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13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15
16 SECURITIES AND EXCHANGE
COMMISSION,
17 Plaintiff,
18
19 v.
20 GINA CHAMPION-CAIN and ANI
DEVELOPMENT, LLC,
21 Defendants,
22 AMERICAN NATIONAL
INVESTMENTS, INC.,
23 Relief Defendant.

Case No. 3:19-cv-01628-LAB-AHG

Ctrm: 14A
Judge Hon. Larry Alan Burns

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
RECEIVER'S MOTION FOR
APPROVAL OF SETTLEMENT
AGREEMENT WITH CHICAGO
TITLE COMPANY AND CHICAGO
TITLE INSURANCE COMPANY**

Date: TBD
Time: TBD
Courtroom: 14A
Judge: Hon. Larry Alan Burns

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1 Krista Freitag ("Receiver"), the Court-appointed receiver for ANI
2 Development, LLC, Relief Defendant American National Investments, Inc., and their
3 subsidiaries and affiliates ("Receivership Entities"), submits this Memorandum of
4 Points and Authorities in support of her Motion for Approval of Settlement
5 Agreement ("Motion") with Chicago Title Company and Chicago Title Insurance
6 Company ("CTC").

7 **I. INTRODUCTION**

8 After 32 months of this receivership and the related litigation, the Receiver has
9 reached a \$24 million settlement with Chicago Title Company and Chicago Title
10 Insurance Company (together "CTC"). If the settlement is approved and the
11 Receiver's recommended allowed claim amounts are approved, this will (a) provide
12 the remaining plaintiff investors with cases against CTC ("Plaintiff Investors") with
13 100% of their money-in, money-out ("MIMO") net losses, (b) end all litigation with
14 CTC, and (c) pave the way for the losing investors who, after accounting for CTC
15 and other third-party settlements, have not already recovered 100% of the MIMO net
16 losses to recover more than 90% and likely closer to 95%¹ of their MIMO net losses
17 from the receivership estate. This would mean that, of the approximately
18 \$183 million in total investor MIMO net losses, the investors are expected to recover
19 a total of at least \$165 million and likely closer to \$174 million.² This is an
20 exceptional outcome in a Ponzi scheme of any kind, and especially one where the
21 purported investments involved in the scheme (loans to liquor license applicants)
22 were a pure fiction.

23
24 _____
25 ¹ When these total recovery estimates are used throughout this memorandum, they
26 are based on the assumption that the Settlement Agreement and the Claims
27 Allowance and Plan Motion (as defined below), including the Receiver's
28 recommended allowed claim amounts, are approved.

² CTC reports it has paid a total of more than \$163 million in settlements to
investors. Of that \$163 million, approximately \$128 million represents payments
of investor MIMO net losses. If the Settlement Agreement is approved, the
Receiver expects investors will receive distributions of at least \$37 million and
likely closer to \$46 million from the receivership estate.

1 A condition of the settlement is an order by this Court barring all existing and
2 future claims against CTC arising from the Ponzi scheme ("Bar Order"). CTC would
3 not agree to pay the receivership estate's full liability for the MIMO net losses of the
4 Plaintiff Investors, as well as additional amounts for other receivership claims
5 against CTC, or release its claims against the receivership and Kim Peterson, without
6 getting global peace. The Bar Order, therefore, is a CTC condition of the settlement.

7 Of the 14 remaining investors who have not settled with CTC (10 Plaintiff
8 Investors and 4 unrepresented investors), 7 have joined the Settlement Agreement
9 and 7 have declined to join and now oppose the Bar Order ("Non-Joining Plaintiffs").
10 The Non-Joining Plaintiffs' claims against CTC arise from the same set of events (the
11 Ponzi scheme) and substantially overlap with the receivership estate's claims against
12 CTC. Indeed, of the approximately \$24 million settlement amount, more than \$22
13 million represents the receivership estate's MIMO net loss liability to the Plaintiff
14 Investors. Under the Settlement Agreement, the Receiver will recover 100% of the
15 more than \$22 million from CTC and then distribute that amount to the Plaintiff
16 Investors in full satisfaction of their MIMO net loss claims against the receivership
17 estate. This will pave the way for an interim distribution of receivership funds in the
18 coming months (pursuant to a distribution plan, approval of which will be sought by
19 May 31, 2022) to all 300+ losing investors (including those who already settled with
20 CTC). And while the Receiver estimates a recovery of at least 90% for all losing
21 investors, it is possible the total recovery will ultimately be closer to 95%.

22 The receivership is a collective proceeding in equity that must take into
23 account the interests of all investors who suffered losses from the Ponzi scheme, not
24 just a handful of Non-Joining Plaintiffs who are not satisfied with recovery of 100%
25 of their MIMO net losses and who believe they can do better by pursuing many more
26 months of discovery, motion practice, trial preparation, trial, and appeal (and likely
27 incurring millions more in attorney fees and costs). As discussed further below, the
28 Receiver cannot settle the receivership estate's claims against CTC and generate such

1 an exceptional outcome for losing investors without the Bar Order. This Court,
2 which has the power to issue the Bar Order, should do so under its broad discretion
3 to manage this receivership as necessary and appropriate to achieve equity.

4 **II. BACKGROUND FACTS**

5 **A. The SEC Action**

6 In August 2019, the Securities and Exchange Commission brought this
7 enforcement action against Gina Champion-Cain ("Cain"), ANI Development, LLC,
8 and American National Investments, Inc., which alleged Cain and the Defendant
9 entities perpetrated a large-scale fraud, raising hundreds of millions of dollars for
10 purported short-term, high-interest loans to applicants seeking to acquire liquor
11 licenses. In reality, no loans were made to any liquor license applicants.

12 The Court appointed the Receiver to, among other things, take control of the
13 Receivership Entities, preserve and protect their assets, perform an accounting, and
14 pursue claims to recover from third parties. The purpose of the receivership was to
15 stop the Ponzi scheme, protect investors from further harm, and maximize the
16 recovery for investors who suffered losses. Cain entered into a Plea Agreement in
17 the related criminal case in which she admitted the nature and scope of the Ponzi
18 scheme. Request for Judicial Notice filed herewith ("RJN"), Exhibit A.

