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Court-Appointed Monitor

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Attorneys for Court-Appointed Monitor

17 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

19 FEDERAL TRADE COMMISSION,
20 Plaintiff,
21 v.
AMG SERVICES, INC., et al.,
22 Defendants, and
23 PARK 269 LLC, et al.,
24 Relief Defendants.

Case No. 2:12-cv-00536-GMN-VCF

**MONITOR'S FOURTH INTERIM
REPORT AND ACCOUNT**

JUDGE: Hon. Gloria M. Navarro

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1 **FOURTH INTERIM REPORT AND ACCOUNT**

2 Pursuant to Section XVII of the Order Appointing Monitor and Freezing Assets (the
3 “Monitor Order,” ECF No. 1099), directing the Monitor to report at intervals of no less than 90
4 days, in my capacity as Monitor, I submit this Fourth Interim Report and Account which covers
5 the activities of the Monitor from November 1, 2017 to January 26, 2018.

6 **1. Summary of the Monitor’s Operations**

7 **a. Real Property**

8 **i. San Antonio, Texas**

9 On December 21, 2017, we completed the sale of a 37-acre property located at 11150
10 Applewhite Road, San Antonio, TX (the “San Antonio Property”) to Copart, Inc. The San
11 Antonio Property was owned by Eclipse Renewables, LLC, which was wholly owned by Eclipse
12 Renewables Holdings, LLC. It was a scrap tire storage facility that had a variety of used tires
13 and tire pieces. The used tires collected water, which led to large swarms of mosquitos. The
14 State of Texas previously filed a lawsuit alleging various environmental violations. *See* ECF No.
15 1064-7, 1064-8, and 1064-9.

16 Prior to the appointment of the Monitor (ECF No. 1099) and the asset freeze (ECF
17 No. 960), on March 16, 2016, Copart, Inc., the owner of the adjoining property, expressed its
18 interest in purchasing the San Antonio Property for \$1,050,000. After paying the outstanding
19 taxes (approximately \$400,000), commission (\$63,000), title insurance (approximately \$7,000),
20 and other expenses, the monitorship received \$542,998.40.

21 **ii. Centerville, Missouri**

22 Black Creek Capital Corporation was the holder of a promissory note and secured by a
23 second deed of trust recorded against property located at 442 NW 1051st Road, Centerville, MO
24 (the “Centerville Property”). The outstanding balance of the promissory note was approximately
25 \$38,000. After the holder of the first deed of trust provided notice of their trustee’s sale, we
26 obtained an appraisal of the property and decided not to pay off the holder of the first deed of
27 trust (approximately \$32,000). We allowed the trustee’s sale to proceed. The Centerville
28

1 Property sold for \$40,000, resulting in excess proceeds of \$4,111.56, which the trustee turned
2 over to the monitorship.

3 **iii. Kansas City, Kansas**

4 Westfund, LLC owns property located at 3850 N. 107th Street, Kansas City, KS (the
5 “Donahoo Property”). After receipt of a tax lien and possible foreclosure, we paid the
6 outstanding property taxes of \$19,503.35 to avoid foreclosure. Depending on the market
7 conditions, we may ask the Court for authorization to sell this property.

8 **b. Whamtech**

9 Black Creek Capital Corporation (“Black Creek Capital”) is the holder of promissory
10 notes owed by Whamtech, Inc. (“Whamtech”) who is currently in default. Whamtech currently
11 owes Black Creek Capital nearly \$3 million. Whamtech believes that it will be able to pay off
12 the promissory notes in full by March 31, 2018. We agreed to refrain from proceeding against
13 Whamtech for its default on the promissory notes until at least March 31, 2018. In exchange,
14 Whamtech agreed to extend the option to purchase certain stocks to December 31, 2020. We
15 will provide an update in our next report.

16 **c. Eyecare Indiana and Steve Lord**

17 As we previously reported, Eyecare Indiana II, P.C. (“Eyecare Indiana”) owed \$185,000
18 to Broadmoor Capital Partners, LLC (“Broadmoor”) as a result of the 2011 sale of optometry
19 services locations. Broadmoor was a member of a limited liability company (OAP I, LLC)
20 which sold the properties, but portions of the funds due Broadmoor were wrongfully diverted by
21 a former Broadmoor officer, Steve Lord, to his company Juke Entertainment LLC (“Juke”).
22 Eyecare Indiana has fulfilled their agreement to remit the remaining principal balance of
23 \$185,000 to the monitorship rather than to Juke.

24 **d. Trailer Dispute**

25 As the Court knows, on September 27, 2017, the Court granted the Motion for
26 Clarification filed by El Dorado Trailer Sales, LLC, E.T.S. Ventures, LLC, and Dale Becker
27 (collectively “El Dorado”) and adopted Magistrate Judge Cam Ferenbach’s Report and
28 Recommendation regarding sanctions. *See* ECF Nos. 1159 and 1160. El Dorado appealed to

1 these orders to the Ninth Circuit Court of Appeals. *See FTC v. E.T.S. Ventures, LLC*, Case
2 No. 17-15552. On December 29, 2017, the Ninth Circuit Court of Appeals issued its decision
3 affirming “the district court’s denial of El Dorado’s motion to dissolve and [found] that
4 jurisdiction over El Dorado and the Trailer is proper in the District of Nevada.” *See* ECF
5 No. 1172.

