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Attorneys for the Receiver

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

Arizona Corporation Commission, )  
Plaintiff, )  
v. )  
One Vision Children's Foundation, Inc., )  
an Arizona non-profit corporation; )  
Hollister M. Marx, an individual; Wealth )  
Management Resources, Inc., an Arizona )  
corporation; Michael B. and Betty )  
Maksudian, husband and wife; Michael )  
A. and Lorrina Diaz, husband and wife, )  
Defendants. )

Cause No. CV 2002-020878

PETITION NO. 3  
PRELIMINARY REPORT AND  
RECOMMENDATIONS OF THE  
RECEIVER

(Assigned to the Honorable Kenneth L.  
Fields)

Lawrence J. Warfield, as the court appointed Receiver, respectfully petitions the  
Court as follows:

1. On October 28, 2002, this Court entered its *Order Appointing Receiver*, which  
appointed Lawrence J. Warfield as Receiver of all of the assets of One Vision Children's  
Foundation, Inc. and Wealth Management Resources, Inc. (AReceivership Order@).

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**Requirement for a Preliminary Report of the Receiver**

2. On November 6, 2002, the Court continued the hearing on the Plaintiff's application for a preliminary injunction until November 15, 2002, and requested that the Receiver file a report with the Court concerning his preliminary findings.

3. In addition, the Receivership Order provides in paragraph 7 as follows:

The Receiver is hereby directed to file with this Court and serve upon the parties, within 30 days after the entry of this Order, a preliminary report setting out the identity, location and value of the Receivership Assets, and any liabilities pertaining thereto. Further, at the time the Receiver makes such report, he shall recommend to the Court whether, in his opinion, based on his initial investigation, claims against the Defendants, should be adjudged in Bankruptcy Court. After providing the parties an opportunity to be heard, this Court will determine whether to accept the Receiver's recommendation and, if appropriate, issue an order authorizing the Receiver to commence a bankruptcy proceeding.

4. Accordingly, I hereby submit the following preliminary report.

**Initial Actions of the Receiver**

5. Upon being informed of my appointment as Receiver, I engaged the services of my accounting firm, Warfield & Company, to provide accounting and support services to me as Receiver, and I engaged the Phoenix law firm of Guttilla & Murphy, P.C. to serve as general counsel to the Receiver. I also engaged the services of A & A Investigations, LLC, to assist me in locating and securing the Receivership Assets. The Receivership Order expressly authorized this engagement of counsel and other agents in paragraph 10, which provides as follows:

1           The Receiver is hereby authorized to employ such employees,  
2           accountants, and attorneys as are necessary and proper for the  
3           collection, preservation, maintenance and operation of the  
4           Receivership Assets.

5           6.       I filed with the Court a Receiver=s Bond in the amount of \$25,000 issued  
6           effective October 28, 2002 by Hartford Fire Insurance Company. Notice of the filing of the  
7           bond was served on the parties on November 4, 2002. This bond was approved by the Court  
8           on November 5, 2002.

9           7.       I submitted a request to postal authorities to have all mail directed to the  
10          corporate defendants forwarded to the Receiver.

11          8.       I have obtained a federal tax identification number for the receivership and I  
12          have opened a bank account in the name of this receivership with Chase Manhattan Bank.

13          9.       At my direction, Guttilla & Murphy has recorded a copy of the Receivership  
14          Order in Maricopa County. In addition, I and Guttilla & Murphy have attempted to inform  
15          persons who may have control of Receivership Assets or Receivership Records of this  
16          Court=s orders.

17          10.       I and my legal counsel have met with representatives of the Plaintiff in an  
18          effort to familiarize ourselves with the relevant facts and to identify Receivership Assets and  
19          Receivership Records so that I can secure those assets and records and where possible take  
20          possession and control of same.

21          11.       On October 29, 2002, the day following the entry of this Court's Receivership  
Order and pursuant to that order, I entered the offices of Wealth Management Resources,

1 Inc. and, with the assistance of others, I inspected the offices of Wealth Management  
2 Resources located at 6991 East Camelback, Suite D203 in Scottsdale, Arizona. Upon entry  
3 we discovered Mr. Diaz holding a meeting in the conference room with three baseball related  
4 persons. We requested identification of these persons, advised them of the court's  
5 proceeding and then requested that they leave the premises. In addition, a consultant, Mark  
6 Maddox, was also asked to leave the premises so that we could secure the records and  
7 operations. Later, after the lunch hour, an additional employee and the accountant consultant  
8 arrived at the premises, to which they were allowed to obtain their personal items and leave.  
9 The accountant consultant drove to his residence where certain bank records were  
10 maintained and brought those back to the offices so that they could be secured.

