

<p>District Court, Denver County, Colorado 1437 Bannock Street Denver, CO 80202</p> <hr/> <p>FRED J. JOSEPH,  Securities Commissioner for the State of Colorado,  Plaintiff,  v.  SEAN MICHAEL MUELLER, MUELLER CAPITAL MANAGEMENT, LLC, and MUELLER OVER UNDER FUND, LP,  Defendants.</p>	<p>DATE FILED: August 8, 2016 1:58 PM FILING ID: 19E14D58B6834 CASE NUMBER: 2010CV3280</p> <p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p>Attorneys for: C. Randel Lewis, Receiver Name: Michael T. Gilbert, #15009 John C. Smiley, #16210 John A. Chanin, #20749 LINDQUIST &amp; VENNUM L.L.P. Address: 600 17<sup>th</sup> Street, Suite 1800 South Denver, CO 80202 Phone No.: 303-573-5900 Fax No.: 303-573-1956 Email: <a href="mailto:mgilbert@lindquist.com">mgilbert@lindquist.com</a> <a href="mailto:jsmiley@lindquist.com">jsmiley@lindquist.com</a> <a href="mailto:jchanin@lindquist.com">jchanin@lindquist.com</a></p>	<p>Case Numbers: 2010CV3280</p> <p>Courtroom: 203</p>
<p><b>RECEIVER'S AUGUST 2016 STATUS REPORT</b></p>	

C. Randel Lewis, as Receiver for Mueller Capital Management, LLC (“MCM”), Mueller Over Under Fund, LP, and related businesses, including Mueller Partners, LP, MCM, LLC, and Mueller Fund, LP, submits this report on the status of the Receivership.

1. On April 23, 2010, the Commissioner filed his Complaint for Injunctive and Other Relief. On April 27, 2010, this Court entered an Order Appointing the Receiver for MCM, Mueller Over Under Fund, LP, as well as any related businesses, including Mueller Partners, LP, MCM, LLC, and Mueller Fund, LP (collectively, the “Business” or the “Estate”). Sean Michael Mueller (“Mueller”) had been operating the Business as a Ponzi scheme.

2. On November 1, 2010, Mueller pled guilty in Denver District Court to violating the Colorado Organized Crime Control Act, C.R.S. § 18-17-104(3), a class two felony, and Securities Fraud and Theft, both class three felonies. On December 6, 2010, he was sentenced to forty years in prison and ordered to pay in excess of \$65 million in restitution. The Receiver has been informed that some investors have received minimum restitution payments from Mueller, and those payments may continue. Those payments have not been made by the Receiver or from assets of the Estate.

3. The Receiver has collected the assets of the Estate and with the exception of the *Taylor* case discussed below concluded all litigation efforts on behalf of the Estate.

4. On July 28, 2014, the Receiver filed his Proposed Plan of Distribution (“Proposed Plan”) and a motion seeking approval of the Proposed Plan. The Proposed Plan summarizes the Receiver’s recovery efforts and the liabilities and assets of the Estate. A copy of the motion and the Proposed Plan were served on all parties in interest, including all claimants in the Receivership and all investors in the Business.

5. After several hearings, the Court ordered the Receiver to amend the Proposed Plan, which he did on April 3, 2015. On April 17, 2015, the Receiver’s Amended Plan of Distribution became effective and in early May 2015, interim distributions of \$10 million were made as ordered by the Court. Copies of the Proposed and Amended Plans (and other relevant materials) remain available at [www.muellerreceivership.com](http://www.muellerreceivership.com).

6. On December 9, 2015, Spencer Brod, a losing investor, sought Court approval to file a late claim against the Receivership Estate and to receive distributions from the Estate as a Class 5 claimant under the Amended Plan. The Court granted Mr. Brod’s motion on January 7, 2016.

7. The only remaining Receivership Estate litigation is a case pending against Steve Taylor. Mr. Taylor received \$487,305.29 in purported “net profits” from Mueller before the Receiver was appointed. The Receiver sued to recover that money under Colorado’s Uniform Fraudulent Transfer Act (“CUFTA”). On January 4, 2013, the Receivership Court entered summary judgment for the Receiver and against Mr. Taylor for the entire \$487,305.29. Mr. Taylor appealed but deposited \$500,000 with the Receiver to secure the judgment. That \$500,000 is being held in a segregated account pending the final outcome of the *Taylor* case.