19 As documented in her quarterly reports, the Receiver has worked since her
20 appointment to marshal assets, sell real and personal property, eliminate secured debt
21 (in some cases, at considerable discounts), and pursue claims to recover from third
22 parties, including clawback claims. This extensive work, some of which is ongoing
23 (including some active clawback actions), has generated a considerable sum for the
24 receivership estate. The estate currently holds approximately \$27.9 million. The
25 Receiver is in the process of wrapping up the claims process and, by May 31, 2022,
26 will file a motion to approve recommended claim amounts, resolve disputed claims,
27 and approve a proposed plan for making distributions ("Claims Allowance and Plan
28 Motion"). Declaration of Krista L. Freitag filed herewith ("Freitag Decl."), ¶ 2.

1 **B. The State Court Actions**

2 After the Receiver was appointed, many investors engaged counsel and filed
3 actions against CTC – initially in this Court and the state court and later in state court
4 only ("State Court Actions"). Those cases, some of which have settled, were
5 originally related before Judge Ronald Styn and, since his retirement, have been
6 related before Judge Kenneth Medel. Through the remaining State Court Actions,
7 the Plaintiff Investors seek to recover from CTC their losses from the Ponzi scheme.

8 In December 2021, this Court authorized the Receiver to file an action in state
9 court against CTC. The Receiver filed her complaint in January 2022 and the case
10 was related with the other State Court Actions before Judge Medel. Through her
11 State Court Action, the Receiver seeks to recover from CTC (a) the amounts for
12 which the receivership estate is liable to investors who have not settled with CTC,
13 (b) amounts the Receivership Entities paid to CTC for escrow services relating to the
14 Ponzi scheme, (c) the administrative fees and costs of the receivership, (d) interest
15 and (e) punitive damages. A trial date in December 2022 has been set in the State
16 Court Actions, but it has not yet been determined which case(s) will be tried first and
17 which will be deferred to one or more later trial dates. Freitag Decl., ¶ 3.

18 **C. Prior Investor Settlements with CTC**

19 In total, more than 300 losing investors³ have settled their claims against CTC.
20 In nearly all of these settlements, CTC settled with investors for a percentage of their
21 reported MIMO net losses, ranging between 50% and 75%,⁴ with various investor
22 groups reportedly settling for 65%, 70%, and 75% of MIMO net losses. As noted
23 above, the proposed settlement contemplates payment to the Plaintiff Investors,
24

25 ³ The number of unique investors with whom CTC has reportedly settled does not
26 necessarily tie to the Receiver's number of unique losing investors with claims in
27 the receivership due to the aggregation of investments/accounts with the same
28 beneficial owners during the receivership claims process.

27 ⁴ Due to allocations of the settlement funds within one investor group, some
28 investors in the group received just over 80% of their MIMO net losses, and
others in the group received 67% of their MIMO net losses, but the overall
settlement was 75% of the aggregate MIMO net losses for the entire group.

1 including the Non-Joining Plaintiffs, of 100% of their MIMO net losses – a much
2 higher percentage than all but two investors have obtained. Freitag Decl., ¶ 4.

3 The two largest losing investors, Ovation Finance Holdings 2, LLC
4 ("Ovation") and Banc of California, N.A. ("BOC") reportedly settled with CTC for
5 amounts well in excess of their MIMO net losses. The facts supporting the claims of
6 Ovation and BOC against CTC, however, distinguish their claims from those of other
7 plaintiffs. Specifically, Ovation and BOC contacted CTC directly and received
8 falsified audit reports signed by an employee of CTC.⁵ Freitag Decl., ¶ 5. These
9 direct written misrepresentations by CTC to Ovation and BOC added considerable
10 strength to the Ovation and BOC claims.

11 Moreover, Ovation and BOC took the lead role for all plaintiffs in the State
12 Court Actions, including preparing what became the "model complaint" for the
13 plaintiffs, propounding numerous discovery requests, and taking numerous
14 depositions of CTC witnesses. While the Non-Joining Plaintiffs took an active role
15 in their own State Court Actions, most of the work to develop the claims and
16 evidence against CTC was done by Ovation and BOC. Freitag Decl., ¶ 6. These
17 facts put them in a different position than the other plaintiffs, having spent many
18 more millions of dollars on fact discovery and preparing their case for trial. To
19 illustrate this point, the BOC settlement with CTC was for \$39.9 million, of which
20 \$8.6 million was for attorney fees and costs.

21 This is not to say the Non-Joining Plaintiffs do not have strong claims against
22 CTC – that is not the case – but the Ovation and BOC settlements should not be
23 considered a benchmark for the reasonableness of other CTC settlements. As noted
24 above, all other investor settlements with CTC, most of which involved investors
25 represented by counsel, were approved by either this Court, the State Court, or both,
26 and were in the range of 50% to 75% of MIMO net losses.

27
28 ⁵ CTC disputed whether the false reports BOC received from Cain were signed by
CTC or forged by Cain.

D. The MIMO Net Loss Claims of Plaintiff Investors

Through her forensic accounting performed pursuant to the Court's orders (See Dkt. 659), the Receiver calculated the total money received from each Plaintiff Investor and the total money paid to each Plaintiff Investor. The applicable transactions, the MIMO net loss calculation, as well as the "prior recovery rate" (the aggregate money out divided by aggregate money in, which is used for the rising tide distribution method), were all laid out in the claim forms sent to the Plaintiff Investors in November 2021. Freitag Decl., ¶ 7.

The Plaintiff Investors' MIMO net losses are as follows:

Plaintiff Investor	Represented By	MIMO Net Loss
Shelley Lynn Tarditi Trust	Jeffrey Zinder	\$285,994.89
Stevens & Kapur Trust		\$351,780.91
Heller Fenley Trust & IRA		\$5,891,813.71
"Zinder Group" subtotal		\$6,529,589.51
Wakefield Capital LLC	James Armstrong	\$3,625,000.00
Wakefield Investments LLC		\$2,000,000.00
2Budz Holding LLC		\$79,204.00
"Armstrong Group" subtotal		\$5,704,204.00
Doug and Kristine Heidrich	Justin Shrenger ⁶	\$215,260.00
Living at the Next Level LLC		\$140,000.00
Heidi and Jeffrey Orr		\$150,000.00
"Shrenger Group" subtotal		\$505,260.00
CalPrivate Bank	O'Melveny & Myers	\$9,520,080.13
Total		\$22,259,133.64

Freitag Decl., ¶ 8.

⁶ The investors represented by Justin Shrenger were part of the Armstrong Group. They then joined the proposed Settlement Agreement and filed Substitutions of Counsel in their State Court Action, replacing Mr. Armstrong with Mr. Shrenger.

