

NOTE CHANGES MADE BY THE COURT.

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11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION
14

15 UNITED STATES OF AMERICA,	) NO. CV 09-2398 RGK (RZx)
	)
16 Plaintiff,	) PROPOSED ORDER APPOINTING
	) SPECIAL MASTER
17 v.	)
	)
18 \$6,874,561.25 IN FUNDS FROM SIX) DATE: January 25, 2010	
WELLS FARGO BANK ACCOUNTS, et) TIME: 9:00 A.M.	
19 al.,	) PLACE: ROYBAL 850
	)
20 Defendants.	)

21 This Court, having granted plaintiff's Motion for
22 Appointment of a Special Master, hereby finds and ORDERS as
23 follows:

24 1. Pursuant to this Court's authority under Rule
25 53(a)(1)(C), Fed. R. Civ. P., and the Court's inherent power to
26 seek assistance in order to administer the cases before it
27 efficiently, economically, and in the interests of justice, the
28 Court orders that Robb Evans shall be appointed as

1 Special Master in this action, ^{upon filing of} ~~effective immediately. The~~
2 ~~Special Master has filed~~ the affidavit required by Fed. R. Civ.
3 P. 53(b)(3)(A), stating that there are no grounds for
4 disqualification under 28 U.S.C. § 455.

5 2. The Court finds that appointment of a Special Master is
6 necessary to address matters that cannot be effectively and
7 timely addressed by an available district judge or magistrate
8 judge of this district, because:

- 9 a. The matters remaining to be adjudicated in this case
10 involve the potential claims of approximately 2,300
11 persons, requiring complicated or detailed computations
12 of losses suffered in a Ponzi-style investment fraud
13 scheme and presenting a great organizational challenge;
14 b. The individual adjudication of each such claim without
15 the aid of a Special Master will result in delay, to
16 the prejudice of all of the affected persons; and
17 c. The work of the Special Master as set forth herein is
18 likely to have the positive effects of reducing the
19 number of contested claims in this action and
20 streamlining the issues to be decided for the contested
21 claims.

22 3. The Special Master shall proceed with all reasonable
23 diligence pursuant to Fed. R. Civ. P. 53(b)(2).

24 4. The duties and powers of the Special Master are limited
25 to those specifically set forth herein. The Special Master shall
26 not have the power to issue any orders or impose any sanctions.

27 5. For purposes of this Order, the following terms have
28 the following meanings:

- 1 a. "Defendant Assets" shall mean and refer to the
2 assets named as defendants in this *in rem* civil
3 forfeiture action, which are more particularly
4 described in paragraph 5 of the government's
5 Verified Complaint for Forfeiture In Rem
6 ("Complaint").
- 7 b. "BDF" shall mean and refer to Best Diamond Funding
8 Corp., Best Diamond Realty Corp., Libreria Del
9 Exito Mundial, Best Alliance Construction Inc.,
10 First Class Bancorp Inc., Milton Retana, Lidia E.
11 Campos, and any other person or entity through
12 which Milton Retana conducted the scheme to
13 defraud described in the Complaint.
- 14 c. "Victim" shall mean and refer to a person who
15 invested funds in the scheme to defraud described
16 in the Complaint.
- 17 d. The clerk has already entered default against the
18 interests of all potential claimants to the
19 Defendant Assets "except persons who invested in
20 the scheme to defraud described in the
21 government's complaint for forfeiture."
22 Accordingly, "victim" shall not mean or refer to a
23 creditor of BDF, except to the extent such
24 creditor meets the definition of victim stated in
25 the preceding paragraph.

26 **POWERS AND DUTIES OF SPECIAL MASTER**

- 27 6. The Special Master shall collect evidence or data,
28 including but not limited to bank records for each bank account

1 maintained by BDF, sufficient to establish the following:

- 2 a. the amount of money invested with BDF by each victim;
- 3 b. the amount of money paid by BDF to each victim for any
- 4 purpose, including alleged "interest" payments and
- 5 refunds;
- 6 c. the identity of each victim; and
- 7 d. the amount claimed by each victim as a loss based on
- 8 his/her asserted investment with BDF.

9 7. The Special Master may issue compulsory process to third
10 parties pursuant to Fed. R. Civ. P. 45 to aid in his/her
11 collection of evidence and data.

12 8. The Special Master may demand by letter (provided in
13 English with accompanying Spanish translation) that victims
14 declare in writing under penalty of perjury the amount of money
15 they invested with BDF, and the amount of money BDF paid to them,
16 and any other factual matters the Special Master deems essential
17 to carry out his/her duties, and may further require that the
18 victims provide to the Special Master all documentary proof of
19 the money they paid and the money they received. The Special
20 Master may set a reasonable time limit for complying with the
21 demands set forth in this paragraph. *Provided*, to the extent a
22 victim has already provided the information and documents set
23 forth in this paragraph to the government, it would not be
24 essential to carrying out the Special Master's duties to demand
25 that the victim submit the same information again.