11 12. At the offices of WMR, I found and identified general office equipment and a  
12 number of sports memorabilia. Attached as Exhibit "B" is an inventory of the property I  
13 found at the offices of WMR. On November 6, 2002, certain property was returned to Mr.  
14 Diaz or Mr. Maksudian, as reflected on Exhibit "B" in the column entitled "Asset  
15 Relocation."

16 13. I also determined that WMR occupied its offices under a written lease which  
17 expires on November 30, 2002. I also learned from the Lessor that WMR had defaulted  
18 under the lease and had not paid the September or October rent when it was due. I have not  
19 paid the November rent and intend to remove all property and records from the offices  
20 within the next several weeks and surrender the property to the Lessor.

21





1 it may be necessary for me to seek an order of this Court placing all of the assets of such  
2 affiliates in receivership.

3 a. Attached as Exhibit "A" is a report setting forth my estimate of the  
4 tangible assets and liabilities of the receivership estate. Because the operations and  
5 assets of the two entities in receivership were commingled, I have not attempted to  
6 state separately the assets and liabilities of each. In addition, the investments in  
7 Yucatan and Merchant Capital are stated at the amount of funds transferred to those  
8 entities, but that does not necessarily mean that they have a present value equal to  
9 those amounts. See discussion below.

10 17. Upon review of the records of WMR, I have determined that the defendants  
11 transferred investor funds to the following:

12 a. Yucatan Resorts. At least \$1,034,210.06 of investor funds were  
13 transferred from One Vision to a corporation named Yucatan Resorts, S.A., also  
14 known as Majesty Travel, Inc. ("Yucatan"). I have been unable to determine where  
15 Yucatan is incorporated, if at all. However promotional materials list corporate  
16 offices in South Bend, Indiana; Cancun, Mexico; and Panama City, Panama. My  
17 counsel has contacted the Indiana Secretary of State and determined that Yucatan is  
18 not incorporated or authorized to do business in Indiana. We have been told that these  
19 Receivership Assets were transferred to Yucatan in order to purchase timeshare  
20 condominiums. It appears from records discovered at WMR's offices that One Vision  
21 has an interest in Lease numbers L4253A and L3528A. The transfer of funds to

1 Yucatan is an unsuitable investment in a case such as this where the safety of the  
2 invested principal is crucial to the foundation's ability to make the future annuity  
3 payments promised to investors. My counsel has been informed by counsel for the  
4 defendants and by counsel for Yucatan, that all of the funds transferred to Yucatan  
5 will be returned upon request. Accordingly, I have requested the return of these funds  
6 and have faxed wire transfer instructions to Yucatan's counsel. To date, however, the  
7 funds have not been returned. Some distributions have been received by One Vision  
8 on this investment.

9 b. Merchant Capital. At least \$1,176,922.11 of investor funds were  
10 transferred from One Vision to Merchant Capital LLC ("Merchant Capital").  
11 Merchant Capital is a limited liability company organized under the laws of  
12 Tennessee. Apparently these funds were used to purchase an interest in five  
13 registered limited liability partnerships (RLLP): Evergreen High Yield RLLP 1182-  
14 4/1; Evergreen High Yield RLLP 1182-2/12; Evergreen High Yield RLLP 1182-0/10;  
15 Evergreen High Yield RLLP 1104-9 and Evergreen High Yield RLLP 1104-6. The  
16 unsigned and undated copies of the partnership agreements provided by Merchant  
17 Capital indicate that these registered partnerships were formed under the laws of  
18 Colorado. However, although these partnerships are authorized to do business in the  
19 State of Colorado, the registration statements filed with Colorado indicate that the  
20 partnerships were formed under the laws of Tennessee. The Secretary of State in  
21 Tennessee has no filings for these entities. It appears that One Vision purchased a

1 percentage of ownership in these five RLLP's at various levels ranging from 30.76%  
2 to 11.88%. The documents indicate that the "recruiter" for the Evergreen RLLP's was  
3 the defendant Michael Diaz. This investment also appears as unsuitable in a case  
4 such as this one. I am investigating whether these funds can be returned without  
5 litigation. Some distributions have been received by One Vision on this investment.