1 Under the proposed Settlement Agreement, the amount to be paid to the
2 receivership estate includes the full \$22,259,133.64 in MIMO net losses of the
3 Plaintiff Investors, which will then be distributed to them in full satisfaction of their
4 claims against the receivership estate.⁷ The Plaintiff Investors have all returned their
5 signed claim forms to the Receiver, and with one exception, have not disputed the
6 Receiver's MIMO net loss calculation. The same applies to the four unrepresented
7 investors; none of them has disputed the Receiver's MIMO net loss calculations. The
8 unrepresented investors will receive 70% of their MIMO net losses under the
9 proposed Settlement Agreement. All four of them have joined the Settlement
10 Agreement by signing the Joinder Agreement attached thereto. Freitag Decl., ¶ 9.

11 The claim of Non-Joining Plaintiff 2Budz Holding, LLC ("2Budz") is
12 disputed. 2Budz disputes whether \$750,000 it received from the Receivership
13 Entities should be considered "money-out" under MIMO, and therefore contends that
14 its claim should be \$750,000 greater than the Receiver's calculation. The Receiver's
15 position is that the \$750,000 at issue came directly from the Ponzi scheme, went
16 directly to 2Budz, is clearly tied to its investments in the Ponzi scheme, and therefore
17 must be treated as "money-out" for purposes of 2Budz's claim. Freitag Decl., ¶ 10.

18 In addition, Non-Joining Plaintiff CalPrivate Bank ("CalPrivate"), which does
19 not dispute its MIMO transactions, has asserted that MIMO does not apply because
20 the bank has a security interest in certain receivership assets that it contends gives it
21 the right to recover *all amounts* owed under its fraudulently-procured loan
22 documents *ahead of all other investors*. The Receiver's position is that CalPrivate is
23 not entitled to priority treatment and should be treated like every other losing
24 investor. CalPrivate does not have a valid security interest in any receivership assets,
25 nor should it have a larger claim or the right to recover ahead of all other investors.

26

27 _____
28 ⁷ The Shrenger Group of Plaintiff Investors and the four remaining unrepresented
investors will receive their portions of the settlement amount directly from CTC
because they have joined the Settlement Agreement.

1 The disputed claims of CalPrivate and 2Budz will be addressed in the Receiver's
2 upcoming Claims Allowance and Plan Motion, which motion will be filed by
3 May 31, 2022. Freitag Decl., ¶ 11.

4 **E. The Proposed Settlement and Bar Order**

5 On September 16, 2021, Judge Goddard set a Mandatory Settlement
6 Conference ("MSC") in January 2022 for the Receiver and CTC, and invited the
7 plaintiffs in the State Court Actions to attend. The Court, however, was open to the
8 parties engaging in private mediation as an alternative. The parties subsequently
9 agreed to attend mediation with the Hon. Steven R. Denton (Ret.) of Judicate West.
10 The mediation was scheduled for January 24-25, 2022. Freitag Decl., ¶ 12.

11 Prior to the mediation, the Receiver and other plaintiffs, through their
12 respective counsel, discussed whether to present a global settlement demand to CTC.
13 The plaintiffs, including the Non-Joining Plaintiffs, rejected the concept of a global
14 settlement demand. A substantial number of the investors who had not settled with
15 CTC then reached settlements shortly before and shortly after the January 24-25
16 mediation. These settlements were all for 70% of the investors' MIMO net losses
17 (with the exception of the Ovation settlement and later the BOC settlement, as
18 discussed above). Freitag Decl., ¶ 13. These settlements were subsequently
19 approved by the Court. Dkt. 768, 769. Two other investors recently settled their
20 claims against CTC for 70% of their MIMO net losses, which settlements were also
21 approved by the Court. Dkt. 775.

22 In March 2022, through counsel, CTC and the Receiver discussed the structure
23 of the settlement proposed herein, which CTC was unwilling to do without a Bar
24 Order that would end all litigation against it arising from the Ponzi scheme, and
25 which both sides hoped the remaining Plaintiff Investors and unrepresented investors
26 would accept. Another mediation with Judge Denton was then held on April 13,
27 2022. The Non-Joining Plaintiffs did not accept the settlement terms, and the
28 Receiver, through counsel, informed them the Receiver would accept the settlement

1 because it is in the best interests of the receivership estate and all investors as a
2 whole. The Settlement Agreement was then executed by the Receiver and CTC, with
3 a Joinder Agreement attached as Exhibit B that gave the Plaintiff Investors (and four
4 remaining unrepresented investors) the option to join and receive payment directly
5 from CTC, rather than the settlement funds going through the receivership. A true
6 and correct copy of the Settlement Agreement is attached as Exhibit A to the Freitag
7 Decl. The Plaintiff Investors and four remaining unrepresented investors were
8 promptly noticed and given until May 10, 2022 to sign the Joinder Agreement.
9 Although the three Shrenger Group investors and all four remaining unrepresented
10 investors joined, the seven Non-Joining Plaintiffs (three of which are affiliated)
11 declined to do so. Freitag Decl., ¶ 14.

12 **Settlement Payment.**⁸ Within 30 days of Court approval of the Settlement
13 Agreement, CTC will pay \$24,359,133.64 to the receivership estate, less the
14 \$505,260.00 that will be paid directly to the Shrenger Group investors and the
15 \$48,578.60 that will be paid directly to the four remaining unrepresented investors.⁹
16 The settlement amount includes (a) 100% of ANI's liability for the \$22,259,133.64 in
17 MIMO net losses of the Plaintiff Investors, (b) 70% of ANI's liability to the four
18 remaining unrepresented investors who have not settled with CTC (\$48,578.60),
19 (c) the full amount of the receivership estate's fraudulent transfer claim against CTC
20 (\$383,000.00), and (d) \$1,668,421.40 for the receivership estate's claim for the fees
21 and costs of the receivership. The Receiver will pay the MIMO net loss amounts (as
22 reflected in the table above) to the Non-Joining Plaintiffs upon approval of the
23 Claims Allowance and Plan Motion. Freitag Decl., ¶ 15.

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25

26 ⁸ The summary of settlement terms provided herein is for ease of reference only
and does not alter or amend the terms of the signed Settlement Agreement, which
controls and governs.
27 ⁹ Because the Shrenger Group investors and the four unrepresented investors joined
the Settlement Agreement, they will each receive settlement payments directly
28 from CTC within 30 days of Court approval of the Settlement Agreement,
including the Bar Order.

