000 or \$7,500), theoretically
3 assigned to a potential plaintiff. There was, however, no effort to actually
4 formalize any form of security interest against a specific potential plaintiff.
5 Potential plaintiffs were just that – “potential” – as most were not the subject of an
6 actual filed cases and all or some of them could fall off the roster as unqualified
7 based on further due diligence.

8 After subtracting redemptions from seven investors who received their funds
9 back (\$170,000) and returns paid to six investors (\$136,000), current aggregate
10 losses are calculated at \$11.7 million. Based on Prometheus’ internal records, it
11 appears that approximately 117 investors funded their investments in whole or in
12 part from IRA accounts, at least as indicated by Prometheus’ internal records.

13 For details as to the inflow of investor funds and how Defendants
14 spent/squandered those funds, see the Financial Information section below.

15 **IV.**

16 **FINANCIAL INFORMATION**

17 **A. Prometheus Financial Summary**

18 The receivership retained Thad Meyer of Alliance Turnaround Management
19 to prepare a forensic reconstruction of Prometheus’ finances. His detailed report is
20 submitted as Exhibit A to this Status Report. The essential findings of that report
21 can be summarized as follows:

- 22 • The first \$5.84 million of investor funds to Prometheus were
23 deposited (September 2013 through October 2014) into Aldrich-
24 controlled accounts in the name of PLC-WA. Aldrich disbursed those
25 funds for various purposes, including transfers to Prometheus
26 accounts controlled by Catipay from which Catipay paid
27 commissions.

28 ///

- 1 • In October 2014, Aldrich and Catipay switched roles – investor funds
2 were thereafter deposited to Catipay-controlled Prometheus accounts
3 from which Catipay disbursed funds, including commissions and
4 transfers to PLC-WA. Investor funds from individuals deposited to
5 Catipay’s control totaled \$5.17 million, plus an additional \$1,190,000
6 from PCP.
- 7 • By February 2015, Aldrich and Catipay had parted ways and Catipay
8 proceeded with Prometheus as the sole owner.² Aldrich brought in
9 \$1.39 million new funds into PLC-WA, but those funds are outside
10 the scope of this receivership over Prometheus.
- 11 • Aldrich disbursed funds from the PLC-WA account for his personal
12 use to purchase an office condominium in Los Angeles (\$1,072,103),
13 pay his 2014 personal federal income taxes based on an inflated
14 income number (\$1,032,497), and in personal draws (\$1,445,407).
- 15 • Catipay disbursed Prometheus funds to, or for the benefit of, Beverly
16 Palacio, who is described by Catipay as his ex-wife, although our
17 observations indicated she is still a close personal and business partner
18 (\$882,819), Herbalcure, a medical marijuana business in which he had
19 some form of ownership (\$821,828), and an apparent girlfriend
20 (\$303,919). He has also received \$1,402,642 in personal draws.
- 21 • Through April 2016, Prometheus had not received a single dollar in
22 fee share payments.

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24

25 ² The details of this split are described in lawsuits brought by Catipay in
26 March 2015 in Los Angeles County Superior Court against Aldrich and others
27 seeking dissolution of the partnership and other remedies. *See Catipay v. Aldrich*,
28 Case No. BC574522. Prometheus and Catipay are involved in at least three other
lawsuits in Los Angeles County Superior Court. *See PLCMGMT LLC v. EON
Escrow, Inc.*, Case No. BC593807; *Catipay v. Prometheus Capital Partners, LLC*,
Case No. BC605665; *Detamore v. Wheeler*, Case No. BC622437.

- 1 • \$7,800 cash recovered from James Catipay.
- 2 • \$2,150 cash recovered from Beverly Palacio (Catipay's ex-wife).
- 3 • \$114,068.90 from the sale of high-end vehicles registered to Beverly
- 4 Palacio (Toyota FJ Cruiser, Nissan GT-R, and Ferrari).
- 5 • \$100,000 from the "sale" of LA Auto, LLC, an auto repair business in
- 6 which Beverly Palacio acquired with Prometheus funds.³
- 7 • \$1,961 from the sale of three loaner vehicles owned by LA Auto.
- 8 • \$1,126 cash from the accounts of LA Auto.

