IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No. 3:09-CV-0298-N
	§	
STANFORD INTERNATIONAL BANK, LTD., STANFORD GROUP COMPANY, STANFORD CAPITAL MANAGEMENT, LLC, R. ALLEN STANFORD, JAMES M. DAVIS, and LAURA PENDERGEST-HOLT,	§ § § § § §	
	§	
Defendants.	§	

RECEIVER'S MOTION TO APPROVE SALE OF INVESTMENT INTERESTS
<u>IN TUG, SPRING CREEK, AND SSM</u>

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I. INTRODUCTION

Ralph S. Janvey, as Receiver for the assets of Defendants and all Stanford-controlled entities, respectfully moves the Court for an order approving the sale of certain private equity interests held by the Receivership Estate. As explained in detail below, the Receiver has obtained offers from prospective buyers who wish to purchase investments held by the Receivership Estate in (i) The Ultimate Gift, LLC ("TUG"), an entity owning the rights to a film bearing the same name; (ii) Spring Creek Ranch Club, LLC ("SCRC") and its affiliated entities Trail Partners, LLC ("Trail Partners"), Flowerland Partners, LLC ("Flowerland") and Spring Creek LLC ("SC LLC" and, together with SCRC, Trail Partners, and Flowerland, "Spring Creek"), companies that own and operate a golf course and surrounding properties in Memphis, Tennessee; and (iii) SSM Venture Partners III, L.P. ("SSM III"), a high-risk investment fund managed by SSM Partners and focused on companies in the basic business and health care sectors.[1] The Receiver has reviewed and analyzed these offers, and has sought recommendations from Park Hill Group ("PHG") concerning each.[2] Based upon PHG's recommendations, the Receiver believes that the liquidation of these investments pursuant to the pending offers will achieve the maximum benefit from the holdings and is in the best interest of the Receivership Estate.

The Receiver also has reached an agreement with the general partner of SSM Venture Partners IV, L.P. ("SSM IV" and, together with SSM III, "SSM") that would allow

[1] Stanford Venture Capital Holdings, Inc. ("SVCH") holds an investment interest in TUG. Stanford Financial Group Company ("SFGC"), SFG Majestic Holdings, LLC ("SFG Majestic"), and SVCH have investment interests in Spring Creek. Stanford International Bank, Ltd. ("SIBL") has an equity interest in SSM III, and SVCH made a commitment to invest in SSM IV. For the purpose of convenience, these entities are referred to as "Stanford" throughout this motion.

[2] On July 16, 2009, the Receiver filed his Motion to Appoint Private Equity Advisor and requested the approval of the Court to retain PHG to manage the Investment Portfolio (as defined below). The Court granted the Receiver's Motion on December 10, 2009. PHG will receive a 3% commission for its work on these sales, totaling $154,500, should the Court approve these transactions.

Stanford to withdraw as a limited partner in SSM IV, another private equity fund created by SSM Partners with an investment strategy similar to that of SSM III. SSM IV, however, has no current investments, and thus Stanford's interest has no fair market value. The Receiver believes that eliminating Stanford's duty to make substantial capital contributions to SSM IV is in the best interest of the Receivership Estate, and respectfully asks the Court for an Order approving the settlement agreement.

II. FACTUAL BACKGROUND

On February 16, 2009, the Securities and Exchange Commission (the "Commission") commenced a lawsuit in this Court against R. Allen Stanford, two associates, James M. Davis and Laura Pendergest-Holt, and three of Mr. Stanford's companies, Stanford International Bank, Ltd., Stanford Group Company, and Stanford Capital Management, LLC (collectively "Defendants"). The Commission alleges, in its First Amended Complaint filed on February 27, 2009, that Defendants perpetrated a multi-billion-dollar fraudulent scheme by (1) promising high return rates on "certificates of deposit" that exceeded those available through true certificates of deposit offered by traditional banks; and (2) selling a proprietary mutual fund wrap program known as Stanford Allocation Strategy using materially false and misleading historical performance data. Am. Comp. (Doc. 48) ¶¶ 3, 6.

The Court found good cause to believe that Defendants violated federal securities laws. Accordingly, on February 17, 2009, the Court entered an order appointing Ralph S. Janvey Receiver over all the assets of Defendants and all the entities they own or control. Order Appointing Receiver (Doc. 10). On March 12, 2009, the Court entered an Amended Order Appointing Receiver that contained changes not material to this motion (the "Receivership Order"). Amended Order Appointing Receiver (Doc. 157).