1 **Participation Right.** If approved, CTC will have the right to share in
2 distributions from the receivership estate (not including amounts paid to the
3 receivership under the Settlement Agreement) in place of the Plaintiff Investors as
4 though the Plaintiff Investors received a payment of 70% of their MIMO net losses
5 from CTC. The MIMO net loss amounts (column "G") and prior recovery rates
6 (column "H") for the rising tide distribution method for each Plaintiff Investor after
7 the deemed 70% payment are reflected on Exhibit A to the Settlement Agreement.
8 Subject to the appeal and holdback provisions discussed below, if the Court approves
9 Settlement Agreement and upcoming Claims Allowance and Plan Motion, the
10 Receiver estimates CTC could receive between \$2.5 million and \$3.8 million from
11 the receivership estate on account of its Participation Right. Freitag Decl., ¶ 16.

12 **Mutual Releases and Bar Order.** The Receiver/receivership estate and CTC
13 fully release one another, including the receivership estate's claims against CTC in
14 State Court and CTC's indemnity claims against the receivership estate. The
15 Settlement Agreement is also conditioned on a Bar Order that permanently enjoins
16 all claims by anyone against CTC (including its existing and former employees and
17 agents) that arise from the Ponzi scheme. CTC will also release its claims against the
18 Peterson Parties, which release is effective upon the Bar Order becoming final.
19 Freitag Decl., ¶ 17.

20 **Appeal.** In the event of an appeal by a Non-Joining Plaintiff, the portion of
21 the settlement payment that represents ANI's liability for 100% of that Non-Joining
22 Plaintiff's MIMO net loss will be held back by the Receiver pending resolution of the
23 appeal. Likewise, the amount that would be distributed to CTC pursuant to its
24 Participation Right for the appealing Non-Joining Plaintiff will also be held back. If
25 the Bar Order is affirmed or the appeal is otherwise dismissed, the respective
26 amounts held back will be released to the appealing Non-Joining Plaintiff and CTC.
27 If the appeal is successful and the Non-Joining Plaintiff is allowed to continue to sue
28 CTC, the amount held back for the appealing Non-Joining Plaintiff will be returned

1 to CTC, the amount held back on account of CTC's Participation Right for that Non-
2 Joining Plaintiff will be treated as general receivership funds and distributed pursuant
3 to terms of the distribution plan, and the appealing Non-Joining Plaintiff will no
4 longer have a claim in the receivership (having turned down 100% of its MIMO net
5 loss and chosen instead to take their case against CTC to trial). Freitag Decl., ¶ 18.

6 During the past 32 plus months since her appointment, the Receiver and her
7 counsel have gathered and reviewed thousands of documents relating to the Ponzi
8 scheme, claims against CTC, claims against Kim Peterson, and claims against other
9 third parties. The Receiver and her staff also analyzed thousands of financial
10 transactions to and from the Receivership Entities, CTC, feeder fund entities,
11 investors, and others in connection with her forensic accounting. Through counsel,
12 the Receiver also monitored the extensive discovery conducted in the State Court
13 Actions, including more than 40 witness depositions. Based on this extensive
14 investigation and analysis, the Receiver believes the Settlement Agreement, which is
15 the product of extensive negotiations between the Receiver and CTC, through their
16 respective counsel, is reasonable and fair and in the best interests of the receivership
17 estate and all claimants. The Receiver, therefore, requests that it be approved.
18 Freitag Decl., ¶ 19.

19 **F. Claims Involving Kim Peterson and Related Entities**

20 **The Receivership Estate.** Pursuant to the Court's order authorizing her to
21 pursue clawback claims, the Receiver filed a clawback action against Kim Peterson
22 and his entities ("Peterson Parties") on September 15, 2021. Prior to this filing,
23 during a MSC with Judge Goddard on May 10, 2021, and in subsequent meetings to
24 discuss settlement, the Receiver discussed with Judge Goddard the receivership
25 estate's substantial claims against the Peterson Parties, which collectively received
26 more than \$12.7 million in profits from the Ponzi scheme. Freitag Decl., ¶ 20.

27 Judge Goddard held several settlement conferences with the Receiver and
28 Mr. Peterson. The conferences that occurred after the filing of the complaint made

1 considerable progress in terms of the informal production of documents and
2 information by the Peterson Parties that would potentially assist in settlement.
3 Unfortunately, however, the settlement discussions through Judge Goddard ended in
4 February 2022 without a settlement having been reached. Freitag Decl., ¶ 21.

5 As such, on February 24, 2022, the Receiver and the SEC filed a joint motion
6 to authorize the Receiver to expand her complaint against the Peterson Parties.
7 Dkt. 754. The Court granted the joint motion on April 6, 2022. Dkt. 767. The
8 Receiver filed her First Amended Complaint against the Peterson Parties on May 18,
9 2022. The Peterson Parties' deadline to respond is June 27, 2022.

10 Considering that, if this settlement is approved, the litigation landscape would
11 be significantly changed (the Peterson Parties' claims against CTC would be barred
12 and CTC would release its claims against the Peterson Parties), once the Settlement
13 Agreement was executed, the Receiver, through counsel, contacted Judge Goddard's
14 chambers to request another settlement conference with the Peterson Parties. Judge
15 Goddard then set a settlement conference for June 1, 2022. Freitag Decl., ¶ 22.

16 **CalPrivate Bank.** Non-Joining Plaintiff CalPrivate Bank has a pending action
17 against The Peterson Family Trust dated April 14, 1992 ("The Peterson 1992 Trust").
18 The Peterson 1992 Trust is also a defendant in the Receiver's pending action against
19 the Peterson Parties. CalPrivate Bank alleges that The Peterson 1992 Trust
20 guaranteed its investment/loan, which loan agreement has been breached, and
21 therefore The Peterson 1992 Trust is liable to CalPrivate Bank on the guarantee.

22 **CTC.** Kim Funding LLC was one of the first parties to sue CTC in state court,
23 which action remains pending. CTC has asserted crossclaims for equitable
24 indemnity against Kim Peterson, Kim Funding LLC, and certain other Peterson
25 Parties in the Kim Funding case against CTC and certain other investor cases.

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III. DISCUSSION

A. Approval of the Settlement Agreement

"The power of a district court to impose a receivership or grant other forms of ancillary relief does not in the first instance depend on a statutory grant of power from the securities laws. Rather, the authority derives from the inherent power of a court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment of a receiver is authorized by the broad equitable powers of the court, any distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*, 953 F.2d 1560, 1569 (11th Cir. 1992).