9 Given a long history of cash transactions, we suspect Catipay may have
10 substantial cash secreted away, but we have not located it. We will seek to take his
11 deposition testimony under oath as soon as possible, but to date, his counsel has
12 indicated Catipay would invoke the Fifth Amendment. Catipay recently entered a
13 criminal plea in federal court in San Diego and we are presently seeking his
14 deposition now that his plea has been entered. We continue to review the viability
15 of claims against Beverly Palacio, Herbalcure, and Catipay's former girlfriend for
16 the return of funds they received from Catipay that were traceable to Prometheus.

17 While the Flower Street condominium bought with \$1,072,103 of
18 Prometheus funds was originally titled to PLC-WA, it is now titled to James
19 Catipay following a settlement between Aldrich and Catipay by which Aldrich
20 agreed to quitclaim the property to Catipay. Prior to providing the quitclaim,
21 however, Aldrich consented to the recording of a Deed of Trust on the property for
22 \$2.975 million as security for PCP's investment in Prometheus. In our view, that
23 Deed of Trust is voidable as a fraudulent transfer and we will seek to have it
24 removed and sell the condominium with the net proceeds to the receivership.

25
26 ³ After confirming that Beverly Palacio had acquired an auto repair business
27 in central Los Angeles (LA Auto) with Prometheus money and was about to
28 complete a deal for \$100,000 to effectively sell the business via return of the lease
to the landlord, we secured an Order from the Court on June 28, 2016 (ECF
No. 52) that LA Auto was a receivership asset and later secured the \$100,000.

1 “profits” on individual contracts of \$10,000 each, but in the aggregate, their
2 Prometheus investments were net losses. The one overall winner has already
3 returned his \$2,500 profit to the receivership.

4 We have identified 37 sales consultants who received commissions totaling
5 approximately \$1.1 million, plus PCP which was paid a commission of \$119,000
6 on its investment of \$1,190,000. We have formally submitted our demand to each
7 that they return to the receivership all commissions paid to them. The initial
8 reaction to our demand letters has been positive with most indicating a desire to
9 resolve without litigation. If we are unable to resolve amicably, we will initiate
10 formal litigation.

11 Three of the 37 targets received commissions exceeding \$100,000
12 (\$320,250, \$240,864, and \$119,000, respectively), three others received between
13 \$50,000 and \$100,000. We have not discerned any specific commission structure
14 except that most were in the 5-10% range, but the largest commission recipient
15 was paid an exorbitant 15% on some investors. 26 of the 37 were recruited in
16 some capacity by one individual who received an override of 5-6% on all investors
17 they delivered to Prometheus.

18 **C. Case Portfolio**

19 Subject to multiple qualifiers, described below, the Case Portfolio being
20 administered by P&H does represent a valuable asset to the receivership as the fee
21 share due to the receivership could be substantial.

22 We have met with the attorney from P&H on several occasions and have
23 reviewed summaries of the Case Portfolio. Based on that review, we can provide a
24 general summary of the Portfolio. The Portfolio is composed of approximately
25 2,115 potential cases. This number may fluctuate because potential plaintiffs may
26 be dropped if further due diligence indicates that they are not qualified or their
27 injuries are not provable. It must be stressed that 2,115 is the number of potential
28 plaintiffs pre-screened by counsel to date – it is not the number of cases that have

1 been filed. At present, approximately 837 actual cases have been filed. We are
2 told this is common in mass tort litigation where cases do not have to be filed until
3 there is an imminent statute of limitations issue. As favorable results are reached
4 in trials or settlements in the filed cases, counsel for the plaintiffs will work toward
5 a global settlement involving all other plaintiffs with provable injuries.

