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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'S FINAL REPORT AND APPLICATION FOR APPROVAL OF FINAL FEE APPLICATION

Judge: Hon. Terry J. Hatter, Jr.
Ctrm.: 9B
Date: UNDER SUBMISSION
Time: UNDER SUBMISSION

Thomas W. McNamara ("Receiver"), by and through his undersigned counsel, hereby submits his Final Report and Final Fee Application for fees and expenses of the Receiver and counsel for six-year period of August 1, 2018 through November 30, 2024.

A settlement in principle has been reached between the Receiver on behalf of PLCMGMT LLC, dba Prometheus Law ("Prometheus") and the Securities and Exchange Commission ("Commission") in which the disgorgement sought against Prometheus is deemed satisfied by the amounts collected and distributed by the Receiver to investors. However, in order to present such a settlement to this Court, the staff for the Commission must present the proposal to the five-member Commission for approval and ratification. The staff expects this process to be completed within 30 to 45 days at which point the staff will file a consent and [proposed] final judgment as to Prometheus. If the Court approves the settlement and enters this final judgment, the Receiver will promptly seek an Order of Discharge.

INTRODUCTION

The Receiver respectfully files this Final Report and Final Fee Application for payment of the Receiver ($53,418.42), counsel ($67,269.58), and accountants ($44,710.54) for the last six years, and request for a reserve ($10,000.00), and will thereafter proceed to make a third (and final) investor distribution of $361,058.50.

This receivership has spanned more than eight years, during which time the Receiver diligently pursued a recovery for the defrauded Prometheus investors. As reflected in the many status reports filed by the Receiver with the Court, the most significant remaining asset held by the Receivership Estate has been its interest in the attorneys' fees generated from a mass tort case portfolio, the cases for which were sourced with Prometheus investors' funds. Paglialunga & Harris, the law firm handling the mass tort cases, recently forwarded a final distribution to the

receivership. Thus, the remaining underlying mass torts cases have at last been resolved. With the last payment in hand, the receivership may now be concluded.

If the Final Report and Fee Application are approved as submitted, a total of $361,058.50 will be distributed to investors.[1] Almost all of this amount was derived from receivership team efforts, since there was only $87 in the Defendants' business accounts at the time of appointment.

Despite those efforts, however, the investors' recoveries are only a fraction of their losses. This unfortunate reality is the result of a number of factors, most notably Defendants' blatant misuse of investors' funds for their own frolics and expenses before the imposition of the receivership. To the extent Defendants used investor funds for "legitimate" business through its legal marketing program, time has shown they were peddling little more than snake oil. Contrary to Defendants' claims to investors that they were investing in settled mass tort claims, the underlying lawsuits were indeed contested, and, as a result, reaching resolutions was a long time in coming. And, importantly, the largest tranche of cases sourced by Defendants, involving the drug Risperdal, turned out to be dramatically less valuable than projected, resulting in relatively little recovery for the receivership estate.

The events of the receivership are detailed below.

FINAL REPORT

The SEC filed suit against Defendants on April 15, 2016, alleging violations of the antifraud provisions of Section 17(a) of the Securities Act, 15 U.S.C. § 77q, and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, as well as violations of Section 5 of the Securities Act, 15 U.S.C. § 77f (for the sale of unregistered securities) and Section 15(a) of the Exchange Act,

[1] *See* Order entered June 20, 2018 which authorized the Receiver to make the first interim distribution to investors and "further authorized [the Receiver] to make pro rata distributions in the future which shall be in the amounts and at such times as the Receiver deems appropriate." ECF No. 114.

15 U.S.C. § 78(o) (for acting as an unregistered broker-dealer). The SEC's claims against Defendants PLCMGMT LLC, dba Prometheus Law ("Prometheus"), James Catipay ("Catipay"), and David Aldrich ("Aldrich") were based on misrepresentations they made to investors and their misuse of investor funds. One week after the case was initiated, Defendants Prometheus and Catipay stipulated to the entry of a Preliminary Injunction Order ("PI," ECF No. 20) that provided for the appointment of Thomas W. McNamara as the permanent Receiver over Defendant Prometheus.

