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11 *Attorneys for Receiver*

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 SECURITIES AND EXCHANGE
COMMISSION,

15 Plaintiff,

16 v.

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

19 Defendants.
20

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

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

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

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1 **III. Receivership Assets**

2 **A. Flower Street Condo in Los Angeles**

3 We provided full details of the tangled history of this property (bought in
4 2015 with Prometheus funds) in the Third Status Report filed August 29, 2017
5 (ECF No. 99 at pages 2-3)

6 After clearing up the title and encumbrance issues, including removal of
7 \$2.9 million Deed of Trust held by Prometheus Capital Partners (“PCP”), and
8 making necessary repairs, we offered the property for sale. We identified a buyer
9 and secured the court’s approval to the terms of sale (Order entered November 13,
10 2017 (ECF No. 105)) At closing, net proceeds of \$968,993 were delivered to the
11 receivership.

12 **B. Clawback Claims**

13 1. Sales Agents

14 To date, clawback claims against Prometheus sales agents have contributed
15 \$310,439 to the receivership with another \$20,975 to be paid over time.
16 Settlement of the separate clawback action against PCP, described below, includes
17 return of its \$119,000 commission over time

18 The clawback lawsuit against the 20 sales agents with whom we could not
19 settle pre-litigation² is near conclusion. Eleven defendants settled, one was
20 dismissed for improper venue, and the eight others defaulted, as to whom the
21 Receiver will seek formal Default Judgments. One of the defaulting defendants,
22 (commissions of \$320,250) filed for bankruptcy in Houston, Texas after service of
23 the Complaint. We retained bankruptcy counsel in Texas and they were
24 instrumental in having the bankruptcy petition dismissed. Other defaulting
25 defendants include one agent (commissions of \$73,458) who resides in Mexico,
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28 ² *McNamara v. Allen, et al.*, (C.D. Cal.) Case No. 2:17-cv-02858-TJH (FFMx).

1 and two agents (aggregate commissions of \$108,000) who have threatened to file
2 bankruptcy.

3 2. Prometheus Capital Partners

4 By the settlement agreement dated August 18, 2017, we settled the lawsuit
5 filed against PCP³ which included cancellation of the \$2.9 million Deed of Trust
6 on the Flower Street Condo. This agreement cleared the way for the Receiver's
7 sale of the Flower Street Condo, noted above.

8 3. Catipay's Family and Friends

9 The third clawback lawsuit,⁴ filed June 12, 2017, seeks recovery of
10 approximately \$1.3 million disbursed to Catipay's family and friends (parents,
11 sister, brother, ex-wife, and former girlfriend). Pursuit of these claims is
12 problematic – we reached a modest settlement with Catipay's sister (\$21,112 to be
13 paid over time), but Catipay's parents and ex-wife have filed for bankruptcy in Los
14 Angeles County and his brother has defaulted. His former girlfriend filed an
15 answer to the Complaint, but has otherwise ignored all court-directed obligations
16 and failed to participate in the case. Most recently, she failed to oppose the
17 Receiver's Motion for Summary Judgment. We have retained bankruptcy counsel
18 to preserve the Receiver's claims in these bankruptcy cases.

19 **C. Case Portfolio**

20 The primary potential asset of the receivership remains the case portfolio of
21 mass tort cases generated by Prometheus-funded marketing. But, there is limited
22 certainty or predictability as to the ultimate value of that portfolio. The only real
23 certainty is that the portfolio is not what Prometheus portrayed it to be:

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26 ³ *McNamara v. Prometheus Capital Partners, LLC*, (C.D. Cal.) Case No.
27 2:17-cv-04821-TJH (FFMx).

28 ⁴ *McNamara v. Catipay, et al.*, (C.D. Cal.) Case No. 2:17-cv-04347-TJH
(FFMx).