6 **e. Clawback Targets**

7 As we previously reported, we reached a settlement in principle with David Feingold.
8 We are working through some technical issues, which we still expect to resolve. Once the
9 settlement agreement is finalized, we will present it to the Court for approval.

10 As we reported in our Second and Third Interim Reports, in 2013, Westfund, Scott
11 Tucker, and others entered a settlement agreement with Sunway Hotel Group, Inc., Donald
12 Culbertson, and others settling various disputes. As a result, the economic interests (i.e., profits
13 and earnings) of a hotel located in Bartlesville, Oklahoma were assigned to Westfund. However,
14 Westfund never received any profits or earnings from the Bartlesville hotel. After my forensic
15 accountant untangled the complicated hotel management structure and reviewed the financial
16 records, he discovered that the Bartlesville hotel, with its current Sunway management
17 agreement in place, has not and will not be profitable. He has also discovered that the
18 management group had been charging an unauthorized fee of \$6,100 per month for more than
19 four years.

20 After we demanded return of these unauthorized fees, Sunway asked that we release the
21 ownership of the company which held partial ownership of the hotel real property. Absent
22 additional compensation, we will not release the ownership interest. Our forensic accountant is
23 reviewing additional financial statements and analyzing the hotel’s new loan agreements. We
24 expect to be in a position to discuss an appropriate resolution with Sunway. If we are able to
25 reach an agreement, we will present it to the court for approval.

26 Our investigation into other potential clawback targets is ongoing. We are also
27 continuing our efforts to locate additional assets and identify potential claims against third
28 parties.

1 **2. Clawback Complaints**

2 On November 29, 2017, the Monitor filed four clawback complaints against various
3 individuals and entities to recover fraudulent transfers. The first complaint is against Charles M.
4 Hallinan and Hallinan Capital Corp. who received fraudulent transfers in excess of \$75 million
5 in Monitorship Estate assets. *See McNamara v. Hallinan*, Case No. 2:17-cv-02966-KJD-NJK
6 (D. Nev.), ECF No. 1. Mr. Hallinan and Hallinan Capital Corp. have until January 29, 2018 to
7 respond to the complaint.

8 The second complaint is against Mr. Hallinan’s daughters, Linda Hallinan and Carolyn
9 Hallinan, who received fraudulent transfers totaling hundreds of thousands of dollars in
10 Monitorship Estate assets. *See McNamara v. Hallinan*, Case No. 2:17-cv-03967-JAD-PAL (D.
11 Nev.), ECF No. 1. Process servers are currently attempting to serve the summons and complaint
12 on Linda Hallinan and Carolyn Hallinan.

13 The third complaint is against Gary Patten and Pano Advisors, Inc. who received
14 fraudulent transfers of more than \$10 million in Monitorship Estate assets. *See McNamara v.*
15 *Patten*, Case No. 2:17-cv-02968-JCM-NJK (D. Nev.), ECF No. 1. Counsel for Mr. Patten and
16 Pano Advisors, Inc. agreed to accept service and will respond to the complaint by February 9,
17 2018.

18 The fourth complaint is against Selling Source, LLC, PartnerWeekly L.L.C., DataX, Ltd.,
19 MoneyMutual, LLC, London Bay Capital LLC, London-Bay-TSS Holding Company, LLC,
20 London Bay-TSS Acquisition Company, Derek LaFavor, and Glenn McKay, seeking to
21 clawback as fraudulent transfers millions of dollars in Monitorship Estate assets. *See McNamara*
22 *v. Selling Source, LLC*, Case No. 2:17-cv-02969-JAD-CWH. Process servers are currently
23 attempting to serve the summons and complaint on these defendants.

24 **3. Monitorship Bank Accounts**

25 Attached as Exhibit A is a Receipts and Disbursements Summary for the monitorship for
26 the period November 1, 2017 through January 26, 2018. During this time period, receipts were
27 \$753,018.14 (\$185,000 Indiana Eyecare; \$542,998.40 proceeds from sale of the San Antonio
28 Property; \$4,111.56 excess proceeds from Trustee’s sale of the Centerville Property; \$3,509.05

1 from Scott Tucker's former attorney; \$10,642.81 checks from various third parties; and
2 \$6,756.32 money market account interest). Disbursements were \$29,005.29 (\$19,503.35 for
3 2012-2017 property taxes on the Donahoo Property; \$7,610.60 for Relativity hosting fees;
4 \$750.00 for legal fees; \$1,141.34 for records production). In aggregate, the monitorship bank
5 accounts have a current balance of \$7,365,680.05.

6 Dated: January 29, 2018

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8 By: /s/ Thomas W. McNamara
Thomas W. McNamara, Monitor

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of January, 2018, pursuant to Fed. R. Civ. P. 5(b), I served via CM/ECF or delivered by email and mailing in the U.S. Mail a true and correct copy of the foregoing **MONITOR'S FOURTH INTERIM REPORT AND ACCOUNT**, postage prepaid and addressed to the following:

VIA CM/ECF

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