The Receiver was given a number of duties in this PI, including: (1) taking custody and control of Prometheus' assets and documents, PI § VIII.A; (2) conducting investigations necessary to locate and account for assets belonging to Prometheus, PI § VIII.D; (3) preserving Prometheus's assets, PI § VIII.E; (4) making an accounting to the Court and the SEC of Prometheus's assets and financial condition, PI § VIII.G; (5) investigating and pursuing claims and causes of action belonging to Prometheus, PI § VIII.I; and (6) instituting or appearing in suits to pursue such claims, when appropriate, PI § VIII.J.

As described in greater detail below, and consistent with his duties, the Receiver performed the following tasks: securing the site Defendants used for their business; preparing an accounting of Prometheus's finances for the Court; and identifying, pursuing, recovering, and monetizing assets belonging to Prometheus, including real property, cash, returns stemming from Prometheus's mass tort case portfolio, and litigation judgments or settlements. At the conclusion of the case, if this application is approved, the Receiver will have made three distributions to the defrauded investors. The majority of these tasks were accomplished before 2019, but the case remained open until the settlement of the remaining claims in the mass tort portfolio, which has occurred now.

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I. Institution of the Action and Appointment of the Receiver

The SEC filed its Complaint (ECF No. 1) in April 2016. In that Complaint, it alleged that Defendants' business model revolved around convincing individuals (many of whom were retirees) to invest in their highly risky "legal marketing" program. That program would – in theory – use these investor funds to locate potential plaintiffs for mass tort litigation regarding prescription drugs or medical devices. The mass tort plaintiffs would then be referred to a contingency-fee attorney, who would litigate the claims, with proceeds from the mass tort actions to be used to pay the investors' returns. Defendants guaranteed returns of between 100% and 300%.

Contrary to what Defendants told the investors, their legal marketing program was a highly speculative and risky venture – and that was assuming the funds were put to their intended use. In actuality, Defendants diverted the majority of investor funds for their own use. Instead of putting the investors' funds into the program, Catipay and Aldrich spent millions of dollars on personal items, including a million-dollar loft in downtown Los Angeles and Aldrich's personal income taxes. When investor returns began coming due, Defendants used new investors' funds to make payments to pay the old investors. In short, Defendants' legal marketing program quickly became a Ponzi scheme.[2]

One week after the filing of the Complaint, Defendants Prometheus and Catipay stipulated to the entry of the Preliminary Injunction that provided for the appointment of a permanent receiver over Prometheus. *See* ECF Nos. 16, 20. Shortly thereafter, on April 26, 2016, Aldrich stipulated to an order freezing assets (ECF Nos. 17, 24), which was amended on May 9, 2016 (ECF No. 29).

[2] Both of the individual Defendants pled guilty in parallel criminal actions and were sentenced to jail time and monetary relief. *See United States v. James Catipay*, Case No. 3:16-cr-02453-JAH (S.D. Cal.) ("Catipay Dkt."), ECF Nos. 56, 13, 26-27; *United States v. David Aldrich*, Case No. 3:16-cr-02688-JAH (S.D Cal.) ("Aldrich Dkt."), ECF Nos. 9-10, 12, 19, 21.

II. The Receiver's Initial Investigation

The PI directed the Receiver to take control of Prometheus's assets (PI § VIII.A), to conduct an investigation to locate additional assets (PI § VIII.D), to make an accounting to the Court (PI § VIII.G), and to pursue claims, which might belong to Prometheus (PI §§ VIII.I, VIII.J), among other things. In line with these directives, the Receiver's first actions upon his appointment were to take control of, preserve, and evaluate Prometheus's assets.

A. Taking Control of the Business Premises

As directed and authorized by Section VIII(A) of the Preliminary Injunction, the Receiver took possession of the Prometheus office located at 1130 South Flower Street, #401, Los Angeles, California (the "Flower Street Condo") on April 27, 2016. This "office" was a work loft condominium of approximately 2,118 square feet, which had been configured to have one bedroom and an office environment comprised of six workstations with computers and telephones. The Receiver's team secured all hard copy documents and electronic data onsite before transporting the files to their office, where they could be reviewed in order to reconstruct Defendants' operational and financial picture and identify assets and third-party claims.