8. On March 13, 2014, the Colorado Court of Appeals reversed the Receivership Court’s summary judgment order on the ground that the time-period for bringing CUFTA claims had expired before the Receiver sued Taylor and that the express tolling agreement between Mr. Taylor and the Receiver was not enforceable. The Court of Appeals did not decide the other issue on appeal – whether Taylor provided reasonably equivalent value to the Estate for the “net profits” he received.

9. On June 19, 2014, the Receiver filed a petition for certiorari with the Colorado Supreme Court asking it to review the Court of Appeals’ decision. On August 3, 2015, the Colorado Supreme Court granted the Receiver’s petition and agreed to review the *Taylor* case. On June 20, 2016, the Supreme Court reversed the Court of Appeals decision and remanded the

case to the Court of Appeals to decide the remaining issue on appeal. On August 1, 2016, the Court denied Taylor's Petition for Rehearing, and on August 3, 2016, issued its Mandate returning the case to the Court of Appeals. It is unknown what additional proceedings will occur in the Court of Appeals or when it will decide the remaining issue.

10. On August 8, 2016, the Receiver made a second interim distribution of \$1 million as set forth on the attached **Exhibit 1**. Checks were mailed to the recipients by certified mail, return receipt requested. If checks are returned unclaimed, the funds will be held in the Estate's account. After the second interim distribution, approximately \$900,000 remains in the Estate's accounts, which includes the \$500,000 deposited by Mr. Taylor. The Receiver does not anticipate making further interim distributions and will make a final distribution after the *Taylor* litigation is finally resolved.

Dated: August 8, 2016.

**LINDQUIST & VENNUM L.L.P.**

*original signature on file*

By: /s/ Michael T. Gilbert

Michael T. Gilbert, #15009

John C. Smiley, Esq., #16210

Counsel for C. Randel Lewis, Receiver

## CERTIFICATE OF MAILING

The undersigned hereby certifies that on August 8, 2016, a true and correct copy of the foregoing **RECEIVER'S AUGUST 2016 STATUS REPORT** was served via ICCES and/or first class U.S. Mail, postage prepaid, on the following, and is also available at [www.muellerreceivership.com](http://www.muellerreceivership.com):

Russell B. Klein  
Charles J. Kooyman  
Colorado Attorney General  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 8<sup>th</sup> Floor  
Denver, CO 80203

Jeffrey M. Lippa, Esq.  
Greenberg Traurig LLP  
Tabor Center  
1200 17<sup>th</sup> Street, Suite 2400  
Denver, CO 80202

Michael P. Miller  
Mollie B. Hawes, Esq.  
Miller & Steiert P.C.  
1901 West Littleton Boulevard  
Littleton, CO 80120

James N. Thomaidis, Esq.  
Gersh & Thomaidis, LLC  
1860 Blake Street, Suite 400  
Denver, CO 80202

David M. Miller, Esq.  
Berenbaum Weinshienk P.C.  
370 17<sup>th</sup> Street, Suite 4800  
Denver, CO 80202

Patric J. LeHouillier, Esq.  
Le Houillier & Associates, P.C.  
455 E. Pikes Peak Ave., Suite 103  
Colorado Springs, CO 80903

Shaun A. Christensen  
Appel, Lucas & Christensen, P.C.  
1624 Market Street, Suite 310  
Denver, CO 80202

*All investors and creditors listed on the attached service list.*

/s/ Jessica M. Groskopf (original signature on file)

**Mueller Receivership - Amended Distribution Plan**  
**Exhibit** \_\_\_\_\_  
**Computation of Interim Distribution #2 of \$1,000,000**

