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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION, Plaintiff, v. AMG SERVICES, INC., et al., Defendants, and PARK 269 LLC, et al., Relief Defendants.	Case No. 2:12-cv-00536-GMN-VCF **MONITOR'S SECOND INTERIM REPORT AND ACCOUNT** JUDGE: Hon. Gloria M. Navarro

SECOND INTERIM REPORT AND ACCOUNT

In my capacity as Monitor, appointed by the Order Appointing Monitor and Freezing Assets entered November 30, 2016 (the "Monitor Order," ECF No. 1099), I submit this Second Interim Report and Account which covers the activities of the Monitor from May 1, 2017 to July 31, 2017. Previously, I filed a Preliminary Report and Account and First Interim Report and Account. *See* ECF Nos. 1111 and 1146, respectively.

1. Summary of the Monitor's Operations

a. Auction of Level 5 Motorsports, LLC's Assets

On May 11, 2017, the assets of Level 5 Motorsports, LLC ("Level 5") were sold at auction in Auburn, Indiana. *See* http://www.auctionsamerica.com/media/release.cfm?ID=1308. There were 346 lots that sold at auction, resulting in gross sales proceeds of $2,771,800 (buyer's premium not included), which greatly exceeded the auction estimate of $1,535,000-$2,015,000. After deducting the $20,000 cataloging fee and seller's commission of $361,010, the monitorship received net proceeds of $2,390,790. The more notable lots included the following: 2012 Ferrari 458 GTD, the class-winner at the 2014 Rolex 24 Hours of Daytona, sold for $462,000; 2012 Ferrari 458 GTD sold for $236,500; 2015 Bruce High Performance Trailer sold for $231,000; 2006 Ferrari 430 GT2 sold for $225,500; and 2014 Porsche GT3 sold for $154,000. These prices include the buyer's premium.

As we previously reported, the first Level 5 vehicle, a 2012 Ferrari 458 Challenge, sold for $162,000 ($180,000 less 10% seller's commission). *See* ECF No. 1146 at 1:19-2:2. In total, the monitorship received $2,552,790 from the sale of Level 5's assets.

b. Appeal of Trailer Dispute

After Magistrate Judge Cam Ferenbach issued his recommendation that El Dorado Trailer Sales, LLC, E.T.S. Ventures, LLC, and Dale Becker (collectively "El Dorado") be held in contempt for violation of the Court's August 25, 2016 enforcement order, El Dorado appealed to the Ninth Circuit Court of Appeals. That appeal has now been fully briefed by all parties and the case is being considered for the October 2017 San Francisco oral argument calendar.

c. Glenn Fisher Settlement

As previously reported, we reached a settlement with Glenn Fisher and 5G Capital, LLC ("5G Capital") regarding Westfund LLC's ("Westfund") $3.5 million loan to Mr. Fisher and 5G Capital. In exchange for a release of rights and responsibilities, Mr. Fisher agreed to transfer 5G Capital's interests, including its $3.5 million loan to eProdigy Financial, LLC, Capital Stack, LLC, and eProdigy Loans, LLC (collectively, "eProdigy") to the monitorship. Mr. Fisher signed the settlement agreement, which the Court approved on June 18, 2017. *See* ECF No. 1152. Mr. Fisher thereafter wired $3,963,426.91 to the monitorship bank account.

d. Capital Stack and eProdigy

Almost immediately after the Court approved the settlement agreement with Mr. Fisher and 5G Capital, eProdigy sought to terminate certain UCC statements which secured their loan from 5G Capital. On or about May 11, 2017, Prodigy sent a wire in the amount of $3,517,500 to 5G Capital, purportedly repaying the 5G Capital loan. Before releasing the UCC statements, I directed my forensic accountant to audit the loan to ensure all amounts have been repaid. We discovered that eProdigy failed to pay the $35,000 prepayment penalty and $11,378.55 in unpaid interest.