B. Sale of LA Auto, LLC

Before the Receiver could make an accounting to the Court based on those records, however, he was forced to file an *ex parte* application to protect the receivership's right to assets belonging to Prometheus. The asset in question was a business – LA Auto, LLC ("LA Auto") – which was purchased with roughly $300,000 of Prometheus's funds. *See* ECF No. 51. At the time of the Receiver's appointment, LA Auto was under the nominal ownership of Catipay's ex-wife, non-party Beverly Palacio ("Palacio"). In spite of this paper ownership, the

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Receiver's investigation quickly led to the conclusion that LA Auto was an asset of the Receivership Estate and not Palacio's.[3]

While initially cooperative,[4] Palacio balked at handing the business over to the Receiver. Without the Receiver's knowledge, Palacio arranged for LA Auto's sale and the surrender of its lease to the business's landlord for $100,000, a price which the Receiver later determined to be reasonable given the distressed nature of the asset. *See* ECF No. 51 at 4. Though it was Palacio herself who arranged the sale, she refused to sign off on it once she realized the Receiver would be able to claim the proceeds. Palacio's refusal to cooperate forced the Receiver to move for relief *ex parte* in order to comply with the timetable set by LA Auto's buyer, whose offer was subject to time constraints. *See id.* at 3-4.

The sale was not an insignificant undertaking, particularly when accounting for Palacio's refusal to cooperate. The Receiver obtained an independent valuation of the assets (to confirm their sale was in the best interests of the Receivership Estate), conducted a forensic accounting necessary to confirm that the Estate was, in fact, entitled to the funds (*see* footnote 1, *supra*), and then filed the *ex parte* application. The Receiver's efforts were fruitful in the end, however, as the Court issued an order before the deadline, which allowed the sale to proceed. *See* ECF No. 52.[5]

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[3] The Receiver had ample evidence that in reality, LA Auto was an asset purchased with funds derived from the Prometheus program and thus belonged to the Receivership Estate. When LA Auto was incorporated in 2015, Palacio and Catipay split ownership 50/50. After the SEC issued subpoenas to the Defendants, including James Catipay, Catipay transferred his 50% ownership interest to Palacio. *See* ECF No. 51, MPA at 1. The Receiver's forensic accountant determined that the funding for LA Auto's purchase of the lease, leasehold improvements, and business operations came from Prometheus. *See id.* at 1-2.

[4] Palacio turned over a little under $100,000 in cash to the Receiver voluntarily, though it should be noted that she later tried (unsuccessfully) to get back the bulk of these funds. *See* ECF No. 61.

[5] As permitted by the Court's order, on July 27, 2016, Palacio filed a declaration objecting to the Court's decision and requesting that 75% of the proceeds from the sale (*i.e.*, $75,000) be turned over to her. *See* ECF No. 61.

C. Initial Accounting and Evaluation of Assets

The PI directed the Receiver, among other things, "to make an accounting, as soon as practicable, to this Court and the SEC of the Assets and financial condition of Defendant Prometheus, and that of its subsidiaries and affiliates." *See* PI § VIII.G. As soon as he was appointed, and in compliance with these duties, the Receiver thus proceeded to assess the scope of the business and identify potential assets.

At the time the asset freeze order was entered, only $87 remained in the Prometheus accounts, out of the roughly $12,000,000 which investors put into the business. *See* ECF No. 71 at 2. One of the Receiver's first tasks was thus to determine where the investor funds had gone and whether there was any chance of recovering them. This task was made more difficult by Catipay's propensity to hold cash, as opposed to keeping a balance in an account. (Funds were slightly easier to trace from Aldrich's accounts.) Nonetheless, the Receiver's forensic accountant was able to do some basic tracing, the full report of which is available at ECF No. 71-1.

Aldrich and Catipay owned separate companies bearing the name PLCMGMT LLC, dba Prometheus Law, with the only difference being that Aldrich's company was incorporated in Washington (referred to herein as PLC-WA) and Catipay's company was incorporated in California (referred to herein as PLC-CA).[6] Aldrich/PLC-WA collected a total of $7,891,615 in investor funds, either directly or indirectly. Of that figure, a total of $4,341,608 went to "business" expenses (primarily items classified as media marketing or lead

[6] While Aldrich was named as a defendant in this action, PLC-WA was not, and PLC-WA is not subject to the receivership (though the receivership would still be entitled to recover any of its funds which were transferred to PLC-WA, of course). The entities' ownership is simplified for purposes of discussion. Prometheus was incorporated in California with ownership initially shared by Catipay (55%) and Aldrich (45%), but by February 2015 it was owned 100% by Catipay.

generation), while Aldrich utilized the remaining funds of $3,550,007 as personal compensation and draws. This latter amount included the $1,072,103 used to purchase the Flower Street condominium in Los Angeles and the $1,032,497, which Aldrich used to pay his 2014 tax bill.

