

seeks to recover those transfers for the benefit of the investors on whose behalf the receivership estate was created.

2. As detailed more fully below, the Receivership Entities stole nearly all of the Silver American Eagles (“SAE”) provided by 194 unsuspecting investors (the “Investors”) to the Receivership Entities by and through the WHC Defendants. Because the theft and misrepresentations regarding the SAE’s violated the Commodity Exchange Act, the Commodity Futures Trading Commission sued the Receivership Entities as well as Robert Higgins (“Higgins”) who owned and controlled the Receivership Entities (collectively, the Receivership Entities and Higgins are referred to herein as the “Receivership Defendants”) in Civil Action No. 22-CV-1266, *Commodity Futures Trading Commission, v. First State Depository Company, LLC, et al.* pending in the District of Delaware (the “Underlying Lawsuit”).

3. Together with other creditors in whose shoes the Receiver stands pursuant to the Uniform Fraudulent Transfer Act (“UFTA”), the Investors defrauded by the Receivership Entities are the principal creditors of the Receivership Entities. The payments to the WHC Defendants were made by the Receivership Entities with intent to defraud creditors -- while the Receivership Entities knew they would not be able to satisfy claims owed to the Investors/creditors; while the Receivership Entities were insolvent; and without the exchange of reasonably equivalent value. Standing in the Receivership Entities’ creditors’ shoes for purposes of the claims asserted below and for the benefit of those defrauded creditors, including the 194 Investors, the Receiver seeks to recover the funds fraudulently transferred to the WHC Defendants.

II. **RECEIVERSHIP**

4. On September 29, 2022, the court in the Underlying Lawsuit entered an Order Granting Motion for an *Ex Parte* Statutory Restraining Order, Appointment of a Temporary

Receiver, and Other Equitable Relief (the “SRO”)[D.I. 12]. A true and correct copy of the SRO is attached as **Exhibit A** and incorporated by reference.¹

5. Pursuant to the SRO, the Receiver was ordered to take exclusive custody, control, and possession of the Receivership Estate, which includes all assets due or owing to the Receivership Defendants (the “Receivership Assets”). See SRO [D.I. 12] ¶¶ 28-29(c). The SRO also authorized the Receiver to initiate proceedings as may, in his judgment, be necessary to preserve or increase the value of the assets of the Receivership Estate. *Id.* at ¶ 29(h).

6. In concluding entry of the SRO was necessary and appropriate, the court made a preliminary finding that from at least January 2014 the Receivership Defendants “engaged in a fraudulent and deceptive scheme (the “Scheme”) in connection with the purchase and sale of precious metals.” See SRO [D.I. 12] at ¶ 3.

7. Pursuant to a claims process established by the court in the Underlying Lawsuit, 194 claimants participated in the “Silver Lease Program” and/or the “Maximus Program”, as discussed herein, involving the WHC Defendants and the Receivership Defendants. In the *Receiver’s Second Revised Claims Report* [D.I. 154] filed in the Underlying Lawsuit on July 28, 2023, the Receiver categorized such claimants as “Compromised FSD Customer – Silver Lease Program” and valued their collective loss of silver at \$19,735,752. On August 4, 2023, the Court issued a *Memorandum and Order* [D.I. 156] approving the Receiver’s Second Revised Report,

¹ The Receiver also requests the Court to judicially notice all pleadings and orders in the Underlying Lawsuit. Additional relevant orders entered in the Underlying Lawsuit and referenced by docket numbers for the Underlying Lawsuit include: (1) the Order of Preliminary Injunction, Appointment of Receiver and For Other Equitable Relief Against Defendants filed on December 2, 2022 [D.I. 57]; (2) the Consent Order of Permanent Injunction and Other Statutory Equitable Relief filed on June 20, 2023 [D.I. 131]; and (3) the Order for Default Judgment by Default, permanent Injunction, Civil Monetary penalties, and Other Statutory and Equitable Relief filed on June 30, 2023 [D.I. 138].

including the claims of the 194 victims of the Silver Lease Program totaling \$19.7 million the (the “Investor Claims”).²

III. PARTIES

8. Plaintiff is a natural citizen and resident of Dallas County, Texas acting in his capacity as Receiver.

9. Defendant WHC is a limited liability company organized and existing under the laws of the State of Wyoming with a principal place of business at 100 N. Broadway, Wichita, Kansas 67202. WHC may be served with a citation by serving its registered agent, Joe Unger, at 100 N. Broadway, Wichita, Kansas 67202.

