

1 Maria A. Gall (NV 14200)
gallm@ballardspahr.com
2 BALLARD SPAHR LLP
1980 Festival Plaza Drive, Suite 900
3 Las Vegas, NV 89135
Tel.: 702-471-7000
4 Fax: 702-471-7070

5 Logan D. Smith (*Pro Hac Vice*)
lsmith@mcnamarallp.com
6 MCNAMARA SMITH LLP
655 West Broadway, Suite 900
7 San Diego, California 92101
Tel.: 619-269-0400
8 Fax: 619-269-0401
Attorneys for Court-Appointed Monitor,
9 *Thomas W. McNamara*

10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA

12 FEDERAL TRADE COMMISSION,
13 Plaintiff,

14 v.

15 AMG SERVICES, INC., et al.,

16 Defendants, and

17 PARK 269 LLC, et al.,

Relief Defendants.

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

**MONITOR'S FINAL REPORT AND
ACCOUNTING**

INTRODUCTION

Thomas W. McNamara, in his capacity as Court-appointed Monitor, hereby submits his Final Report and Accounting for the Court's consideration and in support of his concurrently filed Application for: (1) Discharge of Monitor and (2) Approval of Final Fee Application.

The events of this Monitorship unfolded across five years, dozens of filings in this Court (in this action alone), the filing of nine lawsuits against multiple individuals who did business with Scott Tucker, hundreds of filings across those lawsuits, and hundreds of hours more negotiating and effectuating settlements in those actions and with others. Under the circumstances, it would be a Herculean task – and not, as the Monitor understands it, in keeping with the Court's direction¹ – to detail everything that occurred over the course of this Monitorship in a single filing.² This Final Report is accordingly intended solely as a summary.

FINAL REPORT

At the time of the Monitor's appointment, there was just \$130,177.00 in the Monitor Entities' bank accounts. With minimal liquid resources at their disposal, the Monitor and his team began to investigate the Monitor Entities' assets, both tangible and intangible. After five years of hard work and perseverance, they were able to secure a total of \$17,347,144.93 for the Estate through asset sales, litigation, and negotiated settlements. Given the modest resources available to the Monitorship at its opening, the Monitor believes that this is a profoundly successful result. And while it became clear after the Supreme Court's decision in *AMG Capital Management, LLC, et al. v. Federal Trade Commission* ("AMG Capital"), No. 19-508, slip op. (Apr. 22, 2021) that the Monitorship itself would need to be terminated, the funds collected by the Monitor will, by and large, be transferred to the Department of Justice pursuant to a Preliminary Order of Forfeiture.

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¹ Mindful of the Court's recognition that the filing of a final report could result in unnecessary expense to the Monitorship Estate, which was raised at the July 13, 2021 status conference, the Monitor has written off the vast majority of the time associated with the drafting of this report.

² The fifteen interim reports filed with the Court, each of which includes particularized discussion and the receipts and distributions of the Monitorship Estate during the relevant time period, provide more detailed explanations of events should the Court or the parties require them.

1 With the decision in *AMG Capital*, and in line with the Court’s direction, the Monitor has
 2 now completed his duties as defined in the Monitor Order (ECF No. 1099) and the Second
 3 Amended Order (ECF No. 1338).

4 **I. The Monitor’s Recovery Efforts**

5 The Monitor was appointed by the parties’ stipulation after the FTC obtained a record-
 6 breaking judgment against Scott Tucker and his payday lending enterprise. The parties agreed to
 7 the Monitorship “to preserve the status quo during the pendency of [Tucker’s] appeal [of the
 8 judgment], and to facilitate the liquidation of assets that absent such liquidation would waste in
 9 value during the pendency of the appeal.” *See* Monitor Order at 2. The Monitor’s role, pursuant
 10 to the Court’s order, was to represent the interests of the Monitor Entities and the Monitorship
 11 Estate during that process and to pursue collection efforts on their behalf.³

12 The Monitor’s task was a challenging one. More than four years had elapsed since the
 13 FTC case was initiated, during which time funds had dwindled and records had degraded,
 14 disappeared, or even, in one instance, been destroyed (*see* Part I.A). Expenditures were poorly
 15 tracked or unrecorded. The forensic accountant retained by the Monitor at the time of his
 16 appointment described the QuickBooks records, for example, as “imperfect, incomplete, and to
 17 some extent misleading,” ECF No. 1156-1 at 1, and an accounting report prepared at Tucker’s
 18 request for tax purposes likewise identified significant accounting issues, *see* ECF No. 908-8
 19 at 7. These difficulties were exacerbated by the fact that Tucker’s assets were dispersed
 20 throughout dozens of complex corporate structures, many of which held the Monitor Entities’
 21 assets but were not themselves Monitor Entities. Tucker’s manipulation of shell companies and
 22 entities was one of his trademarks, and it was also a large part of the reason why he was able to
 23 operate with impunity for as long as he did.

24 ³ The Monitor Order named as Monitor Entities AMG Capital Management, LLC, Level 5
 25 Motorsports, LLC, Black Creek Capital Corporation, Broadmoor Capital Partners, Park 269,
 26 LLC, BA Services LLC, C5 Capital LLC, DF Services Corp., DFTW Consolidated [UC] LLC,
 27 Impact BP LLC, Level 5 Apparel LLC, Level 5 Capital Partners LLC, Level 5 Eyewear LLC,
 28 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.” *Id.* at Definitions, H.a-b.

1 Many of the assets the Monitor was able to identify had little, if any, remaining value;
2 Tucker had an eye for high-risk investments and sunk money into dozens of business ventures
3 large and small, many of which were either total or near-total losses. Further complicating
4 recovery efforts, Tucker himself, as well as many of Tucker's longtime partners (*e.g.*, Charles
5 Hallinan and Timothy Muir), were under criminal indictment at the time of the Monitor's
6 appointment and unwilling to cooperate with the Monitor's efforts.

7 The initial phase of the Monitorship involved identifying and selling hard assets that
8 would lose value if not liquidated and reviewing the Monitor Entities' accounts receivable for
9 easily collectible assets (*e.g.*, outstanding loan payments, dividends, etc.). Those efforts are
10 largely addressed in Part I.B. The Monitor then moved to assessing intangible assets, which were
11 primarily the claims discussed in Part II. During the almost five years the Monitorship was in
12 existence, the Monitor brought nine lawsuits and settled many other claims pre-litigation. The
13 Monitor's efforts in this regard were incomplete at the time the Supreme Court reversed the
14 monetary portion of the judgment against Tucker, but they nonetheless yielded significant funds
15 for the Monitorship Estate as detailed below.