With respect to Catipay, the picture (and results) were more muddied. Of the $5,704,156 collected by Catipay/PLC-CA, a total of $2,293,156 went to "business" expenses, primarily the payment of commissions to consultants. Catipay spent the remaining $3,411,000 on personal expenses, most notably in transfers to his ex-wife, Palacio ($821,828), and his ex-girlfriend, Yingjie Mao ($303,919). The remaining $1,402,642 was withdrawn as cash over time. When asked where this cash had gone, Catipay would only say he "blew it."[7] *See* ECF No. 71 at 4-5.

Despite Catipay's general unwillingness to cooperate, at the time he filed his initial report, the Receiver had been able to recover a small portion ($262,000) of the missing or diverted cash. This included the following amounts:

- $7,800 in cash recovered from Catipay;
- $2,150 in cash recovered from Palacio;
- $114,068.90 derived from the sale of high-end vehicles registered to Palacio (Toyota FJ Cruiser, Nissan GT-R, and Ferrari);
- $100,000 derived from the "sale" of LA Auto (discussed above);
- $1,961.75 derived from the sale of three loaner vehicles owned by LA Auto; and
- $1,126.84 in cash from the accounts of LA Auto.

See ECF No. 71 at 10.

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[7] Though the Receiver has long suspected that Catipay retained some of this cash and was hiding it from authorities, the location of that cash (assuming it exists) remains unknown to this day.

This still left the vast majority of Prometheus's assets unaccounted for, however, and it was not long before the Receiver then turned to identifying other assets, which might belong to the Receivership Estate. Initially, the Receiver was able to identify two potential assets of significance: the Flower Street Condo; and the portfolio of cases sourced by Prometheus as part of its legal marketing program. (The Receiver's efforts to liquidate these assets are discussed in detail below at Section III.A and B.)

D. Identification and Notification of Investors

The Receiver was able to identify a total of 251 individual investors in Prometheus. One of the Receiver's first actions was to notify the Prometheus investors of the instant action. To that end, on May 3, 2016, the Receiver's staff sent the following email to the investors:

> Re: Prometheus Law Placed in Receivership
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> According to records of Prometheus Law, you are an investor in Prometheus' litigation marketing vehicles. As you may know, the Securities and Exchange Commission (SEC) has sued Prometheus in federal court in Los Angeles and the court has appointed a receiver over Prometheus. The receiver has suspended all operations and is conducting a detailed review of operations, which will take several weeks. Once that review is completed, we will communicate further. In the meantime, we will not be in a position to answer individual investor questions. You can learn more and access the SEC pleadings and Orders entered against PLCMGMT LLC, dba Prometheus Law at http://regulatoryresolutions.com/cases.
>
> We will provide an update as soon as possible.
>
> Office of the Receiver.

Hard copy letters with the same language were sent out to investors for whom no email address was listed.

Since then, the Receiver has periodically updated the Regulatory Resolutions website to inform investors as developments in the case have occurred. Though inquiries have dwindled over the years, the Receiver's office has answered

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(and remains available to answer) hundreds of investors' questions by email and/or phone.

III. Asset Preservation and Recovery

After conducting a preliminary investigation and assessment of Defendants' assets, the Receiver turned to longer-term tasks. One of the Receiver's primary duties under the PI was "to conduct such investigation and discovery as may be necessary to locate and account for all of the Assets of or managed by Defendant Prometheus, and that of its subsidiaries and affiliates." PI § VIII.D. Alongside this duty was a responsibility to "preserve" these assets – which, in many cases, would mean the sale of said assets in order to prevent wasting.

In pursuing these dual goals, the Receiver and his team arranged for the sale of the Flower Street Condo, which was owned by Prometheus and used as its offices. pursued a number clawback actions, and oversaw the progress and settlement of the mass tort case portfolio (though his ability to affect the outcome in these cases was limited, as discussed below).