6 Ninety-five percent of the Portfolio are potential cases relating to Risperdal,
7 an anti-psychotic medicine manufactured by a subsidiary of Johnson & Johnson.
8 The potential plaintiffs (2,024) are all men alleged to have suffered the side effect
9 of gynecomastia (male breast enhancement). 824 actual cases have been filed in
10 Los Angeles County Superior Court and have been consolidated before one judge
11 who has also been assigned thousands of other Risperdal cases brought by
12 unrelated counsel and parties. The judge has identified “bellwether” cases and
13 instructed counsel to work these up for trial. These cases represent categories of
14 plaintiffs based on age, the years in which the drug was used, and the applicable
15 warning label used during those years. Settlements or trial results in these cases
16 will present valuation parameters for other cases. There have been verdicts and
17 settlements in Risperdal cases in other jurisdictions, but they cannot be
18 extrapolated to value our cases, especially without knowing all the factual details
19 of the claims.

20 The remaining cases involve an assortment of drugs. Actos, a diabetes drug
21 (29 cases, four of which have been filed and seven of which have settled for
22 \$1.76 million); Transvaginal Mesh (commonly called “TVM”) a surgical implant
23 for women suffering from incontinence or organ prolapse (four cases have been
24 filed, but none have yet been resolved); Nuvaring, a female contraception product
25 (four cases, all of which have been settled); SSRI prescription anti-depressants (18
26 cases, none filed); Tylenol (1 potential plaintiff); Testosterone (2 potential
27 plaintiffs); and Topamax (1 potential plaintiff).

28

1 Lead counsel for the cases in the Case Portfolio has emphasized that it is
2 impossible to project with any accuracy the “value” of the Portfolio or the fees that
3 may flow from the cases before they are tried or resolved. Litigation is inherently
4 unpredictable and very fact and court specific. Beyond the lack of precision, it is
5 also not strategically wise for counsel to provide public estimates of valuation
6 which could adversely impact future trials or settlement negotiations. The high
7 concentration of the Case Portfolio on Risperdal cases creates a possibility for
8 dramatic swings in the overall value of the Case Portfolio (positive or negative) as
9 the Risperdal bellwether cases are tried or settled.

10 We have posted a summary of the Portfolio on the Receiver’s website and
11 we have cautioned investors that they should resist the temptation to embrace press
12 or anecdotal reports about litigation results in other cases involving the same drugs.
13 Damage awards by juries are not precedents for future cases involving the same
14 drug; instead, they offer only the most general guidance. Each case will depend on
15 its specific facts – the age of the plaintiff; the severity of the side effects; the
16 provability of the side effects; the plaintiff’s knowledge of the risks; the warning
17 label used on the product, the forum in which the case is filed; and many other
18 factors. In some settlements, the manufacturer may simply allocate a total dollar
19 amount for settlement which must then be divided among the plaintiffs (filed and
20 unfiled) as determined by third party mediators.

21 If the cases are resolved in favor of the plaintiffs, the fees due the
22 receivership will be one-third (1/3) of the fees lead counsel receives, which is
23 generally 40% of the net recovery subject to other reductions: The fees paid to the
24 receivership will be accumulated by the receivership and ultimately disbursed to
25 investors, net of court-approved expenses, after court approval.

26 On September 2, 2016, Catipay assigned all his rights in the Joint
27 Representation Agreement with P&H to the Receiver. To date, the receivership
28 ///

1 has received payments totaling \$151,251.34 from P&H, representing the
2 receivership's share of fees from settlements in 13 cases to date.

3 **D. Claims Against Third Parties**

4 We are evaluating the viability of potential claims against third party
5 professional service providers.

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7 Dated: November 10, 2016

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9 By: S/ Thomas W. McNamara
10 Thomas W. McNamara
11 Receiver
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CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2016, 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.

I further certify that I have caused the foregoing to be mailed by First Class Mail, postage paid, to the following non-CM/ECF participants:

Beverly Yadao Palacio
1130 South Flower, Suite 310
Los Angeles CA 90015

S/ Andrew W. Robertson
Andrew W. Robertson