16 **A. The Monitor's Initial Investigation**

17 Shortly after being appointed, the Monitor traveled to Kansas to assess Tucker's assets
18 and records. After taking an inventory of the assets at Scott and Kim Tucker's residence, the
19 Monitor met with the self-identified "controller" of the Monitor Entities who reported the entities
20 vacated expansive office space in Overland Park, Kansas in August or September 2016. The
21 Monitor Entities' physical documents were moved to the Olathe, Kansas offices of tribal entities
22 Red Cedar and SFS. In the course of reviewing the physical documents at the Olathe office
23 building⁴, the Monitor learned from a former employee that much of the Monitor Entities'
24 electronic data had been destroyed by the tribes when they wiped and repurposed the Monitor
25 Entities' computers and servers.

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28 ⁴ There were approximately 80 bankers boxes and 30 three-foot wide lateral file cabinet drawers filled with business records for the Monitor Entities at this office.

1 The Monitor Entities' records were a mess – the boxes were often mislabeled or not
 2 labeled, many documents were loose in boxes, folders were not labeled, and records from the
 3 different entities were often commingled. ECF No. 1156-1 at 1. The state of the electronic
 4 records was not much better. Despite the destruction of large amounts of data by Red Cedar and
 5 SFS, there remained hundreds of thousands of Monitor Entities' emails to sort through in an
 6 effort to identify and evaluate the assets discussed below.

7 **B. Asset Recovery and Liquidation**

8 While much of Tucker's money was locked up in business ventures and investments,
 9 there were some hard assets in his possession at the time of the Monitor's appointment that were
 10 deemed subject to the Monitorship.⁵ The Monitor identified and liquidated these assets where
 11 appropriate, yielding a total of \$6,618,583.76 for the Monitorship Estate: \$1,363,458.42 in cash
 12 (cashed checks, bank transfers, etc.), \$4,339,383.21 obtained from the liquidation of hard assets
 13 (vehicle and property sales, etc.), and \$915,742.13 from other sources (mortgage and rental
 14 payments, etc.).

15 1. Monetization of a Level 5 Motorsports, LLC Trailer

16 In August of 2016, prior to the Monitor's appointment, non-party El Dorado Trailer
 17 Sales, LLC attempted to appropriate and dispose of a vehicle transporter trailer titled in the name
 18 of Monitor Entity Level 5 Motorsports, LLC. The FTC was forced to file an emergency motion
 19 to forestall El Dorado's attempted sale. *See* ECF No. 1031. After the Monitor's appointment,
 20 while the FTC and El Dorado were in the midst of litigating the dispute, the Monitor learned that
 21 El Dorado was once again attempting to sell the trailer. The Monitor filed an emergency, *ex*
 22 *parte* motion to stop the sale (*see* ECF No. 1106), and protracted, hard-fought litigation ensued.⁶
 23 El Dorado's actions imposed a significant financial burden on the Monitorship Estate, only some
 24 of which the Monitor was able to recover via a sanctions award against El Dorado. Ultimately,

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 26 ⁵ Other hard assets, like a number of Tucker's exotic cars, were subject to forfeiture in the
 criminal action brought against Tucker in the Southern District of New York.

27 ⁶ At least *twenty* pleadings were filed by the FTC, the Monitor, and El Dorado in federal district
 28 court. More pleadings still were filed in Ohio state court, where El Dorado filed to try and obtain
 title to the trailer in violation of this Court's orders, and in El Dorado's Ninth Circuit appeal.

1 the Monitor and El Dorado entered into a settlement agreement, which the Court approved, and
 2 El Dorado thereafter paid \$255,000 and dismissed its appeal. *See* ECF No. 1205.

3 2. Sale of the Remaining Level 5 Assets at Auction

4 The Monitor Order instructed the Monitor to “[s]ell all assets of Level 5 Motorsports,
 5 LLC in a commercially reasonable manner.” Monitor Order § VIII.C. As the Monitor and his
 6 team discovered, Level 5’s inventory was substantial and consisted of all the equipment
 7 necessary to operate a professional auto racing team. Given the scope and scale of the
 8 equipment, the Monitor determined sale via a third-party auction house would be the most
 9 efficient way to maximize their value, and he asked the Court to approve that manner of sale. *See*
 10 ECF No. 1120. The Court approved the Monitor’s motion. *See* ECF No. 1126. After subtracting
 11 the cataloguing fee and commissions, the Monitorship Estate received a total of \$2,390,790.00
 12 from the assets’ sale.

13 3. Sale of Vehicles

14 Given Tucker’s interest in exotic and race cars, it is unsurprising he and his stable of
 15 companies owned a number of vehicles. The Monitor was responsible for assembling and selling
 16 those which were deemed to be the property of the Estate. The vehicles sold were:

- 17 • Two 2015 Ferrari 458 Speciales, which sold for a net \$622,250.00 and
 18 \$259,390.98 at private sale and auction, respectively. *See* ECF No. 1193 (Motion
 19 to Approve Private Sale); ECF No. 1199 (Order Granting Motion); ECF No. 1292
 (Thirteenth Interim Report).
- 20 • A 2010 Land Rover used at the Tuckers’ Aspen house, which was sold for
 \$20,000. *See* ECF No. 1277 (Eleventh Interim Report).
- 21 • A Replica Cobra sold at auction for a net \$47,700.00. *See* ECF No. 1292
 22 (Thirteenth Interim Report).
- 23 • Four vehicles stored by Greg Daughters in Polo, Missouri, which were sold for a
 24 net \$103,300 at auction. *See* ECF No. 1230 (Seventh Interim Report); ECF No.
 1301 (Fourteenth Interim Report).

25 In total, the Monitorship Estate netted \$1,052,640.98 from the sale of these vehicles.

26 4. Eclipse Renewables Outstanding Receivable

27 Monitor Entity Eclipse Renewables Holdings, LLC was a Nevada LLC formed as a
 28 vehicle for Tucker’s investment in Eclipse Renewables LLC, a Texas-based business venture

1 focusing on recycling automobile tires into an energy source. Tucker poured significant money
 2 into the business, but Eclipse Renewables was a flop, and operations had ceased by 2013 or 2014
 3 at the latest, leaving behind a parcel of land (discussed below at Part I.B.7) with thousands of
 4 scrap tires which state officials identified as an environmental hazard. Beyond the real property,
 5 the one lingering “asset” at the time of the Monitor’s appointment was an amount due and owing
 6 from the April 2013 return of eighteen microwave generators, for which Eclipse Renewables was
 7 to receive \$200,000, to their manufacturer. The manufacturer had paid \$100,000, but the other
 8 half of the debt was unpaid. The manufacturer initially offered \$10,000 to retire the debt, but
 9 after negotiations agreed to pay the Monitor \$80,000 in three installments, which it did. *See* ECF
 10 Nos. 1230 (Seventh Interim Report), 1234 (Eighth Interim Report), 1244 (Ninth Interim Report).