10. Defendant Joseph Unger is an individual who is the sole member and Chief Executive Officer of WHC. Defendant Unger may be served at WHC’s office at 100 N. Broadway, Wichita, Kansas 67202.

IV. JURISDICTION

11. This Court has subject matter jurisdiction over the Receiver’s claims pursuant to 28 U.S.C. § 1331 because this action is related to and arises out of alleged violations of the Commodity Exchange Act. Moreover, in the SRO the court assumed exclusive jurisdiction to adjudicate claims regarding the assets that are the basis of this Complaint, and accordingly, pursuant to 28 U.S.C. § 1367, this Court possesses supplemental subject matter jurisdiction over the Receiver’s claims.

² See the *Receiver’s Second Revised Claims Report* filed in the Underlying Lawsuit [D.I. 154].

12. The Receiver's compliance with 28 U.S.C. §§ 753 and 754 also provides subject matter jurisdiction, and together with 28 U.S.C. § 1692, provides personal jurisdiction over each of the WHC Defendants.

V.
VENUE

13. Pursuant to the SRO, the court assumed exclusive jurisdiction over the Receivership Estate and authorized the Receiver, as the court's agent, to take and have possession of the Receivership Assets. Further, pursuant to 28 U.S.C. §§ 754 and 1692, the Receiver filed a copy of the Underlying Complaint and a copy of the Receivership Order in the District Court of Kansas within ten days of his appointment. As a result, the Receiver may sue in the district in which he was appointed to enforce claims arising anywhere in the country. Accordingly, venue is appropriate in the District of Delaware, the venue in which the Receiver was appointed.

VI.
FACTUAL BACKGROUND³

A. The Receivership Entities and Their Purpose

14. FSD was a depository for precious metals and other assets, with its sole office and vaults located at 100 Todds Lane, Wilmington, Delaware. For a fee, FSD stored metals for customers. For those persons who owned metals or other assets in the name of their IRA, they were required to have their assets held by a third party through a custodian. As a result, most of

³ A copy of the Complaint filed in the Underlying Lawsuit, without exhibits, is attached hereto as **Exhibit "B"** and incorporated herein by reference to provide additional information about the fraudulent scheme in which the WHC Defendants participated and the derivation of the compensation paid to them (the "Underlying Complaint"). West Hills Capital, LLC is identified in the Complaint as "Metals Dealer 1", and Joseph Unger is identified in the Complaint as "Individual 1".

the customers of FSD were people whose assets were owned in the name of their IRA and managed through IRA custodians. At all relevant times, Robert Higgins owned and controlled FSD.

15. Argent engaged in the purchase and sale of precious metals, coins, and other assets. It had its sole office at 100 Todds Lane, Wilmington, Delaware. Indeed, it shared its office with FSD. At all relevant times, Robert Higgins owned and controlled Argent.

16. The operations and assets of FSD and Argent were commingled such that FSD and Argent operated a common enterprise primarily involved in the purchase, sale, and storage of precious metals.

17. As alleged in the Underlying Complaint, Higgins and the Receivership Entities engaged in a fraudulent scheme to misappropriate monies and assets (primarily precious metals) from persons or entities who sought to purchase metals through the Receivership Entities or had their metals stored by the Receivership Entities. Once the Receiver took possession and control of the premises of the Receivership Entities beginning on October 4, 2022, the Receiver retained an accounting firm to conduct an inventory of the assets stored at the premises and compare it to the reports of the inventory that was supposed to be stored at the premises. The Receiver's accountants discovered that metals, currency, and other assets exceeding \$70 million were missing from the depository operated by the Receivership Entities.⁴

18. As part of the Receivership Entities' fraudulent scheme, in or about November, 2013, Argent and Higgins began promoting an investment program called the "Maximus Program". Pursuant to the Maximus Program, a customer who owned Silver American Eagles ("ASEs") could "lease" their ASEs to Argent in exchange for Argent paying to the customer a

⁴ See the *Receiver's Second Revised Claims Report* [D.I. 154] filed in the Underlying Lawsuit on July 28, 2023

monthly lease payment based upon the amount of ASEs leased. This allowed Argent to play the short-term market with such silver. Participants in the Maximus Program were promised by Argent that their ASEs would be returned to them promptly upon request.

