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17 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
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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 FIFTH INTERIM REPORT
AND ACCOUNT**

JUDGE: Hon. Gloria M. Navarro

FIFTH INTERIM REPORT AND ACCOUNT

Pursuant to Section XVII of the Order Appointing Monitor and Freezing Assets (the “Monitor Order,” ECF No. 1099), directing the Monitor to report at intervals of no less than 90 days, in my capacity as Monitor, I submit this Fifth Interim Report and Account which covers the activities of the Monitor from January 27, 2018 through April 27, 2018.

1. Summary of the Monitor’s Operations

a. David Feingold

In March 2018, we finalized the settlement agreement with David Feingold (“Feingold”) and filed the Joint Motion to Approve Proposed Settlement Agreement with Feingold and Related Entities. *See* ECF No. 1188. As further detailed in the joint motion and settlement agreement, in May 2013, Scott Tucker (“Tucker”) invested \$1 million in EyeVerify LLC (“EyeVerify”). After learning that EyeVerify was being sold for more than \$100 million, increasing Tucker’s \$1 million investment to more than \$7 million, Tucker and Feingold executed and backdated an assignment purporting to transfer Tucker’s interest in EyeVerify to Feingold. After the Monitor’s investigation and, subject to court approval, Feingold agreed to immediately return \$3.1 million to the Monitor and to pay \$2.6 million to the Monitor in the future. Additionally, EyeVerify will release to the Monitor approximately \$1.2 million that was held as an indemnity escrow. *See* ECF No. 1188-1 at 3-7. After the Court approved the Settlement Agreement (ECF No. 1191), Feingold transferred \$3.1 million to the Monitorship Estate. We will closely monitor Feingold’s compliance with the Settlement Agreement and include updates in future reports.

b. Whamtech

As previously reported, Black Creek Capital Corporation (“Black Creek Capital”) is the holder of promissory notes owed by Whamtech, Inc. (“Whamtech”) who is currently in default. Despite owing approximately nearly \$3 million, Whamtech failed to make any payments to the Monitorship Estate by March 31, 2018. Accordingly, the Monitor will evaluate whether to engage in further negotiations with Whamtech or initiate legal proceedings against Whamtech to enforce the promissory notes.

1 **c. Trailer Dispute**

2 As the Court knows, after 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,” the Court
5 adopted Magistrate Judge Cam Ferenbach’s Report and Recommendation regarding fees and
6 costs incurred by the Monitor as a result of contempt by El Dorado Trailer Sales, LLC, E.T.S.
7 Ventures, LLC, and Dale Becker (collectively, “El Dorado”). *See* ECF No. 1181. El Dorado did
8 not object to Judge Ferenbach’s Report and Recommendation in this Court, but then filed an
9 appeal to the Ninth Circuit Court of Appeals. *See FTC v. E.T.S. Ventures, LLC*, Case No. 18-
10 15401. El Dorado was granted a stay of the \$55,835.58 judgment provided a supersedeas bond
11 is filed by May 18, 2018. *See* ECF No. 1190. The Ninth Circuit Court of Appeals scheduled a
12 telephone assessment conference for May 7, 2018 at 2:00 p.m. to explore settlement potential.
13 El Dorado’s opening brief is due June 18, 2018 and the Monitor’s answering brief is due July 17,
14 2018.

15 **d. Clawback Targets**

16 As previously reported, as a result of a prior settlement in 2013, the economic interest
17 (i.e., profits and earnings) of a hotel located in Bartlesville, Oklahoma was assigned to Westfund.
18 However, Westfund never received any profits or earnings from the Bartlesville hotel. After
19 unraveling the complicated hotel management scheme, my forensic accountant determined that
20 the Bartlesville hotel, with its current Sunway management agreement in place, has not and will
21 not be profitable. He also discovered that the management group had been charging an
22 unauthorized fee of \$6,100 per month for more than four years.