11 5. Personal Property at Leawood, Kansas Property

12 Tucker’s residence in Leawood, Kansas (which he shared with his wife, Kim Tucker, and
 13 two daughters) was subject to forfeiture in the S.D.N.Y. criminal case. After Ms. Tucker
 14 abandoned the Leawood property (along with some personal property that remained in the
 15 house), IRS agents took possession of the property in March 2019 following discussions between
 16 the S.D.N.Y. U.S. Attorney’s Office, the FTC, and the IRS on how to best protect the Leawood
 17 house and personal property. Although the Leawood house was subject to the S.D.N.Y.’s
 18 forfeiture order, the personal property in the house was deemed to be part of the Monitorship
 19 Estate. The Monitorship Estate netted \$53,629.30 from an estate sale of the assets. *See* ECF No.
 20 1250 (Tenth Interim Report).

21 6. Disposition of Real Property

22 Other than the Tuckers’ residence, Tucker and the Monitor Entities owned a number of
 23 real estate properties. Some of these the Monitor sold during the pendency of the Monitorship,
 24 while others remained in the Monitor’s possession and are now subject to forfeiture in the
 25 criminal action against Tucker. The real property identified and/or liquidated by the Monitor
 26 includes:

- 27 • A scrap tire storage facility in San Antonio, Texas owned by Eclipse Renewables
 28 (a wholly-owned subsidiary of Monitor Entity Eclipse Holdings), which the
 Monitor sold for a net \$542,998.40. *See* ECF No. 1173 (Fourth Interim Report).

- A multi-million-dollar house in Aspen, Colorado, which was owned by Monitor Entity Park 269, LLC, and which was subject to forfeiture in the criminal case against Tucker, though the proceeds from the sale of the personal property were deemed to be part of the Monitorship Estate. The Monitor oversaw the sale of the property for more than \$10,000,000 on behalf of the S.D.N.Y., and the Estate ultimately received an additional \$52,863, the approximate value of the home furnishings, from the sale Monitorship property.⁷ See ECF No. 1244 (Ninth Interim Report); ECF No. 1250 (Tenth Interim Report); ECF Nos. 1277 (Eleventh Interim Report), 1282 (Twelfth Interim Report), 1292 (Thirteenth Interim Report).
- A 58-acre parcel of raw land located in Kansas City, Kansas (referred to in reports as the “Donahoo Property”) owned by Monitor Entity Westfund, LLC, which is subject to the S.D.N.Y. preliminary forfeiture order. See ECF No. 1173 (Fourth Interim Report); ECF No. 1230 (Seventh Interim Report).
- A four-acre parcel of land located in Polo, Missouri owned by Monitor Entity DF Services Corporation,⁸ which is subject to the S.D.N.Y. preliminary forfeiture order.

While Tucker regularly invested in real estate, the above are the properties which the Monitor was able to identify and either hold or monetize. The Monitor identified a fifth property, less than one acre in size and located in Polo, Missouri, which Tucker deeded to a third party prior to the entry of the asset freeze, purportedly in exchange for services rendered. See ECF No. 1230 (Seventh Interim Report). Because the property was in a third party’s name, and after determining that the claim of services rendered was at least colorable, the Monitor determined that it would not be cost effective to attempt to claim ownership of the property.

7. Resolution of Mortgage Investments

Tucker also made mortgage loans as part of his investment portfolio. Of the mortgages which the Monitor identified as having some potential value, the Monitor was able to recover nearly the full amount owed. The mortgages which the Monitor identified and resolved were as follows:

- Tucker’s long-time assistant received a \$200,000 mortgage loan from a Tucker-owned entity, Black Creek Capital LLC, for real property located in Leawood, Kansas. The assistant repaid the loan in full, netting the Monitorship Estate

⁷ The \$52,863 referenced in the Monitor’s Fourteenth Interim Status Report (ECF No. 1301) did not account for the subsequent sale of three bikes on the Aspen property. In total and accounting for the bikes, the sale of the personal property at the Aspen location netted \$53,212.97 for the Monitorship Estate, which is the amount cited in the Preliminary Forfeiture Order.

⁸ One of Tucker’s companies, Polo Real Estate Holdings, LLC (“PREH”), was the purchaser on paper, but the \$40,000 purchase of the property was recorded in DF Services’ QuickBooks.

1 \$211,464.77 (\$201,424.77 from the payoff of the mortgage, and an additional
2 \$10,040 in interest payments prior to the payoff). *See* ECF 1292 (Thirteenth
Interim Report).

- 3 • From October 2011 to October 2013, Team Property & Investment, LLC obtained
4 seven loans with an aggregate principal amount of \$433,720.02 from Black Creek
5 Capital Corporation, Real Estate Capital Services LLC, and Westfund LLC to
6 purchase various houses. The loans were repaid in full, minus a \$5,000 credit
7 which Team Property requested to draft the necessary loan release documents,
8 netting a total of \$457,240.98 for the Monitorship Estate. *See* ECF No. 1282
9 (Twelfth Interim Report).
- Black Creek Capital Corporation made a mortgage investment in real property
located in Centerville, Missouri, which was secured by a second deed of trust
recorded against the property. *See* ECF No. 1173 (Fourth Interim Report). The
property went to trustee's sale, and after the holder of the first deed of trust was
paid, the Monitorship Received \$4,111.56 in excess proceeds.
- Black Creek Capital Corporation and Real Estate Capital Services, LLC owned
three houses in Kansas City, each of which was subject to a "Contract for Deed."
See ECF No. 1230 (Seventh Interim Report). The Monitor discovered that the
entities had lost title to two of the properties in 2013 and that the third was nearly
paid off, with only roughly \$5,000 remaining. Given that the return on the third
property would be *de minimis* at best, the Monitor did not pursue the property.