6 18. I have reason to believe that the following additional Receivership Assets may  
7 exist, but I have not taken custody or possession at this time:

8 a. An undetermined amount believed to be in the possession of various  
9 law firms that undertook or considered undertaking the representation of one or more  
10 of the defendants or their Associates.

11 b. Claims and causes of action against the officers and directors of One  
12 Vision and WMR for, among other things, negligence and breach of their fiduciary  
13 duties.

14 c. Claims and causes of action for securities violations, fraudulent  
15 transfers and conversion against persons who received investor funds or facilitated the  
16 wrongful conduct alleged by the Plaintiff, including without limitation the producing  
17 agents that sold the One Vision CGA's to the investors and received commissions.

18 d. Claims against insurance policies providing coverage for the above.

19 19. The recovery, administration, and ultimately the distribution of all  
20 Receivership Assets by this Court=s Receiver will, in my opinion, provide the most  
21 equitable, efficient and economical method for returning the funds to the rightful owners.

1 **Receivership Records**

2 20. I have been hampered in my efforts to determine the assets and liabilities of  
3 this receivership estate due to the absence of adequate business records. I have taken custody  
4 of approximately 15 storage boxes of documents, but they do not contain standard books of  
5 original entry and similar accounting records reflecting the financial transactions of One  
6 Vision Children's Foundation, Inc and Wealth Management Resources, Inc. Accordingly, I  
7 anticipate that it will be necessary to subpoena records from various banks in order to  
8 reconstruct the financial transactions of the defendant corporations.

9 21. I have not had sufficient time to thoroughly review the above described  
10 records, but expect that these records may disclose additional assets and liabilities of the  
11 receivership estate.

12 **Liabilities**

13 22. Based on my preliminary review, I have determined that 18 Charitable Gift  
14 Annuities were issued by One Vision to 15 investors, from whom One Vision received  
15 \$4,357,140.84. Those investors and the amounts of their respective investments are set forth  
16 on the attached Exhibit "C". The annuity for another investor not shown on Exhibit "C,"  
17 was funded but later cancelled and his funds apparently returned to him. I have also  
18 determined that if these investors are entitled to rescind their investments due to the fraud  
19 alleged by the Plaintiff, the amount owed by the receivership estate will be approximately  
20 \$4,093,878.30. This amount was ascertained by taking the amount invested and deducting  
21 the amount of payments that the defendants claim to have paid to the investors. See Exhibit

1 “C”. The figures in Exhibit “C” are preliminary and are based in part on information filed by  
2 the defendants with the Court. I have not determined that the amounts shown were actually  
3 received by One Vision nor have I determined the actual amount of funds that might have  
4 been repaid to these investors.

5 23. Additional liabilities known to exist at this time are reflected on Exhibit “A”. I  
6 have not been able to determine at this time all of the liabilities of the receivership entities.

### 7 **Bankruptcy**

8 24. I recommend against filing petitions in bankruptcy for any of the receivership  
9 entities at this time.

10 25. The reasons for this recommendation are as follows:

11 a. The receivership entities were not operated in accordance with regular  
12 corporate practices and did not have material income other than that generated by the  
13 fraudulent scheme alleged by the Plaintiff. As such, these entities do not need to be  
14 reorganized. Instead, the assets of the entities need to be recovered by an equity  
15 receiver and distributed to the investors. *See Commodity Futures Trading Com=n v.*  
16 *FITC, Inc.*, 52 B.R. 935, 938 (N.D. Cal. 1985) (defendant corporation was nothing  
17 more than a "front for a large and elaborate commodities fraud").

18 b. The access that is provided a debtor to assets in a bankruptcy estate is  
19 inappropriate in this instance where there is a real danger that any assets released to  
20 the defendants will be dispersed or used to further the fraud already committed. *See*  
21 *Securities & Exch. Com=n v. First Financial Group*, 645 F.2d 429, 438 (5th Cir.

1 1981) ("it is hardly conceivable that the trial court should have permitted those who  
2 were enjoined from fraudulent misconduct to continue in control of [the corporate  
3 defendant=s] affairs for the benefit of those shown to have been defrauded).

