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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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

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

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

JUDGE: Hon. Gloria M. Navarro

FIRST INTERIM REPORT AND ACCOUNT

On November 30, 2016, the Court entered the Order Appointing Monitor and Freezing Assets (the “Monitor Order”), which among other things, appointed me as Monitor over the Monitorship Estate.¹ See ECF No. 1099, Section VI, page 10. I filed a Preliminary Report and Account on January 30, 2017. See ECF No. 1111. Section XVII of the Monitor Order directs the Monitor to report at intervals of no less than 90 days. This First Interim Report and Account covers the activities of the Monitor from January 31, 2017 to April 30, 2017.

1. Summary of the Monitor’s Operations

a. Level 5 Motorsports, LLC’s Assets

As the Court knows, on February 9, 2017, I petitioned the Court for approval to sell the assets of Level 5 Motorsports, LLC (“Level 5”) via RM Sotheby’s. See ECF No. 1120. After the Court granted the motion, I signed the consignment agreement with RM Sotheby’s to sell Level 5’s assets, many of which were stored at a warehouse in Fitchburg, Wisconsin. Subsequently, RM Sotheby’s arranged for the transport of Level 5’s assets to Auburn, Indiana – a team of eight individuals worked for a week to complete the removal from Wisconsin and used twelve 53’ trailers to deliver the assets to a 20,000 square foot warehouse in Indiana. RM Sotheby’s also arranged for the transport of five additional vehicles located in San Francisco, California and Leawood, Kansas to Auburn, Indiana.

On April 1, 2017, the first Level 5 vehicle, a 2012 Ferrari 458 Challenge, was sold at auction in Ft. Lauderdale, Florida for \$180,000. After deducting RM Sotheby’s commission of

¹ The Monitorship Estate is defined at Section VI of the Monitor Order as “All of Scott Tucker’s, Kim Tucker’s, and the Monitor Entities’ Assets, wherever they may be located, in whose possession they may be found, whether owned directly or indirectly, except as excluded below” In summary, the excluded Assets are Defendants’ Assets restrained by SDNY or subject to *lis pendens* filed by SDNY, the children’s education savings plans, and Kim Tucker’s W-2 wages up to \$8,000 per month earned as an employee subject to certain conditions. Monitor Entities are defined as AMG Capital Management, LLC, Level 5 Motorsports, LLC, Black Creek Capital Corporation, Broadmoor Capital Partners, LLC, Park 269, LLC, BA Services LLC, C5 Capital LLC, DF Services Corp., DFTW Consolidated [UC] LLC, Impact BP LLC, Level 5 Apparel LLC, Level 5 Capital Partners LLC, Level 5 Eyewear LLC, Level 5 Scientific LLC, NM Service Corp. (f/k/a/ National Money Service), PSB Services LLC, Real Estate Capital LLC (f/k/a/ Rehab Capital I, LLC), Sentient Technologies, ST Capital LLC, Westfund LLC, Eclipse Renewables Holdings LLC, Scott Tucker Declaration of Trust, dated February 20, 2015, West Race Cars, LLC, and Level 5 Management LLC, and their successors, assigns, affiliates, and subsidiaries. See Monitor Order at 3:17-4:6.

1 10%, the monitorship estate received \$162,000, which has been deposited in the newly established
2 bank account. The remaining Level 5 assets will be sold at auction on May 11, 2017 in Auburn,
3 Indiana. RM Sotheby's has cataloged and prepared the Level 5 assets for auction and has
4 dedicated an entire day to selling Level 5's assets. RM Sotheby's has been extensively marketing
5 the upcoming auction. See <http://www.auctionsamerica.com/media/release.cfm?id=1303>.

6 **b. Trailer Dispute**

7 In late 2014, Level 5 purchased and paid for a nearly \$600,000 vehicle transporter trailer
8 from Bruce High Performance Transporters. Bruce High Performance Transporters later sold
9 certain assets to E.T.S. Ventures, LLC ("E.T.S. Ventures") at the end of 2015. It is disputed if
10 the trailer was included.

11 After the Court entered an asset freeze order, El Dorado Trailer Sales, LLC ("El Dorado
12 Trailer Sales") and E.T.S. Ventures refused to return the trailer and the Federal Trade
13 Commission ("FTC") sought and obtained an order enforcing the asset freeze order. See ECF
14 Nos. 960, 1031, and 1036. After the Monitor Order was entered, I learned that E.T.S. Ventures
15 and Dale Becker (collectively and together with El Dorado Trailer Sales, "El Dorado") initiated
16 an action in Ohio state court seeking, among other things, a declaration that Level 5 has no claim
17 to the trailer. When El Dorado refused to turn over the trailer and stay the Ohio state court
18 action, I directed my counsel to file a motion for order to show cause for contempt against El
19 Dorado.

20 On February 9, 2017, Magistrate Judge Cam Ferenbach heard my motion for order to
21 show cause for contempt and sanctions against El Dorado and, five days later, issued his
22 recommendation that my motion be granted and that El Dorado be held in contempt for violating
23 the Court's August 25, 2016 enforcement order. See ECF No. 1123. El Dorado objected to the
24 report and recommendation. See ECF No. 1124. The matter is pending before this Court.

25 El Dorado has also filed a notice of appeal of the Court's order denying its motion to
26 dissolve the enforcement order. See ECF No. 1133. El Dorado filed their opening brief with the
27 United States Court of Appeals for the Ninth Circuit. We are preparing our answering brief.