14 In total, the Monitorship Estate netted \$672,817.31 from the disposition of these mortgages.

15 8. Assets Recouped Following Termination of the Asset Freeze Order

16 Section II(G)(1) of the Monitor Order provided for termination of the asset freeze if,
17 among other things, the Ninth Circuit issued a mandate affirming the Court's judgment. After the
18 judgment was affirmed on appeal and the mandate issued on June 28, 2019, *see* ECF No. 1247,
19 the FTC sent letters to various financial institutions informing them that the asset freeze had
20 lifted and directing them to transfer assets to the Monitor. The following amounts were thereafter
21 transferred to the Monitorship Estate's bank account: \$43,026.84 from bank accounts with
22 Evolve Bank & Trust; \$900,863.87 from three investment accounts with Waddell & Reed, Inc.;
23 \$157,745.94 from three bank accounts with Morrill & Janes Bank; and \$86,798.40 from two
24 bank accounts with Country Club Bank.

25 9. Life Insurance Policies

26 The Monitor was able to identify a number of life insurance policies for both Scott and
27 Kim Tucker: two policies for Scott Tucker with Transamerica (one \$13,000,000 and the other
28 \$30,000,000) and one with AIG (\$1,200,000), and two policies for Kim Tucker (one with AIG

1 for \$300,000 and one with John Hancock for \$1,000,000). If the policies held any value (as
 2 might be accrued with, *e.g.*, a whole or universal life policy), they would qualify as assets of the
 3 Monitorship Estate pursuant to the Monitor Order. After corresponding with Scott and Kim
 4 Tucker's insurers and former insurance brokers, the Monitor's counsel was able to confirm the
 5 universe of policies and verify that all but one of the policies were lapsed term policies. Kim
 6 Tucker's John Hancock policy, which was funded by a single premium payment in 2014, had a
 7 surrender value of over \$1,000,000. The Monitor provided this information to the S.D.N.Y.

8 **II. Litigation Contemplated or Brought by the Monitor**

9 During his investigation, the Monitor and his team were careful to make note of potential
 10 claims belonging to the Monitor Entities (and therefore the Monitorship Estate), as such claims
 11 were recoverable assets under the terms of the Monitor Order. *See* Monitor Order §§ VIII.B,
 12 VIII.R. Generally speaking, these claims fell into two broad groups: the collection on debts owed
 13 to Tucker/the Monitor Entities and the clawback of fraudulent transfers or other ill-gotten gains.

14 Identifying potential claims was not a simple process. As discussed above, Tucker's
 15 business investments were both numerous and routinely ill-fated outside of the payday lending
 16 space. The Monitor wrote off a number of Tucker's outstanding investments as not worth
 17 pursuing for these or other reasons. Of the universe that remained, the Monitor was able to obtain
 18 a total recovery of \$10,555,762.16⁹ for the Monitorship Estate after settling five groups of
 19 potential claims and filing nine lawsuits against Tucker's business partners. As discussed below,
 20 the Monitor believes that substantially more would have been recovered if several of the lawsuits
 21 he pursued had reached a conclusion.

22 **A. Pre-Litigation Settlements and Other Matters**

23 Although the Monitor filed a number of lawsuits on behalf of the Monitor Entities, he
 24 was able to settle several claims pre-litigation. The Monitor and his counsel settled five potential
 25 groups of claims against (i) Glenn Fisher, 5G Capital, LLC, and the eProdigy companies, (ii)
 26 Steve Lord and Eyecare Indiana, (iii) David Feingold, Dylan, Jagger Investment Co., Inc.,
 27 Homeowners Realty, LLC, UMR Building LLC, United Material Recovery, LLC, and Jerry

28 ⁹ This figure includes the \$255,000 El Dorado settlement discussed *supra* at Section I.B.2.

1 Gottlieb, and (iv) the Sunway Hotel and Bartlesville Hotel companies. In each case, the Monitor
2 was able to settle the claims for either the full amount or close to it – that is to say, the settling
3 parties agreed to return almost every (if not every) dollar owed to the Monitorship Estate. The
4 Monitor also confidentially settled a claim pre-litigation with a third party, but the settlement
5 was contingent on the Supreme Court’s affirmance of the Ninth Circuit’s decision in *AMG*
6 *Capital* and was nullified when that decision was issued.

7 1. Glenn Fisher and 5G Capital, LLC

8 In April 2015, Monitor Entity Westfund, LLC made a loan of \$3.5 million to 5G Capital,
9 LLC (owned by Glenn Fisher), which used the funds to make a loan of \$3.5 million to a cadre of
10 related “eProdigy” companies. In exchange for the loan, eProdigy made weekly interest
11 payments to 5G Capital. The Monitor was able to negotiate a settlement for the repayment of the
12 loan (which the Court approved, *see* ECF No. 1152), whereby Fisher would wire the full amount
13 of the initial loan and all assets derived from it, a total of \$3,963,426.91, to the Monitorship
14 Estate’s account. *See* ECF No. 1156 (Second Interim Report). An audit which the Monitor
15 ordered later showed that although Fisher and 5G Capital had complied with the settlement
16 terms, eProdigy had failed to pay the \$35,000 prepayment penalty and \$11,378.55 in unpaid
17 interest to Fisher and 5G (which Fisher and 5G would have paid to the Estate). After eProdigy
18 was confronted with the results of the audit, it paid the full amount owed. The Monitor was thus
19 able to make a full recovery of the funds owed to the Monitorship Estate (a total of
20 \$4,009,805.46) by Fisher, 5G Capital, and the eProdigy companies.

21 2. Eyecare Indiana and Steve Lord

22 Monitor Entity Broadmoor Capital Partners, LLC was a 50% owner of a company which
23 in 2011 had sold a number of optometry services locations to Eyecare Indiana II, P.C. Per the
24 sale agreement, Eyecare Indiana was due to make a balloon payment of \$565,000 in October
25 2016, half of which should have gone to Broadmoor and half of which was to go to Broadmoor’s
26 partner, C3 Capital Partners, LP. A review conducted by the Monitor’s forensic accountant,
27 however, revealed that Broadmoor had never received its half of the proceeds. Further
28 investigation led the Monitor to discover that a former officer of Broadmoor, Steve Lord, had

1 reached a side deal with C3 Capital, whereby C3 paid Lord the money owed to Broadmoor on a
 2 monthly installment basis, which was in violation of the asset freeze order in place at the time.
 3 The Monitor quickly demanded that Lord return the misappropriated funds – a total of \$97,500 –
 4 to the Monitorship Estate, which Lord did. *See* ECF No. 1166 (Third Interim Report). Eyecare
 5 Indiana sent the remaining principal balance of \$185,000 directly to the Monitorship Estate (*see*
 6 ECF 1173, Fourth Interim Report), and the Monitor therefore recovered the full amount owed
 7 Broadmoor: \$282,500.00.