The Receivership Order charged the Receiver with marshaling and preserving the assets of the Receivership Estate. In conducting his duties, the Receiver identified numerous debt and equity investments made in nearly 40 different companies (the "Investment Portfolio"). While the Receivership Estate's records reflect that approximately $650,000,000 was initially invested in the Investment Portfolio, these figures have not been audited, and the Receiver and PHG expect that the Receivership Estate will realize far less for these investments. Many of these investments are in entities with negative equity, market conditions or adverse events have reduced the value of others, and a number include contractual commitments that would require the Receivership Estate to contribute additional millions of dollars or face significant dilution or total loss of the investment.

Included in the Investment Portfolio are direct investments by Stanford in TUG, Spring Creek, SSM III, and SSM IV. These holdings are a part of the Receivership Estate, and the Receiver now seeks Court authority to liquidate its investments in TUG, Spring Creek, and SSM III, and to withdraw as a limited partner from SSM IV.

III. ARGUMENT AND AUTHORITIES

A common-law equity receiver has the power to dispose of property of the receivership estate when it appears that a receivership is continuing an enterprise that does not show evident signs of working out for the benefit of the creditors. *See Jones v. Village of Proctorville*, 290 F.2d 49, 50 (6th Cir. 1961). Courts appointing a receiver "should see that the business is liquidated as economically and speedily as possible, unless its continuance is demonstrably beneficial to creditors." *Id.* (citing *Kingsport Press, Inc. v. Brief English Systems*, 54 F.2d 497, 501 (2d Cir. 1931)).

The liquidation of the identified investments is in the best interest of the Receivership Estate. The offers and related agreements are the product of significant negotiations between the Receiver and the prospective buyers. The Receiver and PHG have analyzed the offers and have determined that they are fair and equitable given the totality of the circumstances surrounding the investments. While the offers do not rise to the level of the initial investments, they represent a fair market cash price when accounting for liquidity discounts and the economic uncertainties inherent in today's market. Additionally, Stanford's exit opportunities for these holdings are limited due to the performance of the investments and the constraints of the applicable markets. Given the current market conditions and the uncertain outlook of these investments, these offers represent the best opportunity for the Receiver to maximize the actual cash value of these investments for the Receivership Estate.

Liquidation provides the best avenue for the Receivership Estate to recover a portion of Stanford's investment in TUG, an entity that owns one asset—the rights to a film first released almost three years ago. Through several loan commitments, Stanford has invested over $16 million in TUG over the past three years. However, Stanford has only recovered a fraction of its initial investment, and TUG is nearing the end of its prime earning period, meaning the prospects for earning significant additional returns on the film are low. The proposed sale would result in a $725,000 cash payment to the Receivership Estate, an amount that is in line with a valuation provided by a third-party advisory firm.

According to information provided to PHG, Stanford's investment in Spring Creek was fueled by a desire to develop a golf course to host a Stanford-sponsored golf tournament and entertain bank clients. Although Stanford made debt and equity investments of over $30 million in Spring Creek, the assets have routinely generated operating deficits that, prior to 2009, largely were covered by Stanford. It is estimated that Spring Creek incurred over $1.4 million in operating deficits in 2009 and, as detailed below, likely will continue to incur similar deficits in 2010 and beyond. Under the terms of the proposed sale, the Receivership Estate would receive a payment of $3.0 million for its interests in Spring Creek, and the buyer would fund all current and future deficits.

Continuing to retain Stanford's holdings in SSM would require the Receivership Estate to satisfy significant financial commitments related to vehicles that carry high levels of risk. Given its regional focus on the Memphis, Tennessee area and heavy investment in the health care sector, SSM III is a highly-speculative venture. Stanford has funded $3,950,000 of its initial $5 million commitment. An additional capital call in the amount of $200,000 remains pending. Stanford's initial investment in SSM III has already suffered a 24% devaluation due to difficulties and setbacks faced by the companies in SSM III's portfolio. Pursuant to the proposed sale, the Receivership Estate would receive a payment of $1,225,000. However, if Stanford does not sell its investment in SSM III, it will be required to meet additional funding obligations of over $1 million—injecting additional capital into a high-risk investment—or face the dilution of its interest.