A. Sale of the Flower Street Condo

At the inception of the receivership, the only hard asset held in the name of Prometheus was the Flower Street Condo, which was purchased for $1,072,103 with Prometheus funds in June 2014. That property was encumbered, however, as a result of Catipay and Aldrich's machinations. Although the funds to purchase the condo came from Prometheus/PLC-CA, title was taken in the name of PLC-WA. When Catipay later sued Aldrich after the disintegration of their partnership, Aldrich agreed to quitclaim the property to PLC-CA to settle the suit; instead of doing so, however, he quitclaimed it to Catipay personally. Aldrich did not disclose to Catipay that he had placed a $2,900,000 deed of trust on the property in favor of Prometheus Capital Partners, a Denver investment fund which was a large investor in – and simultaneously, the sales agent for – Prometheus.

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Following his appointment, the Receiver worked to unwind these title encumbrances. In February 2017, the Receiver secured a quitclaim deed conveying Catipay's interest in the property to PLC-CA, thus putting the property under the rightful control of the receivership. The Receiver was subsequently able, on August 22, 2017, to obtain from Prometheus Capital Partners a Full Reconveyance of the $2.9 million deed of trust as part of its settlement of a lawsuit, which the Receiver had filed against the entity (*see* discussion *infra* at Section IV.B). As of August 2017, therefore, the receivership had clear title to the Flower Street Condo and was able to start the process of listing the property for sale.

On November 8, 2017, the Receiver filed an *ex parte* application with the Court to request an order approving and confirming the sale of the Flower Street Condo to a private buyer for $1,000,000 in cash without further notice, hearing, order, or overbidding. (ECF No. 104.) The real estate firm retained by the Receiver to evaluate and sell the property initially suggested a listing price of $1,195,000, but this price was contingent upon the condition of multiple repairs (water damage, air conditioning unit, mold remediation, drywall, floors, etc.). The Receiver listed the Flower Street Condo at the suggested price but quickly found an all-cash, as-is buyer who was willing to proceed with a short escrow and limited contingencies and reduce the broker commissions from 5% to 1.5%. The result of the sale would be a net of approximately $950,000 to the Receivership Estate, which was comparable to what the Estate would likely have received if the Receiver had proceeded to sell the condominium at the listing price, after accounting for repairs and full commissions. The offer that the Receiver accepted effectively reached the same result, but without the attendant uncertainties and risks of an extended listing before sale.[8]

[8] A quick sale also alleviated the ongoing monthly costs of maintaining the property, as well as monthly carrying costs (HOA fees, utilities, etc.).

The Court granted the Receiver's *ex parte* application on November 13, 2017, and the sale proceeded to close on schedule. The proceeds from that sale allowed the Receiver to proceed with a first interim distribution to investors, discussed *infra* at Section V.

B. Settlement of the Mass Tort Case Portfolio

Although Defendants used a substantial portion of the investor funds for personal expenses, some of the money was in fact devoted to identifying potential plaintiffs for mass tort litigation. After they were recruited and screened by Prometheus, the mass tort plaintiffs became clients of the law firm Paglialunga & Harris ("P&H"), with which Defendants had a fee-sharing agreement. Under their arrangement, Prometheus ewas entitled to one-third of the net fees (which themselves were 40% of the recovery, on average) obtained by P&H in connection with the cases. For the receivership to achieve a full return of the $11.7 million invested, the gross recovery from the cases would have to exceed $90 million.

The value of the mass tort case portfolio has always been speculative. Claims made by Defendants to investors that drug companies had already paid, or committed to pay, millions of dollars into a fund that just needed to be split up among plaintiffs in the portfolio were false. In order to get a real understanding of the potential value of the case portfolio, the Receiver met with P&H early on and then reviewed case summaries prepared by the firm.