				A			B	C	D
Distribution Amount				\$31,829			A/Total A	B*Distribution Amount	C/A
Seq	Class	Claim Number	Investors	Allowable Claim for Distribution	Initial Distribution Rate	Catch-Up Distribution Amount	Pro-Rata Percentage	Pro-Rata Distribution	Percentage of Allowable Claim Distributed
1	5 A	1	ACAR, Inc. 401(k)	\$710,880			1.05%	\$10,157	1.43%
2	5 A	2	Adkins, Kathleen H-OverUnder	\$796,538			1.18%	\$11,381	1.43%
3	5 A	3	Adkins, Kathleen H-Partners	\$544,000			0.80%	\$7,772	1.43%
4	5 A	4	Adkins, Kathleen H - Defined Benefit Plan	\$278,076			0.41%	\$3,973	1.43%
5	5 A	5	Adkins, Kathleen H -Heep Ranch	\$3,450,000			5.09%	\$49,292	1.43%
6	5 A	6	Adkins, Kathleen H Trust -FBO Kathy Davis	\$167,026			0.25%	\$2,386	1.43%
7	5 A	7	Adkins, Ward Defined Benefit Plan	\$422,613			0.62%	\$6,038	1.43%
8	5 A	8	Adkins, Ward IRA	\$268,725			0.40%	\$3,839	1.43%
9	5 A	9	Appel, David B	\$1,700,000			2.51%	\$24,289	1.43%
10	5 A	10	Appel, Jordan - Trust	\$50,000			0.07%	\$714	1.43%
11	5 A	11	Arney, John (Heritage Pension Plan)	\$188,073			0.28%	\$2,687	1.43%
12	5 A	12	Bauman, Brett	\$280,000			0.41%	\$4,001	1.43%
13	5 A	13	Burke, Jim and Mildred	\$203,000			0.30%	\$2,900	1.43%
14	5 A	14	Burke, Kelly K	\$33,350			0.05%	\$476	1.43%
15	5 A	15	Ceriani, Gary J	\$100,000			0.15%	\$1,429	1.43%
16	5 A	16	Creamer, Stephen J	\$1,019,000			1.50%	\$14,559	1.43%
17	5 A	17	Dalton, Rick and Mary Ellen	\$250,000			0.37%	\$3,572	1.43%
18	5 A	18	Davis, Katy B	\$321,348			0.47%	\$4,591	1.43%
19	5 A	19	Downing, Chelsea	\$56,881			0.08%	\$813	1.43%
20	5 A	20	Downing, Delaney	\$56,093			0.08%	\$801	1.43%
21	5 A	21	Downing, Helen	\$300,000			0.44%	\$4,286	1.43%
22	5 A	22	Downing, Jack V.	\$310,000			0.46%	\$4,429	1.43%
23	5 A	23	Downing, Jack V.	\$303,515			0.45%	\$4,336	1.43%
24	5 A	24	Downing, Kameryn	\$55,968			0.08%	\$800	1.43%
25	5 A	25	Downing, Morganne	\$55,522			0.08%	\$793	1.43%
26	5 A	26	Elway, Paige	\$200,000			0.30%	\$2,858	1.43%
27	5 A	27	England, Donald P	\$2,878,750			4.25%	\$41,130	1.43%
28	5 A	28	Foote, Tim - Amended	\$562,850			0.83%	\$8,042	1.43%
29	5 A	29	Gotsdiner, Steven	\$877,239			1.29%	\$12,534	1.43%
30	5 A	30	Gotsdiner, Steven IRA	\$452,764			0.67%	\$6,469	1.43%
31	5 A	31	Kirchhoff, Charles L	\$85,000			0.13%	\$1,214	1.43%
32	5 A	32	Kitchel Estate Exempt Trust	\$131,000			0.19%	\$1,872	1.43%
33	5 A	33	Ludwig, Mark	\$42,570			0.06%	\$608	1.43%
34	5 A	34	Maul, Todd A	\$735,122			1.08%	\$10,503	1.43%
35	5 A	35	MRFR Family Partners, Ltd	\$300,000			0.44%	\$4,286	1.43%
36	5 A	36	Murphy, Robert	\$1,500,000			2.21%	\$21,431	1.43%
37	5 A	37	Myers, Richard J	\$415,000			0.61%	\$5,929	1.43%
38	5 A	38	Nachman, Elaine L	\$704,829			1.04%	\$10,070	1.43%
39	5 A	39	Powers, James E	\$250,000			0.37%	\$3,572	1.43%
40	5 A	40	Richardson, Michael A	\$200,000			0.30%	\$2,858	1.43%
41	5 A	41	Roethlisberger, Emil J	\$1,400,854			2.07%	\$20,015	1.43%
42	5 A	42	Rollins, Blaine P	\$3,500,000			5.17%	\$50,006	1.43%
43	5 A	43	Rosensweig, Jeffrey	\$145,574			0.21%	\$2,080	1.43%
44	5 A	44	Sagrati, Joe	\$100,000			0.15%	\$1,429	1.43%
45	5 A	45	Schaefer, Ann J	\$114,777			0.17%	\$1,640	1.43%
46	5 A	46	Sellers, R Scot	\$1,075,393			1.59%	\$15,365	1.43%
47	5 A	47	Silverston, Leonard	\$1,500,000			2.21%	\$21,431	1.43%
48	5 A	48	Smazal Jr, Stanley	\$50,000			0.07%	\$714	1.43%
49	5 A	49	Strada Advertising - David Lancaster/Amy Levi	\$250,000			0.37%	\$3,572	1.43%
50	5 A	50	Strauseburg, Joseph W	\$250,000			0.37%	\$3,572	1.43%
51	5 A	51	Strauseburg, Joseph W	\$140,144			0.21%	\$2,002	1.43%
52	5 A	52	Thompson, Robert L	\$3,050,000			4.50%	\$43,577	1.43%
53	5 A	53	Walsh, Carol A	\$1,158,146			1.71%	\$16,547	1.43%
54	5 A	54	Weakland/Heydt Trust	\$215,000			0.32%	\$3,072	1.43%
55	5 A	55	Western Skies Investment Fund	\$1,575,000			2.32%	\$22,503	1.43%
56	5 A	56	Westfall, Kevin	\$465,000			0.69%	\$6,644	1.43%
57	5 A	57	Westfall, Roderick J	\$110,573			0.16%	\$1,580	1.43%
58	5 A	58	Westfall, Timothy C	\$370,000			0.55%	\$5,286	1.43%
59	5 A	59	Williams, Bruce	\$2,500,000			3.69%	\$35,719	1.43%
60	5 A	60	Williams, Jerry L	\$85,000			0.13%	\$1,214	1.43%
61	5 A	61	Wimmersberger, Henry Fam Plan	\$1,000,000			1.48%	\$14,288	1.43%
62	5 B	62	Burke, James J	\$5,744,750			8.48%	\$82,078	1.43%
63	5 B	63	Calus, Edward	\$681,721			1.01%	\$9,740	1.43%
64	5 B	64	Champion, Douglas W	\$463,597			0.68%	\$6,624	1.43%
65	5 B	65	Dean, Linda	\$47,768			0.07%	\$682	1.43%
66	5 B	66	Dean, Linda - Integrative Retirement Plan	\$367,117			0.54%	\$5,245	1.43%
67	5 B	67	Giglio, Michael S	\$428,198			0.63%	\$6,118	1.43%