Finally, Stanford has only funded a fraction of its approximately $28 million commitment in SSM IV, and all funds contributed by Stanford to date have been used to pay formation and operating expenses. At this point, SSM IV has not made any investments, and, consequently, Stanford's holding in SSM IV has no fair market value. Under the terms of the proposed settlement agreement, Stanford would be allowed to withdraw as a limited partner in SSM IV and be released from any future funding obligations. Since the Receivership Estate should conserve its remaining assets and avoid making investments in high-risk vehicles, withdrawal from SSM IV is in the best interest of the Receivership Estate.

A. Stanford's Holdings in TUG

TUG is the owner of The Ultimate Gift (the "Film"), a film based on a novel authored by Jim Stovall. The Film is a drama about a character who expected to receive a multi-billion dollar inheritance after the death of his grandfather. However, in order to receive his share of the inheritance, the character must perform a series of assignments within a year. Michael O. Sajbel directed the Film, whose cast includes James Garner, Drew Fuller and Abigail Breslin.

On August 3, 2005, Stanford loaned TUG $12,054,565. Taking into account additional loan commitments through March 8, 2007, Stanford's aggregate investment in TUG totals $16,359,295.

The Film was theatrically released on March 9, 2007 in approximately 800 theaters. During its five month theatrical run, the Film generated approximately $3.4 million in domestic box office sales. After its theatrical run, a DVD/home video of the Film was released in the United States. From August 2007 through October 2007, the Film's gross domestic revenues from DVD/home video rentals totaled $9.6 million, and, according to Home Media Retailing, the Film averaged a rental ranking of 29th over the same period. Since that time, the Film's revenues have continued to decline. For instance, the Film generated only $4 million in additional revenue between November 2007 and March 2009. Exhibit 1 (Appendix at 4-20).

As the Film generates earnings, its distributor, 20th Century Fox, places the proceeds into a revenue collection account, and those funds are subsequently distributed to various parties, including the Film's investors. To date, Stanford has received $1,515,249 from the revenue collection account, and has realized an aggregate total of only $2,349,278 from its approximately $16.3 million investment in TUG.[3] Exhibit 2 (Appendix at 21-25).

Given the amount of time that has passed since the Film's release, it is highly unlikely that Stanford will see a significant return on its investment in TUG. As noted in PHG's recommendation, historically in the film industry, a project generates the majority of its revenue within the first three years of its release, and receipts fall off dramatically thereafter. Exhibit 1 (Appendix at 4-20). Because it was released over 31 months ago, the Film is nearing the end of its prime earning period. Indeed, the Film is projected to generate only $1.4 million of additional net returns over its foreseeable life of 10 years. Stanford's revenue share of these earnings would be $1 million—substantially less than Stanford's initial investment. In short, this is an asset that has not generated significant returns to date, and the passage of time makes it increasingly unlikely that Stanford will ever recoup its initial investment.

In addition to its diminishing earning potential, the Film is expected to incur substantial management, legal, and accounting costs throughout the remainder of its lifespan. The ongoing expenses related to preserving and marketing a film project can be significant. For 2010 alone, the Film's expenses are estimated to be approximately $200,000. Faced with these ongoing costs and expenses, combined with TUG's anticipated low return on investment, a sale offers liquidity for the Receivership Estate, and also eliminates any required payments for future management, legal, and accounting fees.

B. The UG Acquisitions Offer

Due to the low probability of achieving a significant return on Stanford's initial investment, the Receiver engaged PHG to actively market Stanford's holdings in TUG. Even under favorable economic conditions, the universe of potential investors in film assets is

[3] According to TUG's records, Stanford received an additional $834,029 in fee reimbursements.

extremely limited. Moreover, the recent credit environment has impacted the capital available to potential investors that are typically interested in financing film projects, further reducing the number of suitable buyers.

Within the constraints of the current film market, PHG utilized extensive marketing efforts in an attempt to find a potential buyer for Stanford's investment interest in TUG. Initially, PHG focused its marketing efforts on traditional secondary buyers with media expertise. None of these traditional buyers expressed interest in purchasing Stanford's interest in TUG. Given this lack of interest, PHG re-focused its efforts on firms specializing in acquiring film assets. PHG approached the Film's existing equity investors, two entertainment finance companies, Jim Stovall, industry consultants, the Film's distribution partners, and several investment firms. PHG identified the due diligence requirements of potential bidders, and maintained an electronic data room that provided prospective buyers with the applicable agreements governing the investment and TUG's recent financial statements.