- 1 • Although presenting itself as a “litigation marketing company,”
2 Prometheus spent only 27% of the funds raised from investors on actual
3 marketing. Not all of that marketing was productive or cost-efficient.
4 The end result is the current portfolio of 2,278 cases, dominated by
5 Risperdal (97% of total).
- 6 • Prometheus claimed that its cases would be pre-settled and covered by a
7 mass tort settlement – hence, the only risk was when, not whether the
8 portfolio would pay off. But, less than 3% of the Prometheus cases
9 involve drugs subject to mass tort settlements. The other cases, primarily
10 Risperdal, were not pre-settled and have not settled yet. Even mass tort
11 settlements include some level of risk on recovery amount because the
12 settlement fund will be allocated to plaintiffs based on their specific facts.
- 13 • As is common in mass tort litigation, not all cases in the portfolio have
14 been filed in court – many reflect plaintiffs whose cases may be filed in
15 the future and/or included in a future mass tort settlement. The value of a
16 specific case, filed or unfiled, will vary by its own specific facts and the
17 applicable law.
- 18 • Prometheus/Catipay, and now the receivership, has an interest in the
19 portfolio, but that interest is limited to 33 1/3% of net fees paid to lead
20 counsel in successful cases. Under this formula, the Prometheus portfolio
21 must generate more than \$90 million in settlements to cover net investor
22 losses of \$11.7 million. To date, the receivership has received \$185,043
23 as its fee share on settlements of 18 non-Risperdal cases.

24 Marketing and Case Acquisition

25 The Prometheus Due Diligence packet submitted to investors described its
26 management team as litigation marketing experts, even extolling David Aldrich’s
27 “surgeon-like skill to market, screen, and qualify plaintiffs in extremely large
28 numbers.” In reality, neither Aldrich or Catipay were experienced or experts.

1 Even before this case was filed, Aldrich had confirmed as much in his SEC
2 investigative deposition where he acknowledged his mistakes and inexperience.⁵
3 Indeed, lead generation and case acquisition improved when Aldrich demoted
4 himself and delegated marketing management to Justice Roundtable (“JRT”) in
5 mid-April, 2014, as described below.

6 Aldrich’s very first marketing placement brought little benefit to
7 Prometheus. He placed \$113,000⁶ with a single lead generation vendor in the Fall,
8 2013 with vetted leads referred to attorney McDonald Worley in Houston, Texas.
9 By June, 2014, however, Prometheus had only a “fee interest” in six active cases (a
10 flat \$7,500 per case, \$45,000 total) which it sold at the discounted price of \$16,000
11 in order to fund payments to two investors.⁷

12 After James Catipay joined the business as “associate counsel” in
13 November, 2013, Aldrich still drove the marketing with leads now referred to law
14 firm Paglialunga & Harris (“P&H”), in particular partner James Harris, as “lead
15 counsel.” From November, 2013 through mid-April 2014, Aldrich engineered the
16 disbursement of approximately \$700,000 to various third party vendors.⁸

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19 ⁵ Deposition of David Aldrich, February 22, 2016. In recalling his
20 performance prior to the April, 2014 decision to switch marketing to Jim
21 Harris/JRT, Aldrich cited his “limited experience” that gave him the “impression
22 that a retained plaintiff was going to make a settlement” (page 122), that he “got
burned to the tune of \$175,000” by two vendors who were re-selling his leads
(page 114), and that he was “really losing a lot in the beginning” because even
after retainers were secured, there was a “high wash-out” after medical records
were pulled (page 112).

23 ⁶ This expenditure preceded Catipay’s involvement and was derived from
24 the initial group of investors (\$158,000 invested June-November, 2013).

25 ⁷ In an effort to avoid any issues on fee splitting, Worley initially executed
26 promissory notes payable to an investor when a case settled. These notes were later
“re-documented” with Catipay/Prometheus as the referral attorney entitled to a flat
fee of \$7,500 per case from the contingency fee paid upon resolution of the case.

27 ⁸ One of those vendors was P&H, which also had expertise in case
28 acquisition sometimes delivered via its marketing affiliate JRT. “Net”
disbursements to P&H for marketing during this period were \$134,000, which it
expended on media and internet advertising. The gross disbursement was

1 By mid-April, 2014, the pace of portfolio building was disappointing at best.
2 In acknowledgement of these results and Harris' relative expertise, Aldrich
3 designated Harris/JRT to manage marketing going forward. From April 17, 2014
4 through December 18, 2014, JRT was provided \$2,391,000⁹ of Prometheus funds
5 which it then placed in marketing campaigns. The Receiver has requested an
6 accounting from P&H/JRT on their expenditures of these funds. They have been
7 cooperative, but the process has been protracted. We project completion by March
8 15, 2018.