8 3. David Feingold

9 David Feingold was a Tucker business associate; they met while serving time in federal
 10 custody. Feingold's name arose in connection with a \$1,000,000 investment by Tucker in a
 11 biometric security technology company named EyeVerify LLC, which resulted in a substantial
 12 return of close to 600%. Feingold, who said he had done work for Tucker in connection with the
 13 investment, claimed that he had been given an interest in the investment by Tucker as
 14 compensation for services. Further investigation by the Monitor, however, revealed that the
 15 proceeds Feingold had received were fraudulent transfers which rightfully belonged to the
 16 Monitorship Estate. *See* ECF No. 1146 (First Interim Report); ECF No. 1156 (Second Interim
 17 Report).

18 The Monitor's counsel was able to secure a settlement with Feingold that recovered
 19 nearly all of the Monitorship Estate's interest in the EyeVerify investment: a total of \$5,700,000
 20 (with \$3,100,000 paid up front and the remainder over time) out of the \$6,056,000 that Feingold
 21 had misappropriated. Feingold also agreed to secure the remainder of what he owed the Monitor
 22 with real property (a recycling plant). *See* ECF No. 1188 (Joint Motion to Approve Settlement);
 23 ECF No. 1191 (Order Approving Settlement). Unfortunately, after returning \$3,110,000 to the
 24 Monitorship Estate and assigning his rights in remaining EyeVerify escrow payments (ultimately
 25 worth \$1,262,039.29), Feingold breached the settlement and the Monitor moved to enforce it.
 26 *See* ECF Nos. 1213-15. The Court granted the Monitor's motion and entered orders enjoining
 27 Feingold from transferring assets (ECF No. 1216) and directing the issuance of prejudgment

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1 writs of attachment on a number of businesses and properties in which Feingold had an interest
2 (ECF No. 1217).

3 Upon inspection of the recycling plant that Feingold had used to secure the settlement,
4 the Monitor found the plant was in disrepair and required at least \$150,000 in basic repairs to
5 make it commercially salable. *See* ECF 1234 (Eighth Interim Report). Further complicating the
6 matter, Feingold put the recycling plant into a fraudulent bankruptcy a little less than a month
7 after the Monitor's inspection of the plant. It was only after the Monitor retained counsel and got
8 the bankruptcy dismissed that the Monitor was able to sue in Ohio state court to foreclose on the
9 promissory note, at which point the Estate was finally able to monetize its interest in the
10 recycling plant. *See* ECF No. 1234 (Eighth Interim Report); ECF No. 1250 (Tenth Interim
11 Report). The property sold at a Sheriff's sale and netted the Estate a total of \$106,881.69. *See*
12 ECF No. 1277 (Eleventh Interim Report).

13 The Monitor's efforts to pursue Feingold for the unpaid amount of the judgment extended
14 well beyond the sale of the recycling plant, however. In January 2020, the Monitor filed a motion
15 to reduce the Feingold Parties' breached settlement to an enforceable money judgment. *See* ECF
16 No. 1280. The Court granted the motion on April 16, 2020, entering judgment against Feingold
17 and a number of related entities, jointly and severally, in the amount of \$2,416,666.36. *See* ECF
18 Nos. 1290-91. The Monitor's efforts to collect on that judgment are discussed in detail in the
19 Monitor's interim reports,¹⁰ but include the settlement of the Monitor's claims against Jerry
20 Gottlieb, who was a personal friend of Feingold's (and his longtime accountant and tax preparer)
21 and who received a total of \$104,535.72 from Feingold after the Court froze Feingold's assets on
22 September 29, 2018. Pursuant to the terms of his Court-approved settlement with the Monitor,
23 Gottlieb agreed to repay the funds and turn over other Feingold-linked assets to settle the
24 Monitor's claims against him, a settlement which the Court approved. *See* ECF No. 1276
25 (Motion); ECF No. 1279 (Order). The Monitor was in the process of pursuing other collection
26 efforts when the *AMG Capital* decision issued.

27 ¹⁰ *See, e.g.*, ECF No. 1244 (Ninth Interim Report); ECF No. 1250 (Tenth Interim Report); ECF
28 No. 1277 (Eleventh Interim Report); ECF No. 1282 (Twelfth Interim Report); ECF No. 1292
(Thirteenth Interim Report); ECF No. 1301 (Fourteenth Interim Report).

1 4. Bartlesville Hotel

2 Monitor Entity Westfund, LLC held a 55% interest in a hotel located in Bartlesville,
 3 Oklahoma. The Monitor's forensic accountant's review of the Bartlesville hotel's books and
 4 records confirmed that it was not a profitable venture, but also identified a total of \$274,500 in
 5 unauthorized fees that the hotel's management group (the holder of the remaining 45% interest)
 6 had charged to it. The Monitor's real estate expert also evaluated the hotel operations and value
 7 and concluded there was very little equity in the hotel. After protracted settlement negotiations,
 8 the hotel's management group agreed to return the full amount of the unauthorized fees and pay
 9 an additional \$150,500 for the Monitor's assignment to them of Westfund's interest in the hotel,
 10 netting a total of \$425,000 for the Estate. The Monitor sought the Court's approval of the
 11 settlement (ECF No. 1281), which the Court gave (ECF No. 1287). *See also* ECF No. 1282
 12 (Twelfth Interim Report); ECF No. 1292 (Thirteenth Interim Report).

13 5. Confidential Third-Party Settlement

14 In December 2017, the Monitor served a subpoena on a third party to investigate
 15 communications, payments, and asset transfers between Scott Tucker and his entities and the
 16 third party, in response to which the third party agreed to enter a tolling agreement and produce
 17 documents. For more than two years, the Monitor and the third party exchanged information and
 18 engaged in settlement discussions. While a settlement was ultimately reached and approved by
 19 the Court under seal – and an initial, partial payment of \$510,000 was made pursuant to its terms
 20 – the settlement's terms required that the Supreme Court affirm the FTC's judgment for the
 21 settlement to be valid. The *AMG Capital* decision therefore nullified the settlement, and pursuant
 22 to the Court's Second Amended Order, the Monitor returned the settlement funds in his
 23 possession to the third party.