19. As described in the Underlying Complaint at paragraph 30, “[p]rospective Maximus Customers could join the Maximus Program by either (1) transferring funds to Argent in order to purchase ASEs that could then be pledged to the Maximus Program, (2) transferring ASEs the prospective Customer already owned to Argent or FSD to be pledged to the Maximus Program, or (3) transferring coins, bullion, or other assets to Argent or FSD to be exchanged for ASEs that would be pledged to the Maximus Program.”

20. When the Receiver took over the operations of FSD and Argent, and obtained an inventory of the ASE’s in the vault of the Receivership Entities, the Receiver discovered that nearly all of the ASE’s for participants in the Maximus Program were missing. Moreover, the ASEs were not stored with a third party, and neither FSD nor Argent had sufficient assets to repurchase the missing ASEs.

B. The WHC Defendants’ Role in the Receivership Entities’ Fraud

21. In February, 2014, Argent entered into a Maximus Agreement with WHC, which was solely controlled by Unger. Pursuant to the Maximus Agreement between Argent and WHC, Argent agreed to pay WHC twenty cents (\$0.20) per month for each ASE that WHC pledged to the Maximus Program.

22. In order to obtain ASEs to put into the Maximus Program, WHC and Unger began soliciting the Investors “for a leasing program of its own that operated in parallel to Argent’s Maximus Program”, which was referred to as the “Silver Lease Program”. WHC promised to pay participants in its Silver Lease Program a lease fee up to \$0.10 per ASE, while WHC, in turn

received \$0.20 per ASE from the Receivership Entities. Thus, WHC and Unger were able to profit from the difference.

23. As described in paragraph 42 of the Underlying Complaint, WHC “essentially served as a vehicle for directing ASEs to Argent’s Maximus Program.” Indeed, WHC and the Receivership Entities basically had a pass-through agreement where WHC would obtain customers to participate in the Silver Lease Program with the promise to pay the customers up to 10 cents for each ASE; WHC then placed the ASEs with the Receivership Entities pursuant to the Maximus Program and received from the Receivership Entities 20 cents for each ASE⁵. WHC and Unger were thus making a profit of at least 10 cents for each ASE they could get enrolled in the Silver Lease Program.

24. From February, 2014, through the cessation of the Receivership Entities’ operations in October, 2022, the Receivership Entities paid to WHC several million dollars. By Unger’s own admission, from the transfers received by WHC from the Receivership Entities, WHC retained more than \$2 million as “profits” (the “Transfers”), while the remainder of the monies received from the Receivership Entities was paid to WHC’s customers or others.

25. As a result of the Transfers, the fraudulent scheme of the Receivership Entities grew substantially, as more and more ASEs were delivered through the WHC Defendants to the Receivership Entities as part of the Silver Lease Program and the Maximus Program. The WHC Defendants worked side by side with the Receivership Entities and had a significant relationship with one another that made the WHC Defendants “insiders” of the Receivership Entities.

⁵ In the alternative, funds were transferred to the Receivership Entities to purchase the ASEs and put them on deposit at FSD as part of the Maximus Program, or other metals were exchanged with the Receivership Entities for ASEs to be deposited at FSD as part of the Maximus Program.

C. Tolling and Concealment

26. The Receiver exercised diligence in investigating and discovering the claims asserted below. The claims were concealed, and the Receiver was unable to discover or assert the claims until the Receiver was appointed, took control of the Receivership Defendants, completed the claims process to determine the number of participants in the Silver Lease Program, as well as the value of the loss of silver stolen by the Receivership Defendants, and the monies received by the WHC Defendants.