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1 **c. Document Destruction**

2 On March 6, 2017, my accountant Alan Myers and I traveled to Kansas to further review
3 documents, interview former employees of the Monitor Entities, and meet with other individuals.
4 I interviewed Matthew Bradley, a former employee of the Monitor Entities. He is currently
5 employed by Santee Employment Services Authority, which provides services to Red Cedar
6 Services, Inc. (“Red Cedar”) and SFS, Inc. (“SFS”). The Monitor Entities previously operated in
7 Overland Park, Kansas (the “Overland Park Location”) where there were approximately thirty
8 servers and two hundred computers. Additionally, there were forty to fifty servers located at
9 offsite data centers.

10 In August 2016, Mr. Bradley stated that they had moved to Olathe, Kansas (the “Olathe
11 Location”). Of the thirty servers located at the Overland Park Location, approximately ten
12 servers were moved to the Olathe Location and re-deployed for use by Red Cedar and SFS. The
13 hard drives of the remaining twenty servers were destroyed. Of the two hundred computers from
14 the Overland Park Location, approximately one hundred computers were wiped, re-imaged, and
15 re-deployed for use by Red Cedar and SFS at the Olathe Location. The remaining computers
16 were placed in storage.

17 After I interviewed Mr. Bradley, we submitted document requests to Red Cedar and SFS.
18 In response, Red Cedar and SFS produced an invoice from Secure e-Cycle to BA Services for
19 the destruction of 1,073 hard drives and 73 tapes at the Overland Park Location on September 9,
20 2016. The invoice included a handwritten note that the cost would be split 50/50 between Red
21 Cedar and SFS. The destruction of hard drives and tapes almost certainly resulted in the loss of
22 the Monitor Entities’ data. In addition, Red Cedar and SFS very likely violated the records
23 preservation provision of their respective stipulated permanent injunctions. *See* ECF Nos. 888
24 and 889.

25 **d. Clawback Targets**

26 Since we identified additional judicial districts where Monitorship assets may be located,
27 we sought a reappointment order to restart the ten day period to file 28 U.S.C. § 754 notices. On
28 April 19, 2017, the Court entered the reappointment order. The notice of monitorship and

1 reappointment order has been filed in the following judicial districts: Northern District of
2 California, Southern District of California, District of Colorado, Southern District of Florida,
3 Central District of Illinois, District of Kansas, Western District of Missouri, District of Nebraska,
4 Southern District of New York, Northern District of Ohio, Northern District of Oklahoma,
5 Eastern District of Pennsylvania, Eastern District of Texas, Eastern District of Wisconsin, and
6 Western District of Wisconsin.

7 Our investigation into potential clawback targets is ongoing. We are continuing our
8 efforts to locate additional assets and identify claims against third parties.

9 In early March 2017, I met with certain individuals who received loans from the Monitor
10 Entities. We are seeking the repayment of those loans either through the borrower's cooperation
11 or through a lawsuit to enforce the loans. Specifically, I met with John Julian, Paul Thoma and
12 their counsel concerning loans totaling approximately \$1.5 million from Westfund LLC
13 ("Westfund") to Mr. Julian, Mr. Thoma, Milan Development Group, LLC, and United Resource
14 Holdings, LLC. We have engaged in discussions regarding possible resolution, but settlement
15 seems unlikely at this point.

16 I also met with Glenn Fisher and his counsel. Westfund provided a \$3.5 million loan to
17 Mr. Fisher and his company 5G Capital, LLC ("5G Capital"), which 5G Capital lent to eProdigy
18 Financial, LLC ("eProdigy Financial"), Capital Stack, LLC ("Capital Stack"), and eProdigy
19 Loans, LLC ("eProdigy Loans" and together with eProdigy Financial and Capital Stack,
20 "eProdigy"). In return for 5G Capital's \$3.5 million loan to eProdigy, eProdigy made weekly
21 interest payments. According to the loan documents, beginning on April 15, 2017, eProdigy was
22 required to make monthly payments of principal and interest. We reached a settlement in
23 principle with Mr. Fisher and 5G Capital regarding Westfund's \$3.5 million loan to Mr. Fisher
24 and 5G Capital.

25 I directed my counsel to investigate certain investments that were supposedly transferred
26 to another third party, David Feingold. We have engaged in discovery with Mr. Feingold
27 regarding certain assets that he claims Scott Tucker assigned to him. Recently, my counsel
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1 deposed Mr. Feingold and we are continuing negotiations with Mr. Feingold. It is unclear
2 whether we will be able to reach a resolution.

3 If we reach settlements with individuals who received loans or other assets from the
4 Monitor Entities, we will seek the Court's approval to proceed.

5 **2. Monitorship Bank Account**

6 Attached as Exhibit A is a Receipts and Disbursements Summary for the monitorship
7 from January 31, 2017 through April 30, 2017. During this time period, receipts included the
8 \$162,000 proceeds from the sale of the 2012 Ferrari 458 Challenge and \$71,295.04 in checks
9 from various third parties payable to Scott Tucker and/or the Monitor Entities. Disbursements
10 were \$103,118.04 for approved fees and expenses for the Monitor and his counsel. The
11 monitorship bank account has a current balance of \$130,177.

12 Dated: May 1, 2017

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14 By: /S/ Thomas W. McNamara
 Thomas W. McNamara, Monitor
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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of May, 2017, 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 FIRST INTERIM REPORT AND ACCOUNT**, postage prepaid and addressed to the following:

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