District courts have the broad power of a court of equity to determine the appropriate action in the administration and supervision of an equity receivership. *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth Circuit explained:

A district court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. The district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership. The basis for this broad deference to the district court's supervisory role in equity receiverships arises out of the fact that most receiverships involve multiple parties and complex transactions. A district court's decision concerning the supervision of an equitable receivership is reviewed for abuse of discretion.

Id. (citations omitted); *see also CFTC. v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role, and 'we generally uphold reasonable procedures instituted by the district court that serve th[e] purpose' of orderly and efficient administration of the receivership for the benefit of creditors.").

1 A federal equity receiver's power to compromise claims is subject to court
2 approval. With regard to settlements entered into by a federal equity receiver, the
3 Court's supervisory role includes reviewing and approving those settlements in light
4 of federal court policy to promote settlements before trial. *See* Fed. R. Civ. P. 16(c),
5 Advisory Committee Notes.

6 Federal courts of equity may look to bankruptcy law for guidance in the
7 administration of receivership estates. *See SEC v. Capital Consultants, LLC*,
8 397 F.3d 733, 745 (9th Cir. 2005); *SEC v. Am. Capital Invs., Inc.*, 98 F.3d 1133,
9 1140 (9th Cir. 1996); *SEC v. Basic Energy & Affiliated Res.*, 273 F.3d 657, 665
10 (6th Cir. 2001). A bankruptcy court may approve a compromise of claims asserted
11 by or against the estate if the compromise is "fair and equitable." *Woodson v.*
12 *Fireman's Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988). The
13 approval of a proposed compromise negotiated by a court appointed fiduciary "is an
14 exercise of discretion that should not be overturned except in cases of abuse leading
15 to a result that is neither in the best interest of the estate nor fair and equitable for the
16 creditors." *In re MGS Mktg.*, 111 B.R. 264, 266-67 (B.A.P. 9th Cir. 1990).

17 The Court has great latitude in approving compromises. In passing on the
18 proposed settlement, the Court should consider the following:

- 19 a. The probability of success in litigation;
- 20 b. The difficulties, if any, to be encountered in the matter of collection;
- 21 c. The complexity of the litigation involved and the expense,
22 inconvenience, and delay necessarily attending; and
- 23 d. The paramount interest of the creditors and a proper deference to their
24 reasonable views in the premises.

25 *In re Woodson*, 839 F.2d at 620.

26 Here, the proposed Settlement Agreement resolves the receivership estate's
27 claims against CTC on very favorable terms. Specifically, it allows the receivership
28 to pay the MIMO net loss claims of the Plaintiff Investors in full and generates an

1 additional \$2.1 million on account of the receivership estate's other claims against
2 CTC, which then paves the way for an overall recovery to all losing investors, from
3 both the CTC and other third-party settlements and the receivership distribution
4 process, of at least 90% (and potentially closer to 95% or more) of their MIMO net
5 losses. As noted above, this is an exceptional outcome in a Ponzi scheme case.

6 The settlement also eliminates CTC's crossclaim for equitable indemnity
7 against ANI Development. The Court granted CTC relief from the litigation stay to
8 assert an equitable indemnity crossclaim in the Receiver's State Court Action
9 (Dkt. 758), and although the Receiver believes it would be inequitable to grant CTC
10 an allowed claim against the receivership estate for equitable indemnity, the
11 settlement eliminates that possibility altogether.

12 In addition, the settlement eliminates CTC's crossclaims against the Peterson
13 Parties in the State Court Actions. This is very beneficial because the Peterson
14 Parties' assets are insufficient to satisfy the receivership estate's claims, let alone the
15 claims of CTC. Moreover, ending the litigation between CTC and the Peterson
16 Parties will mean the Peterson Parties' remaining assets are not further consumed by
17 expensive litigation with CTC.¹⁰

18 If the Settlement Agreement is not approved, not only will the opportunity to
19 settle with CTC on favorable terms be lost, but the litigation in state court will
20 continue at substantial expense and delay, thus delaying distributions from the
21 receivership estate. The receivership estate will remain liable to the Plaintiff
22 Investors on their MIMO net loss claims and future recoveries from CTC (by the
23 receivership estate and/or the Plaintiff Investors) and their effect on receivership
24
25

26 ¹⁰ CTC also now holds BOC's claims against the Peterson Parties through an
27 assignment made pursuant to the BOC / CTC settlement agreement. It is unclear
28 what amounts the Peterson Parties may still owe to BOC after the settlement, but
regardless these claims will also be released as part of the proposed Settlement
Agreement, which is beneficial to both the receivership estate and the Peterson
Parties.

1 distributions will be unknown, meaning distributions will need to be deferred until all
2 litigation against CTC is fully resolved, which could take years.

3 The Non-Joining Plaintiffs argue that 100% of their MIMO net losses is not
4 sufficient, and therefore the settlement is unfair. They point to the CTC settlements
5 with Ovation and BOC and argue they could get more if they could try their cases.
6 This is pure speculation. Although the Receivers' and Plaintiff Investors' claims
7 against CTC are strong, all litigation involves considerable risk, as well as the
8 expenditure of substantial time, attorney fees and costs. CTC has aggressively
9 defended itself and will continue to do so in the face of the Non-Joining Plaintiffs'
10 claims through trial and appeal. While the Non-Joining Plaintiffs may believe they
11 can recover interest and attorney fees on top of their net losses, they could very
12 easily end up with a lower net recovery if they do not prevail at trial (and on appeal)
13 or do not get the full amount of principal, interest and attorney fees they are seeking.

14 Over 300 losing investors, including many represented by very capable law
15 firms, have weighed the risks and benefits of the CTC litigation and settled their
16 claims for significantly less than 100% of MIMO net losses. Based on her
17 investigation of the facts and legal issues (and after consultation with counsel), the
18 Receiver believes that 100% of MIMO net losses (factoring in CTC's Participation
19 Right) is a favorable settlement and in the best interest of the receivership estate.

20 As discussed above, although Ovation and BOC recovered more than 100% of
21 MIMO net losses through their settlements with CTC, there is no concrete basis for
22 the Receiver to forego a settlement offer reflecting 100% of MIMO net losses in the
23 hope that either some future settlement offer will be forthcoming or trial will yield a
24 larger return simply because Ovation or BOC got a larger settlement. The facts
25 unique to Ovation and BOC positioned them to make a more compelling argument to
26 CTC than many other parties. Accordingly, it is more appropriate to compare this
27 settlement to the settlements of all 300+ other investors who settled their claims for
28 between 50% and 75% of their MIMO net losses, than the settlements of the two

1 largest institutional investors who did almost all of the plaintiffs' side work in the
2 related cases against CTC for the past two plus years, had unique facts supporting
3 their claims, and therefore were able to obtain larger settlements.