**VII.
CAUSES OF ACTION**

COUNT 1: VOIDABLE/FRAUDULENT TRANSFER - ACTUAL FRAUD

27. The Receiver alleges and hereby incorporates by reference each allegation made in the preceding paragraphs as if each were separately set forth below.

28. As described herein, the Receivership Entities made Transfers to the WHC Defendants in excess of \$2 million with intent to defraud the Receivership Entities' creditors, who include, but are not limited to, the Investors.

29. As demonstrated by numerous badges of fraud listed in the Delaware Uniform Fraudulent Transfer Act §1304(b), the Receivership Entities made the Transfers with actual fraudulent intent:

a. As payments made to facilitate fraud and which resulted in claims held by Investors exceeding the value, if any, of the services provided by the WHC Defendants, the Transfers were not made in exchange for reasonably equivalent value. *See S.E.C. v. Resource Dev. Int'l, LLC*, 487 F.3d 295, 301 (5th Cir.2007) (citing *In re Agric. Res. & Tech. Group, Inc.*, 916 F.2d 528, 540 (9th Cir.1990) (Value is assessed in light of the statute's purpose "to protect the creditors"));

- b. The Transfers and their amounts were concealed from creditors;
- c. The Receivership Entities stole assets, including the ASEs owned by the Investors.
- d. The Transfers were made when the Receivership Entities were (a) engaged or about to engage in a business or a transaction for which the remaining assets of the Receivership Entities were unreasonably small in relation to the business or transaction; or (b) intended to incur, or believed or reasonably should have believed that the Receivership Entities would incur, debts beyond their ability to pay as they became due;
- e. At the time the Transfers were made and on all dates since, the Receivership Entities' debts—primarily claims held by defrauded Investors—greatly exceeded their assets;
- f. The Transfers were made to the WHC Defendants, as Insiders;
- g. The solicitation by the WHC Defendants of the Investors to participate in the Silver Lease Program and give control of their silver holdings to the Receivership Entities enlarged the pool of defrauded Investors who hold claims against the Receivership Entities.
- h. At the time of each of the Transfers, the Receivership Entities had actual knowledge or notice that by making the Transfers, they would be unable to pay creditors, including claims held by defrauded Investors. *See Hayes v. Palm Seedlings Partners—A (In re Agricultural Research and Tech. Group, Inc.)*, 916 F.2d 528, 535 (9th Cir. 1990) (Holding knowledge that a transaction will operate to the detriment of creditors may be sufficient to establish actual fraudulent intent);

i. At the time of each Transfer, each of the Receivership Entities was a fraudulent enterprise. Thus, a presumption of fraudulent intent attached to each of the Transfers. *See Zazzali v. AFA Fin. Group, LLC*, No. ADV 10-54524 PJW, 2012 WL 4903593, at *7-8 (Bankr. D. Del. Aug. 28, 2012); *In re IFS Fin. Corp.*, 417 B.R. 419, 439 n.15 (Bankr. S.D. Tex. 2009), *affirmed*, 669 F.3d 255 (2012).

30. The Receiver is authorized to assert these claims on behalf of the Receivership Entities' creditors, including but not limited to Investors, whose claims arose within a reasonable time after the Transfers were made.⁶

31. Because the Transfers from the Receivership Entities to the WHC Defendants were fraudulent under the Delaware Uniform Fraudulent Transfer Act, 6 Del. C. §1304(a)(1) and/or any other applicable State's adoption of the Uniform Fraudulent Transfer Act (the "UFTA"), the Receiver may avoid the Transfers under 6 Del. C. § 1304(a)(1) or any other applicable statutory enactment of the UFTA.

32. The Receiver requests all available remedies provided by the UFTA, including, but not limited to, avoidance of all transfers of monies and property from the Receivership Entities to the WHC Defendants.

COUNT 2: VOIDABLE/FRAUDULENT TRANSFERS - CONSTRUCTIVE FRAUD

33. The Receiver alleges and hereby incorporates by reference each allegation made in the foregoing paragraphs as if each were separately set forth herein.

34. The Transfers were made when the Receivership Defendants were (a) engaged or about to engage in a business or a transaction for which the remaining assets of the Receivership Entities were unreasonably small in relation to the business or transaction; or (b) when the

⁶ *See* Receiver's Second Revised Claims Report [D.I. 154] in the Underlying Lawsuit.