The majority of potential investors approached by PHG declined to bid, expressing concern over the future performance of the Film based upon the revenue generated to date. However, PHG's efforts ultimately resulted in several offers, and PHG proceeded to negotiate with the potential buyers. During the negotiation process, and with the approval of the Receiver, the Film's producers engaged an independent advisory firm, The Salter Group, to provide an opinion as to the intrinsic value of the Film. Based upon The Salter Group's findings, the Film's current after-tax valuation ranges from $710,000 to $750,000. Exhibit 1 (Appendix at 4-20).

PHG was able to utilize The Salter Group's valuation to negotiate an increased offer for the Receivership Estate from the Film's producers. On August 16, 2009, UG

Acquisitions, LLC ("UG Acquisitions"), a company owned by the Film's producers, presented the Receiver with the highest final offer. UG Acquisitions' offer consists of a $725,000 cash payment to the Receivership Estate, an amount that falls squarely within the valuation range determined by The Salter Group. All other bids received by the Receivership Estate were lower than the offer submitted by UG Acquisitions.

After conducting an analysis of the offer submitted by UG Acquisitions, PHG recommended that the Receiver accept the offer because (i) the UG Acquisitions offer was the highest received after extensive marketing efforts; (ii) the UG Acquisitions offer represented 99.3% of the midpoint of The Salter Group's valuation range; (iii) the Film had a low probability of generating significant returns in the future; and (iv) the Film would continue to incur significant management, legal, and accounting fees. As a result, PHG concluded that the pending offer from UG Acquisitions represented the highest dollar value available for the Receivership Estate.

Based upon the recommendation of PHG, the Receiver believes that the Receivership Estate will realize the maximum benefit of this investment by accepting the pending offer from UG Acquisitions and liquidating Stanford's holdings in TUG. Exhibit 1 (Appendix at 4-20). Consequently, the Receiver seeks the Court's approval to complete the sale of Stanford's investment interest in TUG for a total payment of $725,000 to the Receivership Estate. The terms of the sale and assignment are reflected in material attached as Exhibit 3 (Appendix at 26-36).

C. Stanford's Holdings in Spring Creek

Spring Creek owns and operates a golf course and surrounding properties in Memphis, Tennessee. Spring Creek's assets include (i) the Spring Creek Golf Course (the "Golf Course"); (ii) the Spring Creek Ranch Club (the "Club"); and (iii) several parcels of real property located in Shelby County and Fayette County, Tennessee. The Golf Course is a championship course designed by Jack Nicklaus, and the Club is a private, non-equity golf club associated with the Golf Course. In June 2009, Spring Creek completed additional improvements to the Golf Course and the Club's facilities, adding a golf house, teaching and practice facilities, and a maintenance building.

Over the last four years, Stanford has made, in the aggregate, equity investments totaling $13.3 million in Spring Creek. In July 2005, Stanford purchased 50% of SCRC's assets for $6.5 million.[4] Through a series of transactions and assignments, Stanford also acquired a 100% interest in Trail Partners, and 50% interests in both Flowerland and SC LLC.[5]

Stanford also holds debt investments in Spring Creek in the form of two promissory notes totaling approximately $18.9 million. On October 29, 2007, Stanford loaned SCRC $1,485,000. Around the same time period, Stanford purchased a loan from First Tennessee Bank related to the aforementioned improvements to the Club's facilities. In connection with that loan transaction, SCRC issued an additional promissory note to Stanford in the amount of $17,396,532.41.[6]

Spring Creek is currently undergoing substantial operational and financial difficulties, and its ability to generate significant income is uncertain. As a threshold problem, the primary means of support driving the development of the Golf Course, Club, and related facilities are no longer present. Based upon information provided to PHG, Stanford's investment

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[4] Old Bull, LLC, a Tennessee limited liability company ("Old Bull"), owns the remaining 50% interest in SCRC. The Meyer family ("Meyer Family") is the majority owner of Old Bull and the other entities that own the remaining interests in Spring Creek.

[5] Contemporaneous with its investment in SCRC, Stanford purchased a 50% interest in Trail Partners for $1.1 million. In July 2005, Stanford also bought a 50% interest in Flowerland for $400,000, and a 50% interest in SC LLC for $5.3 million. Subsequently, in November 2006, the entity that owned the remaining 50% interest in Trail Partners, Chinquapin Investors, LLC, assigned its interest to Stanford.

