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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 THIRD STATUS
REPORT AND ACCOUNTING**

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

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1 **RECEIVER'S THIRD STATUS REPORT**
2 **AND ACCOUNTING**

3 As the Court-appointed Receiver of Defendant PLCMGMT LLC, dba
4 Prometheus Law ("Prometheus"),¹ I submit this Third Status Report and
5 Accounting.

6 **I. Receivership Accounting**

7 The receivership bank account currently has a cash balance of \$507,227.25.
8 Attached as Exhibit A is the SEC Standardized Fund Accounting Report for the
9 receivership period from appointment on April 26, 2016 through August 29, 2017.
10 That reports indicates receipts of \$772,212, less disbursements of \$264,984.75 and
11 net cash of \$507,227.25.

12 **II. Procedures for Claims and Interim Distributions**

13 The ultimate mission of the receivership is to return funds to the defrauded
14 investors through a series of interim distributions. With the recent removal of the
15 \$2.9 million lien on the Flower Street Condo (*see* pages 2-3 *infra*), we can now
16 proceed to market and sell that property. We anticipate that the funds from such a
17 sale, combined with current assets, will generate enough funds to commence
18 interim distributions. We will, therefore, soon file a motion for the approval of
19 procedures for the final determination of investor claims and interim distributions
20 by the Receiver.

21 The Receiver's investor database is based on our comprehensive review of
22 the internal records of Prometheus and on-going communications with investors.
23 In December 2016, we also launched a mass mailing to investors. That mailing
24 provided each investor a report of what the receivership records indicate had been
25 invested in Prometheus. We asked any investor who disputed the reported amount

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28 ¹ I was appointed by the Court's Preliminary Injunction entered April 26, 2016 (ECF No. 20).

1 to contact us. The responses were sparse and any corrections were *de minimus*,
2 most commonly relating to details as to IRA accounts.

3 Through this process, we have confirmed the universe of investor victims to
4 be 251 (117 of whom invested through IRA accounts) with net losses of
5 \$11.7 million. These conclusions were reported in our Second Status Report (filed
6 April 3, 2017, ECF No. 80) and the \$11.7 million loss amount has been the basis
7 for the amount of disgorgement ordered, or to be ordered², against Catipay and
8 Aldrich in this case and their respective criminal cases.

9 **III. Receivership Assets**

10 We continue to pursue any available assets of Prometheus, Catipay, Aldrich,
11 and third parties who received Prometheus funds from any source. The most
12 promising “asset” still remains, however, the potential fee sharing revenue from
13 the Case Portfolio, although there have not yet been any settlements or verdicts in
14 the nearly 2,000 Risperdal cases in that portfolio, and we have no current
15 projections as to the timing or potential amount of any revenues.

16 **A. Business and Personal Assets**

17 **1. Prometheus – Flower Street Condo**

18 At inception of the receivership, other than the \$63 in one bank account, the
19 only hard asset held in the name of Prometheus was the office condominium on
20 Flower Street in Los Angeles (“Flower Street Condo”), purchased with Prometheus
21 funds (\$1,072,103) in June 2014. That property was, however, ensnared by the
22 tangled web of deceit between Catipay and Aldrich. Although the funds came
23 from Prometheus, title was taken in the name of Aldrich’s separate PLCMGMT
24 LLC entity in the state of Washington. To settle the subsequent lawsuit by Catipay
25 and Prometheus, Aldrich agreed to quitclaim the property to Prometheus, but
26

27 ² The SEC has submitted a Proposed Final Judgement as to Catipay which
28 sets the amount of disgorgement as to him at \$11,738,168 (filed August 15, 2017,
ECF No. 97-3).

1 instead he quitclaimed it to Catipay personally and he neglected to disclose the
2 \$2.9 million Deed of Trust he had placed on the property in favor of Prometheus
3 Capital Partners (“PCP”), a Denver investment fund which is one of the largest
4 investors in Prometheus.

5 We have now cleared up these title and encumbrance issues. In February
6 2017, we secured Catipay’s Quitclaim Deed to Prometheus, thus putting the
7 property under the control of the receivership. On August 22, 2017, PCP recorded
8 a Full Reconveyance of the \$2.9 million Deed of Trust as agreed upon in the
9 settlement of the lawsuit we had filed against PCP on June 30, 2017. *See* page 5
10 *infra*. As such, the receivership now has clear title to the Flower Street Condo free
11 of any debt. We are in the process of listing the property for sale.