Receivership Entities intended to incur, or believed, or reasonably should have believed, that the Receivership Entities would incur, debts beyond their ability to pay as they became due. Thus, the Transfers rendered the Receivership Defendants effectively insolvent and precluded them from paying their debts as they became due.

35. Further, the Receivership Defendants did not receive reasonably equivalent value in exchange for the Transfers. The Transfers were accordingly fraudulent pursuant to the Delaware Uniform Fraudulent Transfer Act, 6 Del. C. §1304(a)(2), *et seq.*, and/or any other applicable State's adoption of the UFTA, and the Receiver may avoid the Transfers under 6 Del. C. § 1304(a)(2) or any other applicable statutory enactment of the UFTA.

36. The Receiver requests all available remedies provided by the UFTA, including, but not limited to, avoidance of all transfers from the Receivership Entities to the WHC Defendants.

COUNT 3: UNJUST ENRICHMENT - CONSTRUCTIVE TRUST

37. The Receiver alleges and hereby incorporates by reference each allegation made in the foregoing paragraphs as if each were separately set forth herein.

38. The WHC Defendants have been unjustly enriched by the Transfers and property they received from the Receivership Entities.

39. The Receivership Entities owe restitution to the Investors, and the WHC Defendants' retention of the Transfers is unjust and injures the Receivership Entities.

40. Accordingly, the Receiver seeks to recover from the WHC Defendants such amounts for the benefit of creditors and defrauded Investors under the equitable doctrine of unjust enrichment and requests the imposition of a constructive trust over all such funds, property, and the proceeds thereof.

COUNT 4: MONEY HAD AND RECEIVED

41. The Receiver alleges and hereby incorporates by reference each allegation made in foregoing paragraphs as if each were separately set forth below.

42. The WHC Defendants received the Transfers from the Receivership Entities, that in equity and good conscience belong to the Receivership Entities. The Receiver seeks to recover the Transfers and other property for the benefit of the Investors and other creditors of the Receivership Entities.

43. The Receiver sues for the recovery of all monies had and received by the WHC Defendants.

COUNT 5: VEIL PIERCING/ALTER EGO/SINGLE ENTERPRISE

44. The Receiver alleges and hereby incorporates by reference each allegation made in foregoing paragraphs as if each were separately set forth below.

45. The Receivership Entities made factually and constructively fraudulent transfers to the WHC Defendants for the personal benefit of Unger. Unger used Defendant WHC as his alter ego to work side by side with Higgins and the Receivership Entities to perpetrate an actual fraud on the creditors of the Receivership. Accordingly, the limited liability veil of WHC should be pierced and disregarded such that Unger is individually liable for the return of monies and damages sought by the Receiver herein.

46. Additionally, the WHC Defendant entities have been used as part of an unfair device to achieve an inequitable result. The Receivership Entities made the Transfers to the WHC Defendants to evade then-existing obligations, to-wit, the claims owed to creditors, and to place the Transfers beyond the reach of creditors but maintain the funds for the WHC Defendants' and Receivership Defendants' use. Moreover, use of corporate entities purportedly operated by

persons other than the Receivership Entities' principals lent a further air of legitimacy to the Receivership Defendants' fraud.

COUNT 6: ATTORNEY'S FEES

47. The Receiver seeks the recovery of all reasonable attorney's fees and expenses incurred in obtaining judgment against the WHC Defendants, as allowed by law or in equity, as well as attorney's fees and expenses required to pursue or defend any appeals in this action.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the Receiver, Kelly M. Crawford respectfully prays that this Court order disgorgement or alternatively award the Receiver judgment against West Hills Capital, LLC and Joseph Unger in an amount to be determined through discovery but believed to exceed \$2 million, plus prejudgment and post judgment interest, attorney's fees, expenses, and court costs; and that the Court grant the Receiver such other and further relief as prayer for herein, both at law and in equity, to which he may show himself justly entitled.

Respectfully submitted,

ASHBY & GEDDES, P.A.

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CAPACITY AS RECEIVER**