4 More importantly, it is the interests of *all losing investors* that are paramount
5 in a receivership, not simply those of a handful of Non-Joining Plaintiffs.
6 Receiverships are collective proceedings in equity in which the Receiver and the
7 Court must take into account the interests of all claimants with interests in the estate.
8 Aside from the few Non-Joining Plaintiffs, there are over 300 losing investors who
9 are eagerly awaiting a distribution from the receivership estate. The Settlement
10 Agreement is extremely beneficial to the estate as a whole in that it (a) paves the way
11 for a recovery of more than 90% of MIMO net losses for all losing investors, and
12 (b) resolves the CTC litigation, which is the only remaining obstacle to distributing
13 the majority of funds in the receivership estate on an interim basis. The Settlement
14 Agreement, therefore, should be approved.

15 **B. Approval of the Bar Order**

16 It is well-established that District Courts supervising equity receiverships have
17 the power to issue a variety of "ancillary relief" to prevent interference with their
18 administration of receiverships, including orders staying or barring claims against
19 third parties (known as bar orders) where necessary to protect the receivership *res*.
20 *See Wencke*, 622 F.2d at 1369; *Zacarias v. Stanford Int'l Bank, Ltd.*, 945 F.3d 883,
21 896-97 (5th Cir. 2019); *SEC v. DeYoung*, 850 F.3d 1172, fn. 5 (10th Cir. 2017)
22 (stating that "numerous district courts have entered a claims bar order" and collecting
23 such cases). In fact, the Court already determined that it has the power to stay or bar
24 investor claims against CTC where necessary to protect a settlement between the
25 receivership and CTC, stating:

26 The Court may issue such a stay where necessary protect
27 the receivership *res*. *See, e.g., Zacarias v. Stanford Int'l*
28 *Bank, Ltd.*, 945 F.3d 883, 897 (5th Cir. 2019) (court has
jurisdiction to bar claims that "directly affect the receiver's
assets"). This authority is an exception to the Anti-

1 Injunction Act, 28 U.S.C. § 2283, and so it "should not be
2 enlarged by loose statutory construction." *Atl. Coast Line*
R. Co. v. Bd. Of Loco. Eng'rs, 398 U.S. 281, 287 (1970).

3 ...

4 Some courts have found it necessary to protect a
5 receivership *res* by enjoining investors in the receivership
6 entities from pursuing state litigation. *See, e.g., Zacarias*,
7 945 F.3d at 894; *S.E.C. v. Stanford Int'l Bank*, 927 F.3d
8 830, 850–51 (5th Cir. 2019); *S.E.C. v. DeYoung*, 850 F.3d
9 1172, 1183 (10th Cir. 2017); *S.E.C. v. Wencke*, 622 F.2d
10 1363, 1369 (9th Cir. 1980). In those cases, the courts acted
11 either to protect the receivership *res* from suits brought
12 directly against the receivership entities, *Wencke*, 622 F.2d
13 at 1369, or to protect the receivership's settlements with
14 third parties where the third parties had conditioned
15 settlement on the issuance of a bar order protecting them
16 from investor suits. *Zacarias*, 945 F.3d at 894; *Stanford*,
17 927 F.3d at 850–51; *DeYoung*, 850 F.3d at 1183.

18 Dkt. 737, pp. 6-7.

19 Additionally, the Court's comments at prior hearings made it clear to all
20 parties, including the Non-Joining Plaintiffs, that a stay was a possible outcome if
21 they did not settle their cases against CTC. At the hearing held on December 17,
22 2020 concerning the Receiver's Motion for authority to sue CTC, the Court set a
23 further hearing in four months (April 12, 2021) and admonished the investors to
24 "make hay while the sun shines" and resolve their cases against CTC – the clear
25 implication being that if they failed to do so, a time would soon come when their
26 claims would be stayed. RJN, Exhibit B, pp. 65-67. It has now been 32 months
27 since the SEC filed this action and the Ponzi scheme was fully exposed. Therefore,
28 the Non-Joining Plaintiffs have had a long time to settle their claims against CTC.

Moreover, in conditionally granting the Receiver's motion for authority to sue
CTC, the Court denied CTC's request for a stay of the investor cases in state court,
stating "[t]he investors suits in question here don't seek to recover from the
Receivership Entities, *nor have the Receiver and CTC agreed to any settlement that*
would fall apart absent a stay." Dkt. 737, p.7. (emphasis added). Therefore, after
admonishing the Non-Joining Plaintiffs in December 2020 to settle their cases

1 against CTC before the Receiver was authorized to file her action against CTC, the
2 Court then made it clear to them in December 2021 that it has the power to stay or
3 bar their cases. Again, all parties have been on notice that the Court considered one
4 possible outcome of the Receiver's lawsuit would be a settlement between the
5 Receiver and CTC, which would be dependent on a bar order. In other words, the
6 Non-Joining Plaintiffs have not only had ample time, they have also had ample
7 warning the instant Motion would be forthcoming.

8 The Receiver and CTC have now entered into the proposed Settlement
9 Agreement that resolves the receivership estate's claims against CTC on very
10 favorable terms for the benefit of all losing investors with allowed claims. To no
11 one's surprise, the Settlement Agreement is conditioned on entry of the Bar Order.
12 The receivership estate's claims against CTC include the amounts for which the
13 Receivership Entities are liable to the Non-Joining Plaintiffs. The receivership
14 estate's claims and the Non-Joining Plaintiffs' claims seek the same losses (as well as
15 other amounts) from the same party (CTC) and arise from the same conduct and
16 series of events. In fact, the Court has previously recognized that the receivership
17 estate's claims substantially overlap with the Non-Joining Plaintiffs' claims against
18 CTC. Dkt. 737, p.7. The Receiver cannot settle the receivership estate's claims
19 against CTC without the Bar Order, making the Bar Order necessary to protect the
20 receivership *res*. The Court has the power and broad discretion to issue the Bar
21 Order.¹¹

22 The Non-Joining Plaintiffs have previously argued in state court that the Court
23 cannot issue the Bar Order because their claims against CTC are not part of the
24 receivership estate. However, applicable caselaw, as previously recognized by the
25 Court, provides that entry of a Bar Order is well within the Court's discretion and
26

27 ¹¹ Pursuant to this power and broad discretion, the Court previously approved claims
28 bar orders in connection with settlements involving William Adams, the Levin
investors, and the Atherton investors. Dkt. 682.