[6] Additional detail surrounding the transactions comprising Stanford's equity and debt investments in Spring Creek is provided in PHG's recommendation, attached as Exhibit 4 (Appendix at 37-40).

in Spring Creek was motivated by a desire to develop a location suitable for hosting a Stanford-sponsored major golf tournament and providing a marquee hosting facility for major Stanford banking clients. No other strategic investors appear to have a similar interest in these facilities.

Geography and a lack of standard club amenities also are major factors contributing to Spring Creek's operational problems. Memphis is a relatively small market to act as the primary membership base for this type of golf club, and the Golf Course, Club, and related facilities are located almost 40 minutes outside of city limits. Further, the Club generally is considered a secondary club membership by most of its patrons. To this end, it does not offer other standard country club amenities like water or other sporting facilities that could attract and retain a broader range of clientele.

Spring Creek's current difficulties are reflected in its financial performance. Even with Stanford's involvement, Spring Creek incurred operating deficits on a yearly basis. Spring Creek has not generated profits since inception, forcing its owners to fund significant deficits in order for the Golf Course and Club to remain open. During the first five months of 2009 alone, Spring Creek posted a net loss of $659,158.[7] While Spring Creek is still in the process of finalizing its 2009 income statement, its operational deficits for the last two quarters of 2009 are estimated to have exceeded $800,000. Consequently, as indicated by the attached revenue forecast, Spring Creek's operational deficits for 2009 are expected to total over $1.4 million, and it is projected to incur significant future deficits in 2010.[8] Exhibit 5 (Appendix at 41). If these operating deficits are not funded, Spring Creek will be forced to cease operating the Golf Course

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[7] Prior to 2009, Spring Creek's operating deficits were funded equally by Stanford and Old Bull. However, Stanford has not funded its share of operating deficits since January 2009. As a result, through June 2009, Old Bull advanced Stanford's portion of the operating deficits—$334,500—to enable Spring Creek to meet payroll and other financial obligations necessary to continue to keep the Club operational for its members.

[8] In addition to its operating deficits, Spring Creek has also incurred a substantial amount of real estate taxes. As of December 31, 2009, delinquent real estate taxes incurred by SCRC and Trail Partners totaled $225,042.31. These taxes remain outstanding. If Spring Creek's tax liabilities are not satisfied, it also faces the possibility of foreclosure.

and Club. Ceasing operations would severely impact the value of the surrounding real property, given its remote location and lack of other available uses.

Finally, the devaluation of golf course assets in the current economic climate makes it highly unlikely that Stanford will recover its initial investment. Throughout the United States, the market values for golf course assets and surrounding properties have been declining as revenues from membership fees come under pressure. According to real estate experts involved in golf course acquisitions, including CB Richard Ellis, most golf courses have lost 30% to 50% of their value since 2007. Moreover, the primary factors that any potential buyer of a golf course analyzes in today's market include (i) location; and (ii) cash flow potential for the property. Because of Spring Creek's remote location and operating deficits, it is unlikely that the Receivership Estate will ever recover a significant amount of its investment through a future sale, particularly if Spring Creek must cease operations for financial reasons. Thus, a sale process while Spring Creek is still operational presents the best opportunity for the Receivership Estate to recapture a portion of Stanford's initial investment.

D. The Meyer Family Offer

Given Spring Creek's performance and the low likelihood of a significant return on Stanford's investment, the Receiver engaged PHG to market Stanford's interest in Spring Creek. PHG utilized several different marketing methods in its attempts to find a buyer for Stanford's holdings. First, PHG solicited interest directly from an initial group of 13 parties, including the Meyer Family, high net-worth investors, golf course owners, professional investment managers for wealthy families, and secondary investors. Second, PHG contacted multiple third-party real estate brokers on a confidential basis to explore marketing Stanford's investment interest.

The majority of the individuals contacted by PHG declined to bid on Stanford's interest, citing Spring Creek's remote geographic location and lack of positive earnings history. In addition, PHG's efforts through third-party real estate brokers failed to yield any interest. Ultimately, the Meyer Family informed PHG that they were interested in purchasing Stanford's interest in Spring Creek. After extensive negotiations, PHG was able to obtain a final offer of $3 million from the Meyer Family, which, under the terms of the proposed sale, would be funded by a cash payment to the Receivership Estate. As additional consideration, the Meyer Family agreed to fund Stanford's portion of all currently incurred deficits and release Stanford from any future funding obligations.