The portfolio was composed of approximately 2,115 potential cases, though that number has fluctuated as potential plaintiffs were dropped when it was determined that they were not qualified or their injuries were not provable.[9] Ninety-five percent of the portfolio cases relate to Risperdal, an anti-psychotic

[9] Less than half of the portfolio plaintiffs had cases filed at the time of the Receiver's appointment, but this is not uncommon in mass tort litigation where cases do not have to be filed until there is an imminent statute of limitations issue. In such cases, as favorable results are reached in trials or settlements in the filed cases, counsel for the plaintiffs will work toward a global settlement involving all other plaintiffs with provable injuries.

medicine manufactured by a subsidiary of Johnson & Johnson. The potential plaintiffs (2,024, at the time of the Receiver's appointment) were all men alleged to have suffered the side effect of gynecomastia (male breast enhancement). Less than half of these plaintiffs had cases filed in Los Angeles County Superior Court, where their cases were consolidated before one judge who had been assigned thousands of other Risperdal cases brought by unrelated counsel and parties. The judge had identified "bellwether" cases and instructed counsel to work these up for trial.[10]

The remaining cases involved an assortment of drugs and devices, including the following: Actos, a diabetes drug; Transvaginal Mesh (commonly called "TVM"), a surgical implant for women suffering from incontinence or organ prolapse; Nuvaring, a female contraception product; SSRI prescription anti-depressants; Tylenol; Testosterone; and Topamax. *See* ECF No. 71 at 13. The potential plaintiffs in these cases numbered less than one hundred, meaning the vast majority of the cases were centered on Risperdal. The high concentration of the portfolio on Risperdal cases created a possibility for dramatic swings in the overall value of the portfolio (positive or negative) as the Risperdal bellwether cases were tried or settled.

The Receiver has been as transparent as possible in reports and investor updates about the limitations on the value of the case portfolio,[11] to the extent he has been able to do so without compromising P&H's litigation strategy. In his

[10] These cases represented categories of plaintiffs based on age, the years in which the drug was used, and the applicable warning label used during those years. Settlements or trial results in these cases were intended to present valuation parameters for other cases. Risperdal verdicts and settlements in other jurisdictions are not necessarily able to be extrapolated to value the Prometheus cases, as jurisdictional case law varies, and the factual details of the claims are all different.

[11] In addition to the uncertainties discussed below, the Receiver's insight into the portfolio's value has been limited by ethical rules on what P&H can report with respect to the individual cases. P&H's attorney-client relationship is with each individual plaintiff, not with the Receiver or the investors.

Fourth Status Report and Accounting (ECF No. 113), the Receiver outlined the problems with the portfolio, which was not what Defendants had portrayed it to be:

- Prometheus spent only 27% of the funds it raised from investors on marketing, not all of which was productive or cost-efficient;
- Contrary to Defendants' representations, less than 3% of the cases in the portfolio were subject to mass tort settlements – the vast majority had yet to settle and their value was uncertain;
- Prometheus's interest in the portfolio was limited to a percentage of the percentage of the recovery, meaning that the portfolio would have to generate more than $90 million in settlements to make the investors whole; and
- The cases in the portfolio were not sourced by litigation marketing experts as promised, since neither Aldrich nor Catipay had expertise in the field. While marketing improved when Aldrich delegated that responsibility to P&H and its marketing affiliate, Justice Roundtable ("JRT"), the cases sourced by P&H/JRT were still not in line with Defendants' claims to investors.[12]

In 2019, lead counsel responsibilities for the portfolio transitioned from P&H to Sanders Phillips Grossman (the "Sanders Firm").[13] The Sanders Firm had previously assisted in the settlement of the TVM cases in the case portfolio and had significant experience with Risperdal cases (the firm has the largest portfolio of Risperdal cases on the West Coast), making them a good fit for the Prometheus

[12] Prometheus disbursed a total of $2,525,000 to P&H and JRT prior to the Receiver's appointment. In order to ensure these investor funds were used as intended, the Receiver undertook (with P&H/JRT's cooperation) a comprehensive review of their expenditures.

The Receiver's team concluded that the vast majority of the funds ($2,375,133) were properly expended for marketing and related services by P&H/JRT, but found a deficit of $149,867, which was paid to P&H/JRT, but was not directly used for marketing. P&H/JRT vigorously disagreed with that conclusion and further contended that they were entitled to credit for certain expenses which the Receiver had not included in his accounting. To resolve the disagreement and settle the issues, the Receiver and P&H/JRT agreed that P&H would allocate 100 additional Risperdal cases, which were in the P&H portfolio, to the Catipay (receivership) portfolio.

[13] The shift occurred because P&H encountered financial difficulties and did not affect the Receivership Estate's interest in the portfolio.

cases. The Sanders Firm also undertook a further review of the cases in the portfolio, but unfortunately, the results of that review were not encouraging: as the Receiver reported in his Seventh Status Report and Accounting, a significant number of claims held by the Receivership Estate were not viable for a variety of reasons. *See* ECF No. 125 at 3.