24 **B. Lawsuits Initiated by the Monitor**

25 There were some claims which the Monitor was not able to settle pre-litigation. To
 26 pursue these claims, the Monitor initiated nine lawsuits, each of which is discussed below.

27 ///

28 ///

1. Fraudulent Transfer Litigation

On November 29, 2017, the Monitor filed four complaints against various individuals and entities seeking to recover Monitorship Estate assets, all of which sought (among other legal theories) the recovery of fraudulent transfers.¹¹ As the Monitor began litigating the Fraudulent Transfer Actions, it became clear that pursuing these claims would not be an inexpensive affair. The relevant conduct went back well over a decade, and each case was complicated by the hallmark of Tucker's business model: a web of complicated corporate structures that included dozens of shell companies. After considering the available options, the Monitor concluded that a contingency fee arrangement made the most sense for pursuit of the claims, as it would avoid any cost to the Monitorship Estate unless and until a recovery was achieved. The Monitor accordingly moved for authorization to engage contingency counsel (*see* ECF No. 1197), which the Court granted (ECF No. 1202). As the cases progressed, the Monitor kept the Court apprised of any developments.¹²

In the end, the Monitor’s decision to pursue the Fraudulent Transfer Actions as contingency matters proved to be the right one. His counsel vigorously pursued the actions, logging thousands of hours across the cases. But because of the contingency arrangement, the Estate was not charged for the pursuit of these cases. Following the Supreme Court’s decision in *AMG Capital*, the Court issued an Order requiring any interested party to assert an interest in these cases by October 3, 2021. Kim Tucker, on behalf of herself and the Monitor Entities, timely filed a Notice of Asserted Interest in each of the Fraudulent Transfer Actions except for *McNamara v. Selling Source*.

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¹¹ The “Fraudulent Transfer Actions” were *McNamara v. Charles Hallinan, et al.*, Case No. 2:17-cv-02966-GMN-NJK (D. Nev.), *McNamara v. Linda Hallinan, et al.*, Case No. 2:17-cv-03967-GMN-PAL (D. Nev.), *McNamara v. Patten, et al.*, Case No. 2:17-cv-02968-GMN-NJK (D. Nev.), and *McNamara v. Selling Source, LLC, et al.*, Case No. 2:17-cv-02969-GMN-CWH.

¹² See ECF No. 1173 (Fourth Interim Report); ECF No. 1192 (Fifth Interim Report); ECF No. 1204 (Sixth Interim Report); ECF No. 1230 (Seventh Interim Report); ECF No. 1244 (Ninth Interim Report); ECF No. 1250 (Tenth Interim Report); ECF No. 1277 (Eleventh Interim Report); ECF No. 1282 (Twelfth Interim Report); ECF No. 1292 (Thirteenth Interim Report); ECF No. 1301 (Fourteenth Interim Report); ECF No. 1314 (Fifteenth Interim Report).

1 ***i. McNamara v. C. Hallinan***

2 Charles Hallinan was Tucker's earliest partner in the payday lending business. By the
3 time their relationship ended in 2008, Hallinan's company, Hallinan Capital Corp. ("HCC"), had
4 received approximately \$20,000,000 or more in connection with Hallinan's interest in Monitor
5 Entity NMS. Later, Hallinan and HCC received an additional \$30,000,000 from AMG Services,
6 Inc. to settle the lawsuit Hallinan filed against Tucker after the disintegration of their
7 relationship. Believing that these funds rightfully belonged to the Monitorship Estate, the
8 Monitor brought suit against Hallinan and HCC. The parties completed discovery and filed and
9 briefed cross-motions for summary judgment, which were pending at the time of the *AMG*
10 *Capital* decision.

11 ***ii. McNamara v. L. Hallinan***

12 Linda and Carolyn Hallinan are Hallinan's daughters. The Monitor's investigation
13 revealed that from January 2003 through November 2008, the women received at least \$630,000
14 in "interest" payments on a \$500,000 loan they purportedly made to one of Tucker's companies.
15 Due to a number of factors (including the fact that Tucker never made any payments towards the
16 principal, despite being more than able to do so), the Monitor decided to sue the Hallinan sisters
17 to recover, at a minimum, the "interest" payments, plus accrued interest, and to investigate other
18 monies transferred to these Hallinan relatives. At the time the *AMG Capital* decision was issued,
19 the parties had completed discovery and fully briefed cross-motions for summary judgment.

20 ***iii. McNamara v. Patten***

21 Gary Patten met Tucker when Patten was working for Selling Source, LLC, the company
22 which provided Tucker's business with its leads. Near the end of 2009, Tucker recruited Patten
23 and his company, Pano Advisors, Inc., to serve as the *de facto* CFO for Tucker's business
24 ventures, payday lending and otherwise. Patten performed his work directly for Tucker and was
25 paid variously through "consulting" payments, salary, and even as a percentage of the loan
26 portfolios' monthly revenues. Together, Patten and Pano received approximately \$14,000,000
27 from Tucker. Based on Patten's close relationship with Tucker and the nature of their business
28 dealings, the Monitor decided to sue Patten and Pano Advisors to recover the money they made

1 from their dealings with Tucker. At the time of the decision in *AMG Capital*, fact discovery was
 2 complete, and the parties had designated experts and exchanged expert reports.

3 ***iv. McNamara v. Selling Source***

4 Payday lenders rely on lead generators to “feed” them customers. In Tucker’s case, that
 5 lead generator was Selling Source, which was co-owned by Tucker and Derek LaFavor until
 6 2007. Selling Source’s lead generation business (of which Tucker’s friend, LaFavor, was the
 7 CEO) and Tucker’s payday lending empire were closely intertwined: Tucker’s enterprise
 8 transferred several hundred million dollars to Selling Source according to QuickBooks records
 9 available to the Monitor. The Monitor sued both Selling Source and LaFavor to recover these
 10 funds as fraudulent transfers and under a number of other theories. The case was stayed early on,
 11 while Selling Source and LaFavor’s motions to dismiss the Monitor’s First Amended Complaint
 12 were still pending. It remained stayed until the Supreme Court’s decision in *AMG Capital*, and
 13 has since been dismissed without prejudice after no party stepped forward to assert an interest in
 14 it.

15 **2. Other Litigation**

16 In addition to the Fraudulent Transfer Litigation, the Monitor engaged in further litigation
 17 efforts to recover funds rightfully belonging to the Monitorship Estate. At the time of the
 18 Supreme Court’s decision in *AMG Capital*, these matters were in various states. On October 3,
 19 2021, Kim Tucker, on behalf of herself and the Monitor Entities, timely filed a Notice of
 20 Asserted Interest in each of these matters except for the Katz matter and its pending settlement.