9 In January, 2015, Prometheus made one final marketing disbursement with
10 no return benefit to date – \$100,000 was disbursed to a new vendor (Flood Law
11 Group) for a new campaign (SSRI) with a new referral attorney (The Hood Law
12 Firm). This appeared to be a “test,” unknowingly funded by Prometheus investors,
13 to evaluate potential new partners for a future venture – that test did generate 17
14 leads, but only three proved to be qualified plaintiffs and none of those three have
15 settled or been resolved to date.

16 Portfolio Composition and Status

17 Despite the limited allocation of funds to, and the uneven quality of, its
18 marketing, Prometheus did ultimately assemble a case portfolio which is now
19 managed by P&H as lead counsel. The current portfolio contains 2,278 cases
20 relating to 11 different drugs.

21 56 cases relate to six drugs now covered by mass tort settlements.¹⁰ The
22 receivership has now received \$185,043 as its fee share on settlement payments

23 _____
24 \$259,000, but P&H transferred \$125,000 to JRT on April 17, 2014 after Aldrich
25 designated JRT to manage marketing.

26 ⁹ \$2.266m was disbursed directly from Prometheus, the other \$125,000 was
transferred from P&H.

27 ¹⁰ These 56 cases involve Nuvaring (birth control device, four cases); TVM
28 (mesh for treatment of pelvic organ prolapse in women, 23 cases), Actos (oral
diabetes medicine, 20 cases), Yaz (birth control device; three cases), Topomax
(antipsychotic; one case), Tylenol (two cases), and Pradaxa (blood thinner, three

1 made on 18 of those cases. The remaining 38 cases are subject to settlement
2 processing which, when completed, will generate more fees to the receivership.

3 The remainder of the portfolio is dominated by 2,204 Risperdal cases,¹¹ an
4 antipsychotic alleged to cause male breast growth. None of these cases have been
5 settled or resolved to date. Lead counsel has consistently advised that projections
6 as to value and timeline are difficult and that he is limited by ethical rules on what
7 he can report to the Receiver or investors on individual cases. His attorney-client
8 relationship is with each plaintiff, not the Receiver or investors, and he must
9 protect privileged or confidential information. Lead counsel has, however,
10 provided general status information which is reported below.

11 The filed Risperdal cases¹² have been consolidated with thousands of other
12 Risperdal cases in L.A. County Superior Court assigned to a single judge. That
13 judge has made no rulings in our cases, but has made rulings in other cases, mostly
14 adverse to plaintiffs.¹³ There have been verdicts, some substantial, in favor of
15 Risperdal plaintiffs in other jurisdictions – such results do provide an indication of
16 the drug company’s potential liability, but are not directly binding on other cases
17 which will depend on their own facts.

18 ///

19

20 cases). Settlements have been processed in 18 of those cases (four Nuvaring; four
21 TVM; 10 Actos).

22 ¹¹ Other than the 56 mass tort settlement cases and the 2,204 Risperdal
23 cases, there are 18 other unsettled cases: SSRI (antidepressants prescribed to
pregnant women leading to birth defects, 15 cases); IUD (birth control device, two
cases); and Xarelto (blood thinner, one case).

24 ¹² As is common in mass tort litigation, not all cases in a portfolio are filed
25 cases, but they may be filed later and/or included in a future mass tort settlement.

26 ¹³ One Risperdal case went to trial in late 2017, resulting in a defense
27 verdict; the judge selected five Risperdal cases to be prepared for trial, but then
28 granted motions for summary judgment filed by all five of them; the judge
dismissed some Risperdal cases on the ground of federal pre-emption that federal
law governed and hence the case could not be brought in state court, but that ruling
has been appealed to the California Court of Appeal.

CERTIFICATE OF SERVICE

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I hereby certify that on February 26, 2018, 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
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Los Angeles, CA 90015

Santiago Cuellar
1709 Christian Court
Weslaco, TX 78596

/s/ Andrew W. Robertson
Andrew W. Robertson