26 9. The Special Master shall analyze the evidence and data
27 as it is collected, and shall calculate and report to the
28 government in writing (and to any victim upon request) the

1 following based upon such analysis:

- 2 a. the total amount of money actually paid to BDF by each
3 victim ("Payments In") for purposes of investment, and
4 the date and amount of each payment;
- 5 b. the total amount of money paid by BDF to each victim
6 for any purpose ("Payments Out"), and the date, amount,
7 and purpose (if discernable) of each such payment.
8 *Provided*, hourly salary payments, if any, to a victim
9 who was a BDF employee shall not be included in
10 Payments Out, but commissions or premiums for
11 attracting new investors shall be so included; and
- 12 c. a proposed loss amount equal to the difference between
13 Payments In and Payments Out. If the difference is a
14 negative number or zero, the proposed loss amount shall
15 be zero.

16 In addition, the Special Master shall prepare and deliver to the
17 government a written report for each victim setting forth the
18 above calculations for that victim (and a summary of the
19 calculations for the entire pool of victims). To the extent the
20 individualized report calculations differ from the losses the
21 victim has previously claimed (whether to the government or to
22 the Special Master pursuant to paragraph 8), the report shall
23 concisely state the Special Master's bases and reasons for such
24 differences. The government shall send a victim's individual
25 written report, to that victim by certified mail, along with a
26 notice of the opportunity to file a claim in this action pursuant
27 to Rule G(4)(b), Supplemental Rules for Certain Admiralty and
28 Maritime Claims and Asset Forfeiture Actions, Federal Rules of

1 Civil Procedure.

2 10. The Special Master shall make every effort to minimize
3 his/her expenses while at the same time carrying out the mandates
4 of this Order. The Special Master shall have the sole discretion
5 to determine the appropriate procedures for resolution of all
6 assigned duties and shall have the authority to take all
7 appropriate measures to perform the assigned duties.

8 **EX PARTE COMMUNICATIONS**

9 11. Because the duties of the Special Master will require
10 him/her to collect evidence from the government (to the extent
11 permitted by law) and from the victims, the Special Master shall
12 be allowed to engage in ex parte conversations with counsel for
13 the government and for the victims, and with the victims
14 themselves (to the extent consistent with the California Rules of
15 Professional Responsibility governing contacts with represented
16 parties), in order to perform his/her duties. Unless otherwise
17 ordered, the Special Master may not communicate with the Court ex
18 parte.

19 **RECORDS THE SPECIAL MASTER MUST MAINTAIN**

20 12. The Special Master shall maintain and preserve the
21 following records:

- 22 a. Normal billing records of time spent on the matter,
23 with reasonably detailed descriptions of activities and
24 matters worked on;
- 25 b. Formal written reports regarding any matter, including
26 the reports described in paragraph 9;
- 27 c. Documents created by the Special Master that are
28 docketed in court;

- d. Documents received by the Special Master from counsel or from the victims;
- e. Documents obtained pursuant to compulsory process; and
- f. A complete record of the evidence considered by the Special Master in creating the reports described in paragraph 9.

13. The Special Master shall file a report with the Court every 120 days describing the work completed during the preceding 120 days, and describing whether and the extent to which duties described by this Order remain to be completed. The Special Master shall file a final report after the completion of all reports required by paragraph 9.

COMPENSATION

14. All payments to the Special Master for work done pursuant to this Order, and reimbursements for reasonable expenses incurred pursuant to this Order, shall be paid from the Defendant Assets rather than by the parties. The Defendant Assets constitute a fund under the Court's control pursuant to Fed. R. Civ. P. 53(g)(2)(B). By deciding to appoint a Special Master, the Court has considered the fairness of imposing the likely expenses on the parties and has taken steps to protect against unreasonable expense or delay. Fed. R. Civ. P. 53(a)(3).

15. The Special Master shall be paid \$325.00 per hour for work done pursuant to this Order (the "Special Master's fees").

The Special Master may petition the Court for permission to hire an Accountant, Attorney, or other personnel to assist in completion of the duties set forth in this Order, at a specified fee rate, if good cause is shown.

~~The Special Master may petition the Court for permission to hire an Accountant, Attorney, or other personnel to assist in completion of the duties set forth in this Order, at a rate not to exceed \$325.00 per hour (the "Accountant's fees"), and~~

~~attorneys at a rate not to exceed \$375.00 per hour (the "Counsel
fees"). The Special Master may hire or employ other personnel to
assist in completion of the duties set forth in this Order at a
reasonable market rate, and shall be reimbursed for payments made
to such personnel as part of the reasonable expenses incurred.~~

16. Beginning 30 days after entry of this Order, and
continuing every 60 days thereafter until the Special Master's
duties are completed, the Special Master shall apply to the Court
for payment from the Defendant Assets of the Special Master's
fees, Accountant's fees, Counsel fees, and reasonable expenses.
All applications for payment shall be filed with the court and
served on the government and on any person who has then filed a
claim pursuant to Rule G(5)(a)(i) (Supplemental Rules for Certain
Admiralty and Maritime Claims and Asset Forfeiture Actions,
Federal Rules of Civil Procedure), and shall set forth in
reasonable detail the nature of the services for which payment is
requested. The application shall be noticed for hearing on the
next Monday that is at least ten calendar days after the date the
application is filed. The proposed order will direct the United

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1 States Marshals Service to pay the amount ordered by the Court
2 from the Defendant Assets.

3 IT IS SO ORDERED.

4 Dated: 2/11/2010


The Hon. R. Gary Klausner
UNITED STATES DISTRICT JUDGE

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6 Presented by:

7 GEORGE S. CARDONA
8 Acting United States Attorney

9 by: _____
10 MONICA E. TAIT
11 Assistant United States Attorney
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