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13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 SECURITIES AND EXCHANGE
16 COMMISSION,

17 Plaintiff,

18 v.

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

21 Defendants.

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

**RECEIVER'S SECOND STATUS
REPORT AND ACCOUNTING**

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

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1 Still pending before the Court is the Receiver’s First Interim Fee Application
2 for the period April 26, 2016 through October 31, 2016, which was filed December
3 1, 2016 (ECF No. 72) and is unopposed. That application seeks approval to pay
4 fees and expenses of the receivership totaling \$212,967.

5 **III.**

6 **THE UNIVERSE OF INVESTORS**

7 Our most recent updated investor database confirms gross investments into
8 Prometheus of \$12,044,168 less redemptions (\$170,000) and returns (\$136,000)
9 for net investments of \$11,738,168. This database indicates 255 investors – 254
10 individuals and Prometheus Capital Partners (“PCP”), the investment partnership
11 based in Denver, Colorado which invested \$1,190,000. Four of the individual
12 investors, however, suffered no economic harm as three received full redemptions
13 (\$120,000 redeemed on \$120,000 invested) and one received a profit of \$2,500
14 (\$40,000 paid on \$37,500 invested). Hence, for our purposes, we show 251
15 victims with net losses of \$11.7 million.

16 Based on Prometheus’ internal records, it appears that approximately 117
17 investors funded their investments in whole or in part from IRA accounts.

18 The details as to the inflow of investor funds and how Defendants
19 spent/squandered those funds were set forth in our Status Report and Accounting
20 report of November 10, 2016 (ECF No. 71, the “November Report”).

21 **IV.**

22 **THE PROSPECTS FOR RECOVERY**

23 The primary remaining business of this receivership is to cost-effectively
24 accumulate any available assets of Prometheus which may include assets in the
25 hands of others, including Catipay and Aldrich, acquired with Prometheus funds.
26 The most promising “asset” remains the potential fee sharing revenue from the
27 Case Portfolio, although we have no realistic basis to project the amount of those
28 revenues.

1 **A. Business and Personal Assets**

2 1. Prometheus

3 At the time of our appointment, Prometheus had cash funds in the bank of
4 only \$87 and we could not identify any other assets, real or personal, held in the
5 name of Prometheus. Prometheus funds (\$1,072,103) were, however, deployed in
6 June, 2014 to purchase an office condominium on Flower Street in Los Angeles
7 (the “Flower Street Condo”), but it was not titled to Prometheus but to David
8 Aldrich’s Washington state entity PLCMGMT, LLC (“PLC-WA”).

9 In October, 2015, PLC-WA quitclaimed the Flower Street Condo to Catipay
10 individually following a settlement between Aldrich and Catipay. By Quitclaim
11 recorded February 24, 2017, Catipay has now transferred ownership to Prometheus
12 – as such, this property is now under the control of the receivership. It remains
13 subject, however, to a \$2.975 million Deed of Trust in favor of PCP, which was
14 consented to by Aldrich. We regard this Deed of Trust to be voidable as a
15 fraudulent transfer and will seek to have it removed and then sell the property with
16 net proceeds to the receivership. We will make every effort to achieve that through
17 a consensual arrangement with PCP, but it may require litigation.

18 2. Catipay

19 As detailed in the November Report, we have to date recovered \$262,000 of
20 the nearly \$3.2 million diverted by Catipay for personal draws or disbursements to
21 third parties. Given the long history of cash transactions, we continue to suspect
22 that Catipay may have substantial cash secreted away, but we have not located it.
23 We have taken his deposition at which he was uncooperative and untruthful as
24 detailed in the November Report. The pendency of commitment to a federal
25 penitentiary has not yet inspired Catipay to identify the location of any such funds.

26 We continue to review the viability of claims against third parties who
27 received substantial Prometheus funds from Catipay.