21 ***i. Lawsuit Against WhamTech, Inc.***

22 During his investigation, the Monitor discovered that Monitor Entity Black Creek Capital
 23 Corporation was owed a substantial sum on loans made to a company called WhamTech, Inc.,
 24 which was well into default by the time the Monitor was appointed. After learning of the debt,
 25 the Monitor engaged in discussions with WhamTech, and on November 15, 2017, the parties
 26 agreed on new terms for WhamTech’s repayment of the loans. WhamTech failed to repay the
 27 loans by the agreed-upon time, however, and the Monitor was forced to bring suit against
 28 WhamTech. *See McNamara v. WhamTech, Inc.*, Case No. 2:18-cv-01336-JCM-CWH (D. Nev.);

1 *see also* ECF No. 1204 (Sixth Interim Report). The parties thereafter engaged in settlement
 2 discussions and reached a new agreement for WhamTech's repayment of the loans (*see* ECF No.
 3 1240), which the Court approved (ECF No. 1241).

4 As reported to the Court, WhamTech paid \$1,000,000 to the Monitorship Estate before
 5 defaulting on the remaining \$2,000,000 it owed. *See* ECF No. 1277 (Eleventh Interim Report).
 6 When WhamTech failed to cure the default, the Monitor filed a confession of judgment. *See*
 7 *McNamara v. WhamTech*, ECF Nos. 17, 19; *see also* ECF No. 1292 (Thirteenth Interim Report).
 8 On July 24, 2020, the Court issued a judgment against WhamTech in the amount of \$2,000,000
 9 plus interest at the legal rate. *McNamara v. WhamTech*, ECF No. 22; *see also* ECF No. 1301
 10 (Fourteenth Interim Report).

11 ***ii. Lawsuit to Recover on the Kendallwood and Milan Loans***

12 In August 2007 and December 2015, a group of associated entities and related individuals
 13 executed two separate promissory notes payable to Monitor Entity Westfund, LLC: the "Milan
 14 Note" (2007) and the "Kendallwood Note" (2015). Both were in default as of June 1, 2018.
 15 When attempts by the Monitor to negotiate a resolution were unsuccessful, the Monitor asked the
 16 Court for leave to retain counsel to file suit against the borrowers and guarantors, which the
 17 Court granted. *See* ECF Nos. 1194 (Motion), 1199 (Order). Counsel then filed suit against the
 18 Milan and Kendallwood Note borrowers and guarantors in Kansas state court, *see McNamara v.*
 19 *United Resource Holdings, LLC, et al.*, Case No. 18CV03375 (Johnson County, KS), and the
 20 Monitor ultimately sought and obtained summary judgment in the case. At the time of the
 21 Supreme Court's decision in *AMG Capital*, the Monitor's counsel was in the process of
 22 attempting to collect on the judgments entered against the borrowers and guarantors.

23 ***iii. Lawsuit Against Stealth Power, LLC***

24 Stealth Power, LLC borrowed money on several occasions from Monitor Entity
 25 Westfund LLC. The total amount of Stealth's loans was confirmed in January 2016, several
 26 months prior to the Monitor's appointment, as being \$533,950.00 at 18% interest. After making
 27 three payments totaling \$114,641, Stealth defaulted on its outstanding obligation. While Stealth
 28 and the Monitor engaged in settlement discussions, they could not come to terms and the

1 Monitor subsequently brought suit against Stealth. *See McNamara v. Stealth Power, LLC*, Case
 2 No. 2:18-cv-01813-GMN-NJK (D. Nev.). The Monitor sought summary judgment and judgment
 3 on the pleadings against Stealth; both motions were pending at the time the *AMG Capital*
 4 decision was rendered.

5 **iv. Lawsuit Against Intercept Corporation**

6 Tucker's payday lending operation needed to partner with a payment processor in order
 7 to access consumers' accounts, either to deposit the payday loan or to withdraw payments and
 8 fees; Tucker's primary third-party payment processor was a company called Intercept
 9 Corporation. After the Monitor concluded based on his investigation that Intercept had played a
 10 critical role in (and provided substantial support to) Tucker's payday lending enterprise, he filed
 11 suit against Intercept and three of its principals. *See McNamara v. Intercept Corp., et al.*, Case
 12 No.: 2:18-cv-02281-GMN-VCF (D. Nev.). At the time that the decision in *AMG Capital* was
 13 issued, Intercept's motion to dismiss the Monitor's First Amended Complaint was pending
 14 (Intercept's first motion to dismiss had been granted in part and denied in part with leave to
 15 amend) and discovery was ongoing.

16 **v. Lawsuit Against Ward Katz**

17 Ward Katz was an affiliate of David Feingold. After discovering that Feingold had made
 18 what appeared to be a fraudulent transfer to Katz of Feingold's interest in an apartment complex,
 19 the Monitor filed a petition in Kansas state court against Feingold, Katz, and a number of entities
 20 related to both men. *See McNamara v. Katz, et al.*, Case No. 20CV00154 (Johnson County,
 21 Kan.). The Katz parties ultimately agreed to pay \$175,000 to settle the matter contingent on this
 22 Court's approval, but the Monitor's motion to approve the settlement (ECF No. 1307) was still
 23 pending when *AMG Capital* was decided. Because no party asserted an interest in the settlement
 24 within the time limit set by the Court's Second Amended Order (ECF No. 1338), the Monitor
 25 withdrew the motion seeking approval of the settlement. (ECF No. 1354.)

26 **C. Claims Contemplated but Not Pursued**

27 There were numerous other third parties whom the Monitor investigated but elected not
 28 to pursue for one reason or another. For instance, the Monitor considered whether there were any

1 viable lawsuits against (1) high-ranking individuals who worked for the Tucker enterprises, (2)
 2 the tribes and tribal entities that agreed to serve as fronts for Tucker-owned payday lending
 3 entities, and (3) other third parties who received assets or otherwise assisted Tucker. As a review
 4 of the financial records of Tucker's entities confirmed, with few exceptions (namely Hallinan
 5 and Patten), Tucker largely enriched himself and paid comparatively smaller sums to those who
 6 worked for him, even those in "leadership" roles. With respect to the tribes and tribal entities, the
 7 Monitor considered pursuing some for their ongoing use of Tucker's payday lending software,
 8 but he ultimately declined to pursue the claims based on potential ownership/copyright issues
 9 and the tribal entities' likely sovereign immunity defense. While the Monitor firmly believes that
 10 his investigation of third parties was necessary and worthwhile, he also believes that it was in the
 11 best interests of the Monitorship Estate to refrain from pursuing them.