PHG conducted an analysis of the Meyer Family's bid, and recommended that the Receiver accept the offer because (i) the Meyer Family offer was the highest bid PHG was able to obtain after considerable marketing efforts; and (ii) Spring Creek's undesirable location and history of operating deficits combine to make it highly unlikely that Stanford will receive a significant return on its investment or find a more attractive exit opportunity. As a result, PHG concluded that the Meyer Family offer represented the highest dollar value available for the Receivership Estate.

The recommendation of PHG is attached as Exhibit 4 (Appendix at 37-40). Based upon this recommendation, the Receiver believes that the Receivership Estate will realize the maximum benefit for its investment in Spring Creek by accepting the pending offer and liquidating Stanford's holdings in Spring Creek. Thus, the Receiver requests approval of the Court to complete the sale of its interest in Spring Creek for the payment of $3 million to the

Receivership Estate.[9] The terms of the sale and assignment are attached as Exhibit 6 (Appendix at 42-57).

E. SSM Partners

SSM Partners, founded in 1973 and based in Memphis, Tennessee, is a principal investment firm specializing in venture, growth capital, acquisition, and re-capitalization transactions.[10] Generally, SSM Partners prefers to invest in expansion and later stage companies, and seeks out investments in basic business or outsourcing services, health care, and consumer services. SSM Partners seeks to lead or co-lead in transactions, and takes a board seat in portfolio companies. It typically invests between $3 million and $10 million in transactions that require up to $20 million in equity.

SSM Partners is the General Partner ("GP") of two limited partnerships in which Stanford invested: SSM III and SSM IV.

1. Stanford's Holdings in SSM III

Consistent with SSM Partners' general approach to investing, SSM III is a fund primarily comprised of investments in the basic business and health care service sectors. SSM III is a highly speculative investment for several reasons. First, Memphis, Tennessee is not well-known as a center for the type of investments the fund targets, meaning the SSM III portfolio companies tend to be regional ones lacking significant track records. Second, SSM III's portfolio is heavily invested in health care companies. Many high-growth health care companies fail in any event, but the regional focus of SSM III creates an especially high risk of investment loss.

[9] If the proposed sale has not closed by January 31, 2010, the Meyer Family may terminate the Purchase and Sale Agreement.

[10] In addition to its principal office in Memphis, Tennessee, SSM Partners has offices in Austin, Texas and Atlanta, Georgia.

Pursuant to a Subscription Agreement dated March 27, 2002 (the "SSM III Subscription Agreement"), Stanford committed to invest $5 million into SSM III. Exhibit 7 (Appendix at 58-75). To date, Stanford has funded $3,950,000 of its $5 million commitment.

The value of Stanford's investment in SSM III has diminished over the past six months, and significant near-term returns are highly unlikely. On September 30, 2009, the GP reported that the fair market value of Stanford's investment decreased by 26% since March 31, 2009. As a result, the overall fair market value of Stanford's investment, including realizations, is 76% of cost.

Additionally, based upon conversations with the GP, substantial uncertainty surrounds the future success of the investments contained in SSM III's portfolio. Certain investments have yet to fully prove their business models, and other portfolio companies are struggling due to the current economic recession. For instance, one of the companies in the portfolio, Plan Express, experienced a comparative revenue decline of approximately 60% during the first nine months of 2009 as compared to the prior year. As a result, Plan Express has suffered a 70% loss of value since March 31, 2009. Plan Express is one of several portfolio companies that has decreased in value, and it still remains unclear how other portfolio companies will be impacted in the coming quarters by the economic slowdown.

Moreover, Stanford is required to advance additional funding in the form of capital calls to SSM III or face the potential dilution of its investment interest. One capital call is currently pending. On June 16, 2009, SSM Partners sent a letter to Stanford informing it that SSM III was making a 4% capital call and that Stanford's portion—$200,000—was due on or before June 29, 2009. If Stanford continues to not meet this funding obligation, it could be subjected to the default remedies available to the GP by way of the limited partnership agreement. If these default provisions are triggered, Stanford's capital account in SSM III would be diluted by over 60%.[11] In addition to Stanford's current funding obligation, in discussions with the Receiver and PHG, the GP confirmed that SSM III will continue to draw capital on Stanford's outstanding $1.1 million of unfunded commitments to support existing investments through 2010 and beyond.