12 2. Catipay

13 Neither the threat of incarceration nor the commencement of his 24-month
14 prison sentence has inspired Catipay to identify the location of any additional cash
15 funds beyond the \$262,000 collected to date. Nor did more than 20 hours of
16 deposition taken in November and December 2016. While we suspect that Catipay
17 may have cash secreted away, we have not located it. Based on our forensic
18 investigation and the lengthy deposition of Catipay, we have, however, identified
19 clawback claims against third parties to whom Catipay disbursed substantial
20 Prometheus funds. *See* pages 5-6 *infra*.

21 3. Aldrich

22 In addition to the \$52,476.38 retainers we have recovered from Aldrich’s
23 counsel, we have sought to recover \$1,032,497 of Prometheus investor funds
24 Aldrich used to pay his own personal federal income taxes based on inflated
25 income numbers. Aldrich has cooperated in the filing of an amended tax return
26 and request for refund. To our knowledge, the IRS has not yet made a
27 determination on whether to issue the requested refund.

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1 The Final Judgment against Aldrich (ECF No. 70) does include an award of
2 \$3.6 million, but Aldrich has made no payments toward satisfaction of that
3 judgment. That judgment is in favor of the SEC and any funds collected would,
4 therefore, initially go to the SEC, although we anticipate that the SEC would make
5 them available for restitution to investors.

6 **B. Clawback Claims**

7 The receivership has filed three clawback lawsuits in the receivership court:

8 1. Sales Agents

9 We ultimately identified a universe of 39 sales agents³ who received
10 commissions from Prometheus of approximately \$1.1 million. In addition, PCP
11 received a \$119,000 commission on its investment of \$1,190,000.

12 At the outset, our goal was to resolve as many of these claims as possible
13 through pre-litigation settlement, deferring the filing of suit until those efforts were
14 exhausted. In the follow up to our initial demand letters sent in October 2016, we
15 reached settlements as to 20 agents and we learned that one agent was deceased
16 and one had filed bankruptcy. As to the 17 remaining, we were forced to file suit
17 in the receivership court on April 14, 2017 (*McNamara v. Allen, et al.*, (C.D. Cal.)
18 Case No. Case No. 2:17-cv-02858-TJH). We have since completed settlements
19 with six of those defendants.

20 The \$119,000 commission claim against PCP was included with other
21 claims against PCP in a separate lawsuit we filed against PCP on June 30, 2017.
22 That lawsuit was settled swiftly with PCP agreeing, among other things, to return
23 the full \$119,000. *See page 5 infra.*

24 The aggregate dollar amount of the sales agent cases settled to date (before
25 and after filing suit) is \$316,814 (\$275,572 of which has been paid, \$41,242 to be
26 paid over time). The PCP settlement of \$119,000 increases that total to \$435,000

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28 ³ Three sales agents also operated through LLCs, but we do not count these entities as additional agents.

1 which represents a cost-effective recovery of more than 78% from the settling
2 parties.

3 The universe of sales agent claims has now narrowed to the eleven agents
4 (with aggregate commissions of \$647,796) who are still defendants in the lawsuit.
5 The agent with the most commissions (\$320,250) has, however, filed for Chapter
6 13 bankruptcy in Houston⁴ and another agent (commissions of \$73,458) resides in
7 Mexico. We will continue to pursue these cases with an elevated focus on the
8 cost/benefit of litigation costs and will also continue to pursue settlements.

9 2. Prometheus Capital Partners

10 From the outset of the receivership, PCP's \$2.9 million lien on the Flower
11 Street Condo was a material obstacle as it more than consumed any potential
12 equity in the property. PCP was also a commission clawback target for the
13 \$119,000 it received from Prometheus, but PCP invoked the terms of its funding
14 agreement with Catipay to argue that it was not a commission, but pre-paid
15 interest.

16 Given PCP's intransigence, we developed a complex clawback claim for
17 rescission and cancellation of the \$2.9 million Deed of Trust and return of the
18 \$119,000. When negotiations for settlement failed, we filed suit in the receivership
19 court on June 30, 2017 (*McNamara v. Prometheus Capital Partners, LLC*, (C.D.
20 Cal.) Case No. 2:17-cv-04821-TJH). Shortly thereafter, PCP agreed to a
21 settlement whereby PCP would immediately cancel the Deed of Trust and return
22 the full \$119,000 over time.