In 2020, the Sanders Firm reported that there had been some preliminary settlement discussions with Risperdal defense counsel. *See* ECF No. 130 at 2. Those discussions were derailed and delayed to an extent by the COVID-19 pandemic, but they resumed thereafter. Negative developments in the Risperdal bellwether cases, however, significantly diminished the value of the portfolio. In November 2020, the Sanders Firm withdrew, and P&H resumed representation of the Prometheus mass tort claimants.

In early 2021, P&H informed the Receiver that the Prometheus portfolio of Risperdal claims had settled; however, the settlement value turned out to be substantially less than what was initially expected. A special master was assigned to review the cases to determine the allocation of funds to the qualifying clients, and once a sufficient number of clients had accepted the settlement offer, P&H would begin to receive its attorneys' fees from the settlement, out of which the receivership would be paid. Unfortunately, contacting the clients and obtaining their written approval of the settlement took over three years to accomplish. Due to the nature of the Risperdal client population (whose psychological conditions necessitated a Risperdal prescription in the first instance), some clients proved to be uncooperative and difficult to locate, which greatly delayed the settlement process according to P&H.[14]

[14] Investor questions coming into the Receiver's office have long indicated investor confusion and frustration about the case portfolio, particularly related to its value. In an effort to address these issues, the Receiver's office posted detailed "Case Portfolio FAQs" on its website, to present in one accessible place the available information regarding the case portfolio.

As discussed below in Section V, the funds from recent case portfolio settlements make up the funds available for the final distribution to investors.

IV. Clawback Litigation

One of the Receiver's obligations was to identify and pursue potential clawback litigation. *See* PI §§ VIII.I, J. Four potential clawback litigation targets were identified: the Prometheus sales agents, who received commissions for selling the unregistered securities; Prometheus Capital Partners, which received a *de facto* commission, and which held a deed encumbering the Flower Street Condo; the friends and family of Catipay, who received gratuitous transfers; and the investors whose investments yielded "returns," *i.e.*, net winning investors.

A. Recoveries from Prometheus Sales Agents

Prometheus utilized 39 sales consultants who received commissions totaling approximately $1,100,000 from the sales of Prometheus securities, plus Prometheus Capital Partners, which was paid a commission of $119,000 on its investment of $1,190,000. *See* ECF No. 71 at 12. In October of 2016, the Receiver made a demand on each of the sales agents that they return to the receivership all commissions paid to them.

1. Pre-Litigation Settlements

The Receiver was able to settle or otherwise dispose of claims against 22 Prometheus sales agents prior to filing suit. Thirteen of the 22 repaid their commissions in full, while others repaid the majority of the commissions they received as part of a pre-litigation settlement.

The Receiver's claims against these 22 sales agents totaled $310,075.09, of which the Receiver was able to recover $274,404.20.

2. Post-Litigation Settlements

The Receiver was forced to file a lawsuit against the other 17 Prometheus sales agents. Eight of the sales agents settled shortly afterwards for a total of

$100,300. Default judgments against eight of the remaining nine agents were entered and recorded.

B. Recovery from Prometheus Capital Partners, LLC

Prometheus Capital Partners was similar to the Prometheus sales agents in that it received a commission for securing an investment. Unlike the sales agents, that commission was for its own investment of $1,190,000. The Receiver sought the recovery of the 10% ($119,000) commission, as well as avoidance of Prometheus Capital Partners' recorded $2.9 million security interest in the Flower Street Condo, which was encumbering the property and preventing its sale.

When the Receiver demanded turnover of the commission funds, Prometheus Capital Partners invoked the terms of its funding agreement with Catipay to argue that it was not a commission, but pre-paid interest.[15] Given Prometheus Capital Partners' intransigence, the Receiver developed a complex clawback claim for rescission and cancellation of the $2.9 million Deed of Trust and return of the $119,000. When negotiations for settlement failed, the Receiver filed suit in the receivership court on June 30, 2017. *See McNamara v. Prometheus Capital Partners, LLC*, Case No. 2:17-cv-04821-TJH (C.D. Cal.). Filing of the lawsuit had the desired result: shortly thereafter, Prometheus Capital Partners agreed to a settlement whereby it immediately canceled the Deed of Trust and returned the full $119,000 over time.