2. The Industry Ventures Offer

Faced with the performance of SSM III, and combined with Stanford's future capital commitments, the Receiver engaged PHG to undertake extensive marketing efforts on his behalf in order to locate a suitable buyer for Stanford's interest in SSM III. Private equity assets are, by their nature, illiquid, especially in the current market. In most instances, no active public market exists by which a holder can divest its interest. However, a limited secondary market is present wherein private equity holders like Stanford may attempt to liquidate their holdings through a sales process. The interest in this secondary market is driven by a variety of factors, including the (i) type and quality of the assets; (ii) industry and regional focus; (iii) track record of management; (iv) size of the investment; (v) size of the interest for sale; (vi) amount of unfunded capital; (vii) capital needs of the company; (viii) supply of similar interests in the market; and (ix) availability of financing and exit options available to the portfolio company. In the instant case, all of these factors combined to significantly limit the universe of interested, prospective buyers for the SSM III investment.

Working within these constraints, PHG, in conjunction with the GP, conducted preliminary discussions with investor groups in the secondary market in order to pre-screen bidders and identify investors who have a strong interest in SSM III. In doing so, PHG screened

[11] The Receiver could object to the dilution under the Receivership Order, and therefore require the GP to seek an order from the Court before diluting the Estate's interest.

its substantial network of potential purchasers to initiate contact with buyers that were existing investors in SSM III or similar assets, or prospects that might be interested in secondary stakes in U.S. venture funds requiring a smaller commitment size.

By narrowing its focus on this core group of potential buyers, PHG was able to locate and engage 17 potential investors in preliminary discussions: three existing fund investors, eight strategic institutional investors, and six dedicated secondary investors. PHG then utilized a two-tiered auction process in order to maximize the bids received by the Receivership Estate. PHG provided the 17 potential investors with approximately five weeks to conduct initial due diligence and submit bids. After that, bidders had one week to conduct confirmatory due diligence and submit their final offers to the Receiver for review.

In connection with this auction process, PHG maintained an electronic data room that provided bidders with further information such as capital account statements, financial statements, fund reports, capital call notices, and other key legal documentation. PHG also organized five conference calls between potential buyers and the GP, and, following the calls, obtained and conveyed additional information about SSM III in response to requests from the potential buyers.

As a result of PHG's marketing efforts, six of the 17 prospective investors submitted first round bids. The mean of the six bids was 27.1% of SSM III's Net Asset Value ("NAV"), and the median bid was 28.3% of NAV. The spread between the highest and lowest bid was 11.5% of NAV. Subsequently, all six of the prospective buyers submitted final bids. Industry Ventures Fund V, LP ("Industry Ventures") submitted the highest final round bid. Under Industry Ventures' offer, the Receivership Estate would receive a one-time cash payment of $1,225,000 for Stanford's interest in SSM III. In addition, Industry Ventures would assume all current and future funding requirements, including the $200,000 capital call that is currently pending.

After conducting an analysis of the offer, PHG recommended that the Receiver accept Industry Ventures' bid because (i) the Industry Ventures offer of $1,225,000 represented the highest cash price that PHG was able to obtain after extensive marketing efforts and a two-tiered auction; (ii) the uncertainty and risk in SSM III's portfolio and the setbacks experienced by several of the individual portfolio companies render Stanford's interest less attractive to potential investors; and (iii) a large portion of Stanford's capital commitment remains unfunded and would require a substantial capital contribution from any potential buyer.

Based upon PHG's recommendation, which is attached as Exhibit 8 (Appendix at 76-78), the Receiver believes that the Receivership Estate will recover maximum benefit by monetizing its investment in SSM III by way of the proposed sale to Industry Ventures. Consequently, the Receiver requests that the Court approve the sale and assignment of Stanford's interest to Industry Ventures for a payment of $1,225,000 and the assumption of Stanford's $5 million funding commitment under the SSM III Subscription Agreement, including the pending $200,000 capital call. The specific terms of the sale and assignment are reflected in Exhibit 9 (Appendix at 79-111).

3. Stanford's Interest in SSM IV and Settlement Agreement

Like SSM III, SSM IV was formed by SSM Partners with the intention of investing in a portfolio of companies specializing in basic business and healthcare services. SSM IV, however, is a fund that is still in its infancy. To date, SSM IV has not selected any portfolio companies or made any investments.