23 While Sunway agreed to return the unauthorized fees, they also asked that we release
24 ownership of the company which holds partial ownership of the hotel real property. We will not
25 release the ownership interest without additional compensation. Currently, the Bartlesville hotel
26 is attempting to restructure its debt and obtain new loans. My forensic accountant is reviewing
27 additional financial statements and analyzing the hotel’s new loan agreements. We expect to be
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1 in a position to discuss an appropriate resolution with Sunway. If we are able to reach an
2 agreement, we will present it to the court for approval.

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

6 **2. Fraudulent Transfer Complaints**

7 As previously reported, the Monitor filed four fraudulent transfer actions, which are
8 presently pending before Judges Dawson, Dorsey, and Mahan. In all four cases, defendants filed
9 motions to dismiss. Briefing on the motions to dismiss have been completed in the actions filed
10 against Charles Hallinan and Gary Patten. In the remaining two cases, the Monitor has either
11 already filed a first amended complaint or will file a first amended complaint shortly.

12 Charles M. Hallinan and Hallinan Capital Corp. responded to the Monitor's fraudulent
13 transfer complaint by filing a motion to dismiss. Briefing on the motion to dismiss was
14 completed on March 26, 2018 and is currently pending before the court. *See McNamara v.*
15 *Hallinan*, Case No. 2:17-cv-02966-KJD-NJK (D. Nev.). Mr. Hallinan and Hallinan Capital
16 Corp. also filed a motion to stay discovery pending the outcome of their motion to dismiss. The
17 parties also filed their joint discovery plan, will exchange initial disclosures by May 7, 2018 and
18 commence written discovery requests shortly thereafter.

19 In the second fraudulent transfer action against Linda Hallinan and Carolyn Hallinan,
20 defendants filed a motion to dismiss and the Monitor then filed a first amended complaint. Upon
21 court approval of the parties' stipulation, Linda Hallinan and Carolyn Hallinan will respond to
22 the First Amended Complaint by May 15, 2018. *See McNamara v. Hallinan*, Case No. 2:17-cv-
23 03967-JAD-PAL (D. Nev.).

24 In the third action, Gary Patten and Pano Advisors, Inc. filed a motion to dismiss. The
25 parties completed the motion to dismiss briefing on April 6, 2018. *See McNamara v. Patten*,
26 Case No. 2:17-cv-02968-JCM-NJK (D. Nev.). Defendants also filed a motion to stay discovery
27 pending the outcome of their motion to dismiss to which the Monitor will respond by May 7,
28 2018.

1 In the fraudulent transfer action filed against Selling Source, LLC, PartnerWeekly L.L.C.,
2 DataX, Ltd., MoneyMutual, LLC, and Derek LaFavor, the defendants filed motions to dismiss.
3 *See McNamara v. Selling Source, LLC*, Case No. 2:17-cv-02969-JAD-CWH. The Monitor will
4 file his first amended complaint on April 30, 2018.

5 **3. Monitorship Bank Accounts**

6 Attached as Exhibit A is a Receipts and Disbursements Summary for the monitorship for
7 the period January 27, 2018 through April 27, 2018. During this time period, receipts were
8 \$3,128,803.89 (\$3,100,000 Feingold settlement funds; \$10,734.86 insurance refund; \$11,244.98
9 checks from various third parties; and \$6,824.05 money market account interest). Disbursements
10 were \$826,332.01 (\$540,644.53 for legal fees; \$276,003.82 for Monitor's fees; \$7,444.28 for
11 Relativity hosting fees; \$2,239.38 for facilities management). In aggregate, the monitorship
12 bank accounts have a current balance of \$9,668,151.93.

13 Dated: April 30, 2018

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15 By: /s/ Thomas W. McNamara
Thomas W. McNamara, Monitor
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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of April, 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 FIFTH INTERIM REPORT AND ACCOUNT**, postage prepaid and addressed to the following:

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