Additionally, in 2014 and 2015, Westfund placed money with Capital Stack and participated in loan "syndications" to fund merchant cash advances, which entitled it to a percentage of the daily payments from merchants. During this two year period, Westfund sent several million dollars to Capital Stack and received large deposits in return. I also directed my forensic accountant to audit these loan syndication payments. After some difficulties, Capital Stack agreed to provide my forensic accountant access to the loan participation database. My forensic accountant then determined that Westfund is owed a total $2,698,245, but $1,285,220 was already written off and $128,059 was "satisfied" and paid off at a discount. The remaining $1,284,986 is classified as non-performing (*e.g.*, bankruptcy, legal, suspended, etc.). As such, we do not expect to collect significant additional amounts on these loans.

After my forensic accountant completed his review and eProdigy paid the prepayment penalty and unpaid interest, I directed my counsel to release the UCC statements. On June 23,

2017, eProdigy sent a wire in the amount of $46,378.55 to the monitorship bank account. On June 26, 2017, the UCC assignments and terminations were filed with the secretary of states for Delaware, New York, Nevada, and Utah. As a result of the settlement with Mr. Fisher and 5G Capital and eProdigy's repayment of its loan, prepayment penalty, and unpaid interest, we received a total of $4,009,805.46.

e. Clawback Targets

As previously reported, we have engaged in discussions with David Feingold regarding certain assets that belong to the monitorship. We have reached a settlement in principle. After the parties finalize the settlement agreement, it will be presented to the court for approval.

In 2013, Westfund, Scott Tucker, and others entered a settlement agreement with Sunway Hotel Group, Inc., Donald Culbertson, and others regarding various disputes. As a result, the economic interests (i.e., profits and earnings) of a hotel located in Bartlesville, Oklahoma were assigned to Westfund. From 2013 forward Westfund never received any profits or earnings from the Bartlesville hotel. We understand that Scott Tucker previously audited Sunway's books and records and found no irregularities. Nevertheless, I instructed my forensic accountant to review the hotel's books and records. After untangling the complicated hotel management structure and reviewing the financial records, my forensic accountant discovered that the Bartlesville hotel, with its current Sunway management agreement in place, has not and will not be profitable. However, he discovered that the management group had been charging an unauthorized fee of $6,100 per month for nearly four years. We demanded return of this fee. We have reached a settlement in principle whereby the management group will return $274,500 of unauthorized fees to the monitorship in exchange for the economic interest and certain releases. After the parties finalize the settlement agreement, we will present it to the court for approval.

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

2. Accounting

a. Forensic Accounting Report – Monitor Entities

Our forensic accounting team has now completed a thorough review of the available books and records of the Monitor Entities. That report – "Forensic Accounting – Monitor Entities" is attached as Exhibit A. Many of the apparent assets identified in the report are loans or investments between Monitor Entities and Tucker or his family and may be uncollectible. We have also identified some material assets and/or clawback targets that will be the focus of our efforts going forward. The report discusses the unavailability of traditional financial and accounting records and identifies numerous factors that compromise the ultimate reliability and completeness of the records.

b. Monitorship Bank Accounts

Attached as Exhibit B is a Receipts and Disbursements Summary for the monitorship from May 1, 2017 through July 31, 2017. During this time period, receipts were $6,443,531.86 ($3,963,426.91 Fisher settlement proceeds; $2,390,790 from Level 5 asset sales; $46,378.55 eProdigy loan repayment; and $42,936.40 checks from various third parties). Disbursements were $35,932.96 ($12,148 IT forensics services; and $23,784.96 Relativity hosting fees).

On July 7, 2017, we opened a money market account (which pays interest at 0.40 percent per year) and funded it with $6.5 million from the monitorship checking account. In aggregate, the monitorship bank accounts have a current balance of $6,537,775.90.

Dated: July 31, 2017

By: /S/ Thomas W. McNamara
Thomas W. McNamara, Monitor

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of July, 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 SECOND INTERIM REPORT AND ACCOUNT**, postage prepaid and addressed to the following:

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