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Mueller Receivership - Amended Distribution Plan  
 Exhibit \_\_  
 Computation of Interim Distribution #2 of \$1,000,000

				<u>A</u>			<u>B</u> A/Total A	<u>C</u> B*Distribution Amount	<u>D</u> C/A
Distribution Amount							\$31,829	\$968,171	
Seq	Class	Claim Number	Investors	Allowable Claim for Distribution	Initial Distribution Rate	Catch-Up Distribution Amount	Pro-Rata Percentage	Pro-Rata Distribution	Percentage of Allowable Claim Distributed
68	5 B	68	Giglio, Penelope (Wolford)	\$212,691			0.31%	\$3,039	1.43%
69	5 B	69	Grubb, Dan L	\$364,109			0.54%	\$5,202	1.43%
70	5 B	70	McGrath, Jon	\$1,148,930			1.70%	\$16,415	1.43%
71	5 B	71	Talley, Barry L - Amended	\$1,669,677			2.46%	\$23,856	1.43%
72	5 B	72	Weakland, Darrell R - Amended	\$664,400			0.98%	\$9,493	1.43%
73	5 C	73	Elway, John A	\$9,000,000			13.28%	\$128,588	1.43%
74	5 C	74	Pierce, Mitchell D	\$5,940,000			8.77%	\$84,868	1.43%
75	5 C	75	Spirit 6, LLC						
76	5 D	76	Bailey Saetveit Retirement Funds	\$504,066			0.74%	\$7,202	1.43%
77	5 A	77	Brod, Spencer	\$215,000	14.80%	\$31,829	0.32%	\$3,072	1.43%
				\$67,763,217		\$31,829	100.00%	\$968,171	