23 3. Catipay's Friends and Family

24 On June 12, 2017, we filed a third lawsuit in the receivership court, this one
25 against friends and family of James Catipay (*McNamara v. Catipay, et al.*, (C.D.
26 Cal.) Case No. 2:17-cv-04347-TJH). The defendants are Catipay's parents, sister,

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28 ⁴ We intend to file an adversary action in this bankruptcy based on the claim
that a judgment or debt based on fraud and/or an intentional securities violation
cannot be discharged in bankruptcy.

1 brother, ex-wife, and former girlfriend who received approximately \$1.3 million of
2 Prometheus funds from Catipay. This case is in the very early stages. Five of the
3 six defendants have been served to date.

4 We also continue to investigate potential other clawback claims.

5 **C. Case Portfolio**

6 One of the most fundamental frauds of the Prometheus business was that
7 Defendants mischaracterized and overvalued the portfolio of cases that had been
8 identified or would be identified in the future. There is a Case Portfolio which is
9 being managed by lead counsel of approximately 2,000 potential cases (95% of
10 which are related to the drug Risperdal) as to which the receivership has a claim to
11 a portion of any fees paid to lead counsel on successful cases. But, it is important
12 to recognize that the likelihood of success and the range of potential damages on
13 each case will depend on the specific facts of each. These cases cannot be fully
14 evaluated until all the evidence and medical records are assembled. Some
15 investors have even reported to us that they had the impression that the drug
16 companies had already paid, or committed to pay, millions of dollars into a fund
17 that just needed to be split up between the plaintiffs in the portfolio. There were no
18 such funds.

19 If cases are settled or resolved in favor of the plaintiffs, the receivership is
20 entitled to receive a portion (generally 1/3) of the 40% contingency fees paid to
21 lead counsel. For example, if a case settled for \$100,000, the funds would be
22 disbursed roughly as follows with some variations due to court fees and costs: the
23 injured plaintiff would receive \$60,000; lead counsel would receive \$40,000; and
24 lead counsel would remit to the receivership 1/3 of the fees paid to them, which in
25 this example would be \$13,333 (1/3 of \$40,000). For the receivership to achieve a
26 full return of the \$11.7 million invested, the gross recovery from the cases would
27 have to exceed \$90 million.

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1 Lead counsel for the cases in the Case Portfolio have emphasized that it is
2 not possible to project the “value” of the portfolio or the fees that may flow from it
3 or to provide any specific timeline as to when cases may be resolved. Litigation is
4 inherently unpredictable and all cases are very fact and court specific. Beyond the
5 lack of precision, it is also not strategically wise for counsel to provide public
6 estimates of valuation which could adversely impact future trials or settlement
7 negotiations.

8 There have been liability findings, damages awards, and settlements in
9 Risperdal cases in various jurisdictions, but none yet in the Case Portfolio. While
10 such verdicts and settlements provide an indication of the drug company’s
11 potential liability, they do not necessarily translate directly to different cases with
12 different plaintiffs in different court jurisdictions. Lead counsel have cautioned
13 that Risperdal cases have their own specific universe of variables, including: the
14 age of the plaintiff; the disclosures and warnings in effect during the time of usage;
15 whether the drug used was a generic or brand name Risperdal; the availability of
16 complete medical records to confirm usage and injury; the level of cooperation
17 from the plaintiff; the strategy and tactics of defense counsel; and the applicability
18 of legal defenses.

19 Through August 29, 2017, the receivership has received payments totaling
20 \$179,470.10 from lead counsel, representing the receivership’s share of fees from
21 settlements in 16 cases to date (ten relating to an anti-diabetic medication and six
22 relating to a birth control device).

23 Dated: August 29, 2017

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25 By: /s/ Thomas W. McNamara
26 Thomas W. McNamara
27 Receiver
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CERTIFICATE OF SERVICE

I hereby certify that on August 29, 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:

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

Santiago Cuellar
1709 Christian Court
Weslaco, TX 78596

/s/ Andrew W. Robertson
Andrew W. Robertson