4 c. Because the assets of the receivership entities were derived from the  
5 investors through fraudulent means, and because of the overlapping illegal activities  
6 and regulatory violations, the panology of legal issues will exceed the limited  
7 jurisdiction of a bankruptcy court. In addition, such assets would not be assets the  
8 bankruptcy estate of the entities. *See Federal Trade Com=n v. R.A. Walker & Assoc.,*  
9 *Inc.*, 37 B.R. 608 (D.D.C. 1983) (holding that funds obtained through fraudulent  
10 means would not be considered property of the estate in a bankruptcy court and not  
11 within the jurisdiction of a bankruptcy court).

12 26. Therefore, the interests of judicial economy and the protection of the interests  
13 of the defrauded investors dictate that a receivership in this court is preferable to one or more  
14 bankruptcy court proceedings. In order to maintain judicial economy and efficiency and  
15 because of the connection of the defendants to one another in perpetration of the alleged  
16 fraudulent scheme, I recommend at this time that all of the assets of the receivership entities  
17 remain in this receivership and that none of the entities be placed in bankruptcy.

18 27. In making my recommendation, I have carefully considered the most  
19 significant advantages to a bankruptcy proceeding B the avoidance powers provided under  
20 the bankruptcy code and the mechanisms established for the protection of creditors. Neither  
21 of these advantages, in my opinion however, outweigh the benefits to a receivership as set

1 forth above. With respect to the avoidance powers provided under bankruptcy, I intend to  
2 rely upon the Order entered by this Court empowering me to collect assets acquired from  
3 investors in the fraudulent scheme, and where necessary, the applicable fraudulent transfer  
4 statutes. To the extent any of the assets were used to purchase property prior to the  
5 institution of the receivership, I will seek to obtain possession of such property and pursuant  
6 to this Court=s Orders liquidate the property so that it may be used to distribute to the  
7 victims of the fraudulent scheme. In order to provide protection to the creditors of the  
8 defendants and, in particular, the innocent investors whose funds were transferred to the  
9 defendants, I have requested that the Court enter a management order that will provide for  
10 orderly notice to creditors and a mechanism for the filing and adjudication of claims to the  
11 seized monies. See the Receiver’s Petition No. 2.

### **Suspension of Annuity Payments to Investors**

12  
13 28. I recommend that no annuity payments be made to investors at this time  
14 because there are insufficient liquid assets to fulfill all of the annuity obligations of One  
15 Vision. If the two investments in Yucatan and Merchant Capital (see paragraph 17 above)  
16 can be liquidated without loss, it may be possible to resume annuity payments for an interim  
17 period until the actuarial adequacy of the reserves can be ascertained.

18 29. By way of illustration, the attached Exhibit “D” provides information showing  
19 the effects of continuing the annuity payments to the investors. This Exhibit assumes that all  
20 of the cash currently held in the receivership estate is distributed to the investors in  
21 accordance with the schedule of payments provided by the defendants. This Exhibit assumes

1 that a total of approximately \$500,000.00 is distributed by the Receiver according to the  
2 payment schedule provided by the defendants. The effect of such distributions is that the  
3 investors are not treated fairly, that is some investors will receive a far greater return of their  
4 investment than others. The disparity in return ranges from 0% to 32.3% return of the  
5 amount originally invested. This unfair disparity exists even if one assumes some future  
6 recovery by One Vision on the investments in Yucatan and Merchant Capital. The only way  
7 to eliminate the disparity is for me to recover sufficient assets to pay all of the contractual  
8 annuity obligations as they become due, or liquidate those assets that are available and make  
9 a pro-rata distribution to the investors so that each investor receives the same percentage of  
10 their original investment.

11 30. Counsel for the defendants has asserted that some of the investors need their  
12 annuity payments to live on. Accordingly, I have written to each of the investors and asked  
13 them if they fall into this category. I propose that if such persons exist, that I should develop  
14 an interim payment plan which will provide relief to these hardship cases but still insure that  
15 in the end every investor will be treated the same.

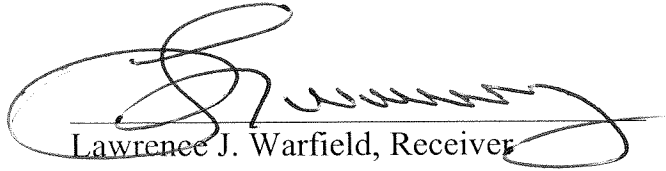
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WHEREFORE, the Receiver respectfully requests that the Court enter an order approving the Receiver's Preliminary Report.

Respectfully submitted this 14<sup>th</sup> day of November, 2002.



Lawrence J. Warfield, Receiver

GUTTILLA & MURPHY, PC

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