Pursuant to a Subscription Agreement dated September 26, 2008 (the "SSM IV Subscription Agreement"), Stanford committed to contribute the lesser of $50 million or 49.9%

of the sum of aggregate subscriptions to SSM IV. Exhibit 10 (Appendix at 112-134). As of December 1, 2009, Stanford's commitment totaled $28,336,427.15, but this amount likely will increase as additional limited partners are added to SSM IV. Stanford has funded only $566,728.54 of its commitment, and the entire amount of Stanford's past capital contribution was used to satisfy SSM IV's management fees and expenses. Exhibit 11 (Appendix at 135). SSM IV has not yet invested in a portfolio company and, as a result, Stanford's interest in SSM IV has no fair market value. Because Stanford's investment in SSM IV is nothing more than a future commitment to contribute funding, PHG has advised the Receiver that Stanford's investment in SSM IV is not marketable.

In order to generate funds to invest in portfolio companies, SSM IV will have to issue capital calls to its existing limited partners, including Stanford, or locate additional limited partners. Unless Stanford meets its contractual future funding requirements to SSM IV, the GP may attempt to exercise the default provisions in the applicable partnership agreement, which could possibly give rise to an affirmative claim against the Receivership Estate.

By way of a settlement agreement between Stanford and SSM IV (the "Settlement Agreement"), the GP has offered to allow Stanford to withdraw as a limited partner in SSM IV for no consideration. In essence, the Settlement Agreement would relieve Stanford of its duty to advance future capital under the SSM IV Subscription Agreement and, since Stanford's current funding has gone exclusively toward management fees and expenses, Stanford will merely be forfeiting its opportunity to invest in this high-risk venture. Further, by withdrawing from SSM IV, Stanford can avoid (i) classification as a defaulting partner; (ii) the related punitive effect of the default remedies in the partnership agreement; and (iii) any future claim against the

Receivership Estate that might arise from not meeting Stanford's $28 million funding commitment to SSM IV.

It is in the best interest of the Receivership Estate to conserve its remaining funds and avoid making large capital contributions into investment vehicles that, like SSM IV, contain high levels of risk. Consequently, the Receiver respectfully requests that the Court approve the terms of the Settlement Agreement, attached as Exhibit 12 (Appendix at 136-140), so that Stanford may withdraw as a limited partner in SSM IV.

IV. CONCLUSION AND PRAYER FOR RELIEF

After significant consultation with his team and PHG, the Receiver believes that the liquidation and sale of Stanford's interests in TUG, Spring Creek, and SSM III would inure maximum benefit to the Receivership Estate. As a result, the Receiver respectfully requests that the Court approve the respective sale of these holdings pursuant to the terms contained in Exhibits 3, 6, and 9 (Appendix at 26-36, 42-57, and 79-111). In addition, the Receiver also requests that the Court allow Stanford to withdraw as a limited partner in SSM IV by granting approval of the Settlement Agreement attached as Exhibit 12 (Appendix at 136-140), and grant any such other relief that the Court may deem just and equitable.

Dated: January 20, 2010

Respectfully submitted,

Baker Botts L.L.P.

By: /s/ Kevin Sadler

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ATTORNEYS FOR RECEIVER RALPH S. JANVEY

CERTIFICATE OF CONFERENCE

Counsel for the Receiver conferred with David B. Reece, counsel for the SEC, who stated that the SEC does not oppose the motion and the relief sought herein. Counsel for the Receiver conferred with John Little, Court-appointed Examiner, who stated that he is not opposed to this motion and the relief sought herein. Counsel for the Receiver attempted to confer with Manuel P. Lena, Jr., counsel for U.S.D.O.J. (IRS), but received no response. Counsel for the Receiver attempted to confer with David Finn, counsel for James Davis, but received no response. Counsel for the Receiver conferred with Ruth Schuster, counsel for R. Allen Stanford, who stated that her client opposes the motion and the relief sought herein. Counsel for the Receiver attempted to confer with Jeff Tillotson, counsel for Laura Pendergest-Holt, but received no response. Therefore, this motion is opposed.

/ s / Kevin M. Sadler
Kevin M. Sadler

CERTIFICATE OF SERVICE

On January 20, 2010, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin Sadler
Kevin Sadler