1 equitable powers, and such Bar Order is not limited to claims belonging to the
2 receivership, but applies to claims that directly affect receivership assets. Dkt. 737,
3 p. 6; *Zacarias*, 945 F.3d at 897. Here, due to the "overlapping nature of the
4 investors' claims and the Receiver's claims," (Dkt. 737, p.7) the claims of the seven
5 Non-Joining Plaintiffs (and their refusal to accept 100% of their MIMO net losses)
6 now stand in the way of the Receiver achieving a settlement of the receivership
7 estate's claims against CTC on terms that are very favorable to the entire receivership
8 estate including the over 300 investors who were victims of the Ponzi scheme.
9 Therefore, the Non-Joining Plaintiffs' independent claims against CTC pose
10 substantial harm to receivership assets (*i.e.* the receivership estate's claims against
11 CTC) and the Bar Order is necessary to protect the estate.

12 The Non-Joining Investors have also argued in state court that the Court
13 cannot issue the Bar Order because CTC has the resources to pay all claims against it
14 in full. Again, this ignores the "overlapping nature" of the Non-Joining Plaintiffs'
15 claims and the receivership estate's claims. Because ANI is also liable to the
16 investors for their MIMO net losses, both the Non-Joining Plaintiffs and the Receiver
17 seek to recover those losses from CTC. Moreover, any claims for consequential or
18 punitive damages by Non-Joining Plaintiffs are also substantially the same as those
19 of the Receiver. The Receiver and CTC cannot be held doubly liable to both the
20 receivership and the Non-Joining Plaintiffs for the same losses, nor would it ever
21 agree to settle with one and continue to be sued by the other.

22 Moreover, the Court's power to issue a Bar Order is not limited to situations in
23 which there is a limited fund available to recover. In fact, many of the cases in
24 which courts have issued bar orders did not involve a limited fund. *See e.g.*,
25 *Zacarias*, 945 F.3d at 900 (noting that one of the two insurance carriers against
26 whom claims were barred was an "alleged deep-pocket defendant" that would be
27 "able to satisfy any judgment against it"); *SEC v. Adams*, No. 3:18-CV-252, 2021
28 WL 8016843, at *3 (S.D. Miss. Feb. 25, 2021); *SEC v. Stanford Int'l Bank, Ltd.*, No.

1 3:09-CV-0298-N, 2015 WL 10845785, at *3 (N.D. Tex. Sept. 23, 2015); *SEC v.*
2 *Aequitas Mgmt., LLC*, No. 3:16-CV-00438-JR, 2020 WL 7318305, at *1 (D. Or.
3 Nov. 10, 2020), R&R adopted, No. 3:16-CV-00438-JR, 2020 WL 7318129 (D. Or.
4 Dec. 11, 2020); *SEC v. Kaleta*, No. CIV.A. 4:09-3674, 2012 WL 401069, at *4 (S.D.
5 Tex. Feb. 7, 2012), aff'd, 530 F. App'x 360 (5th Cir. 2013); *Harmelin v. Man Fin.*
6 *Inc.*, No. CIV.A. 05-2973, 2007 WL 4571021, at *4-5 (E.D. Pa. Dec. 28, 2007).

7 The District Court supervising the receivership that arose from the highly-
8 publicized Ponzi scheme perpetrated by Allen Stanford approved a bar order in
9 connection with a settlement between the receiver and BDO USA, LLP, and laid out
10 the factors to be considered:

11 The Court finds that the BDO Settlement, including
12 without limitation the \$40 million Settlement Amount, was
13 reached following an extensive investigation of the facts
14 and resulted from vigorous, good faith, arm's-length,
15 mediated negotiations involving experienced and
16 competent counsel. The Court further finds that
17 (i) significant issues exist as to the merits and value of the
18 claims asserted against the BDO Entities by Plaintiffs and
19 by others whose potential claims are foreclosed by this
20 Order; (ii) such claims contain complex and novel issues of
21 law and fact that would require a substantial amount of
22 time and expense to litigate, with an uncertainty regarding
23 whether such claims would be successful; (iii) a significant
24 risk exists that future litigation costs would dissipate
25 receivership assets and that Plaintiffs and other Claimants
26 may not ultimately prevail on their claims; (iv) Plaintiffs
27 and Claimants who have filed Claims with the Receiver
28 will receive partial satisfaction of their claims from the
Settlement Amount being paid pursuant to the BDO
Settlement; and (v) the BDO Entities would not have
agreed to the terms of the BDO Settlement in the absence
of this Bar Order and assurance of "total peace" with
respect to all claims that have been, or could be, asserted
arising from their relationship with the Stanford Entities.

24 *Stanford Int'l Bank, Ltd.*, 2015 WL 10845785, at *3; *see also Kaleta*, 2012 WL
25 401069, at *4 (S.D. Tex. Feb. 7, 2012) ("courts may consider factors such as the
26 value of the proposed settlement, the value and merits of Receiver's potential claims,
27 the value and merits of any foreclosed parties' potential claims, the complexity and
28 costs of future litigation, the risk that litigation costs would dissipate receivership

1 assets, the implications of any satisfaction of an award on other claimants, and any
2 other equities attendant to the situation.").

3 All of the factors courts generally consider in approving bar orders are present
4 here. The proposed settlement was reached after extensive investigation of the facts,
5 both through the Receiver's investigation and forensic accounting and through the
6 discovery conducted in the State Court Actions. The settlement resulted from
7 vigorous, good faith, arms' length, mediated negotiations, with multiple mediations
8 and conferences involving CTC, the Receiver, and the Plaintiff Investors having been
9 held by Judge Steven Denton (Ret.) of Judicate West. Although the Receiver
10 believes the claims against CTC are strong, there are numerous issues and defenses
11 that must be litigated, the cases are complex, have been aggressively defended by
12 CTC, and would be expensive to take to trial (not to mention the inevitable appeal
13 and delay associated therewith).

14 Further, the Receiver is collecting 100% of the MIMO net losses of the
15 Plaintiff Investors. The balance of any claims which remain consist of speculative
16 claims for consequential and punitive damages. Certainly it is within the reasonable
17 business judgment of the Receiver and the discretion of the Court to approve a
18 settlement in which investors are barred from pursuit of speculative claims for
19 consequential damages when they will recover 100% of their MIMO net losses.