12 **III. Resolution of the Monitorship**

13 The Supreme Court's decision in *AMG Capital* vacated the monetary portion of the
 14 judgment against Tucker, but what was to become of the Monitorship – which was premised on
 15 the Monitor Order, to which the parties had stipulated – was less clear. Defendants sought
 16 immediate termination of the Monitorship; the Monitor, on the other hand, asked for an
 17 extension of the Monitorship completion deadline to conduct an orderly wind-down of the Estate
 18 and ensure all parties with potential interests were given an opportunity to come forward and
 19 claim them. Even though the bulk of the Monitorship Estate's assets were subject to forfeiture in
 20 the criminal action against Tucker,¹³ there were certain other issues that remained unresolved. In
 21 the papers he filed with the Court, the Monitor identified four categories of assets not subject to
 22 forfeiture: ongoing litigation, Defendants' documents and electronic data, unsatisfied judgments,
 23 and pending and voided settlements. In each case, it was unclear what should happen to these
 24 assets in connection with the resolution of the Monitorship.

25 After briefing by the parties and a status conference, the Court entered a Second
 26 Amended Order (ECF No. 1338) on September 3, 2021 that set a procedure for disposition of
 27 those assets not subject to forfeiture. The Court provided 30 days for any interested party to

28 ¹³ See *U. S. v. Tucker*, Case No. 1:16-cr-00091-PKC, ECF No. 447 (S.D.N.Y. June 9, 2021).

1 appear and assert an interest in the ongoing litigation, to assert an interest in the pending Katz
 2 settlement, or to assert an interest in one or more of the outstanding judgments. Kim Tucker
 3 asserted an interest in some of the ongoing litigation (discussed *supra* at Part II.B) and all of the
 4 outstanding judgments (*see* ECF No. 1345), but she did not assert an interest in the pending Katz
 5 settlement (discussed *supra* at Part II.B.2.v). As authorized by the Court, Ms. Tucker also took
 6 custody of Defendants' documents that were in the Monitor's possession. Once these issues were
 7 resolved, the Monitor was to file his Final Report and wind down the Monitorship "consistent
 8 with the terms of the Monitor Order," which he has now done.

9 **IV. Final Monitorship Accounting**

10 Attached as Exhibit A is a Receipts and Disbursements Summary for the Monitorship
 11 period through November 15, 2021. It shows aggregate receipts of \$17,347,144.93, less
 12 disbursements of \$2,894,499.36, for net cash as of this Final Report of \$14,452,645.57.

13 **DISCHARGE OF THE MONITOR**

14 As noted above, contemporaneous with this Final Report the Monitor has filed a Final
 15 Fee Application and Application for Discharge with a proposed order.

16 Dated: November 23, 2021

McNAMARA SMITH LLP

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 18 By: /s/ Logan D. Smith
 Logan D. Smith (*Pro Hac Vice*)
 lsmith@mcnamarallp.com
 655 West Broadway, Suite 900
 San Diego, California 92101
 Tel.: 619-269-0400
 Fax: 619-269-0401

21
 22 Maria A. Gall (NV 14200)
 gallm@ballardspahr.com
 BALLARD SPAHR LLP
 1980 Festival Plaza Drive, Suite 900
 Las Vegas, NV 89135
 Tel.: 702-471-7000
 Fax: 702-471-7070

25
 26 *Attorneys for Court-Appointed Monitor,*
Thomas W. McNamara

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of November, 2021, 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 FINAL REPORT AND ACCOUNTING**, postage prepaid and addressed to the following:

VIA CM/ECF

Kimberly L. Nelson
Federal Trade Commission
600 Pennsylvania Ave. NW
Mail Stop CC-9528
Washington, DC 20580
Tel.: 202-326-3304
Fax: 202-326-3197
Email: knelson@ftc.gov
Attorneys for FTC

VIA CM/ECF

Paul C. Ray
Paul C. Ray, Chtd.
8670 West Cheyenne Avenue, Suite 130
Las Vegas, NV 89129
Tel.: 702-823-2292
Fax: 702- 823-2384
Email: paulcraylaw@gmail.com
*Attorneys for AMG Capital Management, LLC;
Level 5 Motorsports, LLC; Black Creek
Capital Corporation; Broadmoor Capital
Partners, LLC; Scott A. Tucker; Park 269 LLC*

VIA CM/ECF

Sean K. McElenney
Bryan Cave Leighton Paisner LLP
Two North Central Avenue, Suite 2100
Phoenix, AZ 85004-4406
Tel.: 602-364-7000
Fax: 602-364-7070
Email: skmcelenney@bclplaw.com
*Attorneys for Movants Kim Tucker, Black
Creek Capital Corporation, NM Service
Corporation, BA Services, LLC, and Westfund
LLC*

VIA CM/ECF

Richard E. Finneran
Bryan Cave Leighton Paisner LLP
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, MO 63102
Tel.: 314-259-2080
Fax: 314-259-2020
Email: richard.finneran@bclplaw.com
*Attorneys for Movants Kim Tucker, Black
Creek Capital Corporation, NM Service
Corporation, BA Services, LLC, and Westfund
LLC*

VIA CM/ECF

Carrie D. Savage
Phillip G. Greenfield
GM Law PC
1201 Walnut, Suite 2000
Kansas City, MO 64106
Tel.: 816-471-7700
Fax: 816-471-2221
Email: carries@gmlawpc.com;
philg@gmlawpc.com
*Attorneys for Movants David Feingold; Dylan,
Jagger Investment Co., Inc.; Homeowners
Realty, LLC; UMR Building, LLC; and United
Recovery, LLC*

VIA CM/ECF

Dominica C. Anderson
Tyson E. Hafen
Duane Morris LLP
100 N. City Parkway, Suite 1560
Las Vegas, NV 89106
Tel.: 702-868-2655
Fax: 702-993-0722
Email: dcanderson@duanemorris.com;
tehafen@duanemorris.com
*Attorneys for Movants David Feingold; Dylan,
Jagger Investment Co., Inc.; Homeowners
Realty, LLC; UMR Building, LLC; and United
Recovery, LLC*

/s/ Logan D. Smith

Logan D. Smith
*Attorneys for the Court-Appointed Monitor,
Thomas W. McNamara*