C. Recoveries from Recipients of Voidable Transfers

On June 12, 2017, the Receiver filed a single lawsuit in the receivership court against friends and family of James Catipay, who had received roughly $1,300,000 from Catipay. While Catipay's sister settled promptly, the remaining

[15] The Receiver believes it bears noting that there is substantial evidence that the principals of Prometheus Capital Partners were aware of the issues with Prometheus's business, such that PCP was not just another investor. That evidence is discussed in detail in the complaint filed against Prometheus Capital Partners by the Receiver.

family and friends defaulted (after some bankruptcy shenanigans by Palacio and Catipay's parents).

D. Recoveries from Prometheus Investors

As in many Ponzi and Ponzi-like schemes, some of Prometheus's early investors received "profits" on their investments, all of which came from new investors' funds. The Receiver examined the Receivership Defendants' records to determine whether any payouts to investors might be subject to clawback litigation. Ultimately, however, the Receiver determined that there was no basis for filing clawback litigation against the investors. Only six investors received any sort of return from Prometheus, and only one of those was an overall winner with a net profit of $2,500 (which the investor returned to the receivership). *See* ECF No. 71 at 11-12.

E. Liquidation of Clawback Judgments

The Receiver first began assessing how to efficiently collect on the unsatisfied judgments in mid-2019. His team solicited offers for the judgments; however, all offers were *de minimus*. Contingency counsel was retained to collect on the judgments. *See* ECF No. 146 at 1-2. Unfortunately, substantial collection efforts by counsel did not yield any recovery.

V. Distributions to Investors

Upon the sale of the Flower Street Condo, the receivership accounts had enough funds to support a first distribution to investors. The Receiver identified a universe of 251 investor victims (122 of whom invested through IRA accounts) with net losses of $11,700,000. The Receiver presented proposed claims procedures, which the Court approved in June of 2018. *See* ECF No. 114. Pursuant to that order, the Receiver made a $1,056,435 distribution on a pro rata basis to investors. The amount distributed represented approximately 9% of the total losses, meaning that each investor received a 9% recovery on his or her investment. *Id.* The Receiver made a second interim distribution to investors on

August 23, 2018, which amounted to $234,813.38. That amount represented approximately 2% of the losses. *See* ECF No. 118. The third and final distribution of $361,058.50 will be made upon the Court's acceptance of the Final Reportand approval of the Final Fee Application. In total, each investor will have received a 14% on his or her investment.

VI. Receivership Accounting

Attached as Exhibit A is a Standardized Fund Accounting Report for the receivership period through November 30, 2024. It shows aggregate receipts of $540,114.24, less disbursements of $8,642.20 for net cash of $531,472.04. If the Final Report and Fee Application are approved as submitted, net cash for the final distribution to investors will be $361,058.50.

FINAL FEE APPLICATION

The Final Fee Application seeks approval to pay fees and expenses for services during the six-year period August 1, 2018 through November 30, 2024 as follows: $53,413.50 fees and $4.92 expenses to the Receiver and staff payable to TWM Receiverships Inc., dba Regulatory Resolutions; $64,725.50 fees and $2,544.08 expenses to Receiver's counsel McNamara Smith LLP; and $44,487.00 fees and $223.54 expenses to the Receiver's accountants, Baker Tilly US, LLP.

The Final Fee Application also seeks authorization to hold back $10,000.00 as a reserve for final administrative costs, *e.g.*, shepherding the final distribution to investors to conclusion, document and electronics storage costs, removal and destruction of computer hard drives, document destruction costs, and filing an Application for Discharge which may be expended without further order of the Court. If the invoices in this Final Fee Application are approved for payment in full, and the requested reserve of $10,000 is approved, net cash for a final distribution to the investors will be $361,058.50.

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The Final Fee Application is made pursuant to Section XIII of the Preliminary Injunction, which provides that the Receiver and all personnel hired by the Receiver are entitled to reasonable compensation and for the cost of actual out-of-pocket expenses to be paid from the assets of Defendant Prometheus, based upon periodic requests to the Court for payment.

Dated: December 20, 2024

MCNAMARA SMITH LLP

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

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2024, 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