20 In all likelihood, after substantial further discovery is conducted, there would
21 be multiple trials occurring over several months in 2023 due to the number of
22 plaintiffs, the related claims asserted by and against the Peterson Parties, and the
23 crossclaims asserted by CTC. The litigation costs for the receivership estate would
24 be substantial, the delay would be lengthy, and there is no guarantee the plaintiffs
25 would prevail (including on appeal). Moreover, the Non-Joining Plaintiffs will
26 receive full satisfaction of their MIMO net loss claims in the receivership. Finally,
27 CTC would not have agreed to the settlement without the Bar Order. Therefore, all
28

1 of the factors courts consider in approving bar orders weigh strongly in favor of the
2 proposed Bar Order.

3 **The Peterson Parties.** Although the Peterson Parties profited from the Ponzi
4 scheme, they sued CTC in state court for fraud and other claims, asserting damages
5 including amounts they owe investors on guarantees of their investments/loans in the
6 Ponzi scheme. CTC filed crossclaims for equitable indemnity against the Peterson
7 Parties, alleging that they committed fraud and aided and abetted Champion-Cain.
8 As noted above, the proposed settlement will bar the Peterson Parties' claims against
9 CTC and release CTC's claims against the Peterson Parties. The Peterson Parties
10 benefit from the settlement (as they have with other CTC settlements involving
11 investors they brought into the Ponzi scheme) in that CalPrivate, whose investment
12 was guaranteed by The Peterson 1992 Trust, will receive 100% of its MIMO net loss
13 (\$9,520,080.13) through the receivership.

14 As noted above, the Receiver recently filed her First Amended Complaint
15 ("FAC") against the Peterson Parties for fraudulent transfer, breach of fiduciary duty,
16 fraud, aiding and abetting breach of fiduciary duty, aiding and abetting fraud, and
17 civil conspiracy. Case No. 21-cv-01620-LAB-AHG, Dkt. 36. Considering the
18 profits received by the Peterson Parties, as well as their role in expanding the Ponzi
19 scheme and preventing it from being detected – as laid out in the FAC – the Receiver
20 does not believe the Peterson Parties have valid claims against CTC. In fact, CTC
21 probably has a better chance of establishing equitable indemnity against Kim
22 Peterson, Kim Funding and ABC Funding Strategies. Even if the Peterson Parties'
23 chances vis-à-vis CTC were 50/50, which they are not, the litigation with CTC has
24 been tremendously expensive for the Peterson Parties and those costs will now come
25 to an end. The settlement, therefore, is beneficial to the Peterson Parties for this
26 reason as well.

27 The Receiver has made extensive efforts to settle the receivership estate's
28 claims against the Peterson Parties, including through several settlement conferences

1 with Judge Goddard. Although the Receiver and the Peterson Parties have been
2 unable to agree on a settlement amount, the Peterson Parties have insisted that any
3 settlement include a bar order in their favor and the Receiver has acknowledged that
4 a bar order may be appropriate depending on the other terms of the settlement. The
5 Receiver has also discussed these issues with counsel for CalPrivate, considering that
6 CalPrivate has a breach of guarantee claim against The Peterson 1992 Trust that
7 other investors do not have. Judge Goddard has set another in-person settlement
8 conference with the Receiver and the Peterson Parties for June 1, 2022.

9 **CTC / Nossaman Settlement.** Another material term of the proposed
10 Settlement Agreement is that, in the event CTC reached a settlement with Nossaman
11 LLP, which has now occurred, the Receiver would support a bar order in favor of
12 Nossaman as part of that settlement. The Receiver has not asserted claims against
13 Nossaman, nor have any investors. Therefore, a bar order in favor of Nossaman does
14 not prejudice the receivership estate or the investors. Nossaman must release all
15 claims it could assert against the receivership estate, although it has not asserted any
16 such claims. For these reasons, the Receiver supports and requests entry of the bar
17 order in favor of Nossaman as part of the proposed CTC / Nossaman settlement.

18 **The Receiver's Counsel Fee.** When she originally sought authority to sue
19 CTC in June 2020, the Receiver proposed to engage Allen Matkins for the case on a
20 tiered contingent fee arrangement. After several substantial settlements between
21 CTC and investor groups, the Receiver revised her request and recommended that
22 Allen Matkins be engaged on an hourly basis. In conditionally granting the Receiver
23 authority to sue CTC, the Court required the Receiver's counsel to handle the case on
24 the contingent fee arrangement originally proposed in June 2020. Dkt. 737. Allen
25 Matkins agreed to do so and the Receiver proceeded with her action against CTC.

26 If Allen Matkins were to be paid pursuant to the tiered contingent fee
27 arrangement, the firm would receive 25% of the settlement amount (\$24,359,133.64),
28 or more than \$6 million. However, if the Settlement Agreement is approved, the

1 Receiver and Allen Matkins have agreed, subject to Court approval, that the firm will
2 instead be paid on an hourly basis, which Allen Matkins estimates will be in the
3 range of 3.5% to 4.0% of the settlement amount, or approximately \$850,000 -
4 \$950,000, meaning an additional approximately \$5,050,000 - \$5,150,000 will be
5 available to distribute to investors. Once work on approval of the Settlement
6 Agreement and related CTC issues is completed, Allen Matkins will seek approval of
7 its hourly fees for the CTC litigation in a fee application filed with the Court.

8 **IV. CONCLUSION**

9 The proposed Settlement Agreement and Bar Order allow the Receiver to
10 settle the receivership estate's claims against CTC on terms very favorable to the
11 estate and the investors as a whole. If approved, the settlement represents a big step
12 forward towards bringing all litigation associated with the Ponzi scheme to an end,
13 being able to distribute a substantial amount of receivership funds in the coming
14 months, and making progress toward the ultimate conclusion of the receivership. If
15 the Settlement Agreement is approved, the only litigation remaining will be
16 clawback actions (including the expanded claims against the Peterson Parties), of
17 which seven active cases remain that the Receiver and her counsel are working to
18 resolve or bring to judgment. These clawback actions, however, should not delay
19 making a substantial interim distribution of receivership funds upon Court approval
20 of the Claims Allowance and Plan Motion, which will be filed by May 31, 2022.
21 Freitag Decl., ¶ 23.

22 For the foregoing reasons, the Receiver requests entry of the proposed order
23 approving the Motion and the Settlement Agreement, including the Bar Order.

24
25 Dated: May 23, 2022

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