28 ///

1 3. Aldrich

2 In addition to the \$47,123 retainer we have recovered from Aldrich's
3 counsel, Aldrich has cooperated in the preparation and filing of an amended federal
4 tax return for 2014 to seek the refund of portions of the \$1,032,497 of Prometheus
5 investor funds used to pay his own personal federal income taxes based on a 2014
6 return that inflated his income by categorizing investor funds as income to him.
7 The IRS has not, however, yet made a determination on whether to issue the
8 requested refund.

9 **B. Clawback Claims**

10 Only six investors received any sort of return from Prometheus and only one
11 of those was an overall winner with a net profit of \$2,500. The other five had
12 "profits" on individual contracts of \$10,000 each, but in the aggregate, their
13 Prometheus investments were net losses. The one overall winner has already
14 returned his \$2,500 profit to the receivership.

15 We have identified 40 sales consultants who received commissions totaling
16 approximately \$1.1 million², plus PCP which was paid a commission of \$119,000
17 on its investment of \$1,190,000. We have formally submitted demands to each
18 that they return to the receivership all commissions paid to them. To date, we have
19 resolved 17 of those claims with net proceeds to the receivership of \$46,847. As to
20 the unresolved claims, we will file suit in this Court this month and will also
21 continue to pursue consensual settlements as the litigation proceeds.

22 **C. Case Portfolio**

23 Despite Aldrich and Catipay's squandering of investor funds for their own
24 personal use, there is a Case Portfolio of potential plaintiffs as to which the
25 receivership has a claim to a portion of fees (generally one-third) earned from
26

27 ² These commissions are concentrated in five sales consultants who
28 received an aggregate of \$780,000 in commissions. The two largest recipients are
\$320,000 and \$240,000.

1 successful cases. Fees paid to the receivership will be accumulated and ultimately
2 disbursed to investors, net of Court-approved expenses, after Court approval.

3 On September 2, 2016, Catipay assigned all his rights in the Joint
4 Representation Agreement with lead counsel Paglialunga & Harris (“P&H”) to the
5 Receiver. To date, the receivership has received payments totaling \$151,251.34
6 from P&H, representing the receivership’s share of fees from settlements in 13
7 cases to date (nine relating to an anti-diabetic medication and four relating to a
8 birth control device).

9 Lead counsel for the cases in the Case Portfolio have emphasized that it is
10 not possible to project with precision the “value” of the Portfolio or the fees that
11 may flow from the cases before they are tried or resolved. Nor is it possible to
12 provide any specific timeline as to when the cases may be resolved. Litigation is
13 inherently unpredictable and all cases are very fact and court specific. Beyond the
14 lack of precision, it is also not strategically wise for counsel to provide public
15 estimates of valuation which could adversely impact future trials or settlement
16 negotiations.

17 The Portfolio contains approximately 2,000 potential plaintiffs. It must be
18 stressed that 2,000 is the number of potential plaintiffs pre-screened by counsel to
19 date, but is not necessarily the number of cases that have actually been filed as
20 cases do not have to be filed until there is an imminent statute of limitations issue.
21 As favorable results are reached in trials or settlements in the filed cases, counsel
22 for the plaintiffs will work toward a global settlement involving all other plaintiffs
23 with provable injuries.

24 95% of the Portfolio are potential plaintiffs relating to a single drug
25 (Risperdal) manufactured by a large pharmaceutical company which has some
26 known side effects. Such a high concentration in one drug creates a possibility for
27 significant swings in the overall value of the portfolio. The ultimate value of these
28 cases will depend on multiple factors, including the age of the plaintiff, the

1 evidence of use and side effects, the years in which the drug was used, and the
2 applicable warning label used during those years. Settlements or trial results in
3 some cases will present valuation parameters for other cases. None of these cases
4 in the Portfolio have yet been settled or decided.

5 **D. Claims Against Third Parties**

6 We are evaluating the viability of potential malpractice claims against third
7 party professional service providers who provided services to Prometheus.

8 Dated: April 3, 2017

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

I hereby certify that on April 3, 2017, 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:

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Weslaco TX 78596

S/ Andrew W. Robertson
Andrew W. Robertson