

1 DAVID R. ZARO (BAR NO. 124334)
MATTHEW D. PHAM (BAR NO. 287704)
2 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
3 865 South Figueroa Street, Suite 2800
Los Angeles, California 90017-2543
4 Phone: (213) 622-5555
Fax: (213) 620-8816
5 E-Mail: dzaro@allenmatkins.com
naspis@allenmatkins.com

6 EDWARD G. FATES (BAR NO. 227809)
7 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
8 One America Plaza
600 West Broadway, 27th Floor
9 San Diego, California 92101-0903
Phone: (619) 233-1155
10 Fax: (619) 233-1158
E-Mail: tfates@allenmatkins.com

11 Attorneys for Receiver
12 KRISTA FREITAG

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15
16 SECURITIES AND EXCHANGE
COMMISSION,

17 Plaintiff,

18 v.

19 GINA CHAMPION-CAIN and ANI
20 DEVELOPMENT, LLC,

21 Defendants,

22 AMERICAN NATIONAL
23 INVESTMENTS, INC.,

24 Relief Defendant.

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENTS
WITH:**

**1) MERIT FINANCIAL, INC. AND
ILAN AWERBUCH;**

**2) RANDOLPH C. HOUTS, THE
LAW OFFICES OF RANDOLPH C.
HOUTS, AND POWER
PROCESS INC.**

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

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

I. INTRODUCTION4

II. BACKGROUND FACTS6

 A. The Merit Parties.....6

 B. The Houts Parties8

III. NOTICE10

IV. DISCUSSION.....10

 A. Settlement Approval10

 B. Approval of the Bar Orders.....12

V. CONCLUSION15

TABLE OF AUTHORITIES

Page(s)

Cases

1
2
3
4 *In re MGS Mktg.*,
5 111 B.R. 264 (B.A.P. 9th Cir. 1990)..... 11
6 *S.E.C. v. Wencke*,
7 622 F.2d 1363 (9th Cir. 1980)..... 12
8 *SEC v. Am. Capital Invs., Inc.*,
9 98 F.3d 1133 (9th Cir. 1996)..... 11
10 *SEC v. Basic Energy & Affiliated Res.*,
11 273 F.3d 657 (6th Cir. 2001)..... 11
12 *SEC v. Capital Consultants, LLC*,
13 397 F.3d 733 (9th Cir. 2005)..... 11
14 *SEC v. DeYoung*,
15 850 F.3d 11725 (10th Cir. 2017)..... 12
16 *SEC v. Hardy*,
17 803 F.2d 1034 (9th Cir. 1986)..... 10
18 *SEC v. Kaleta*,
19 No. 4:09-cv-3674, 2012 WL 401069, (S.D. Tex. Feb. 7, 2012)..... 14
20 *SEC v. Stanford Int’l Bank, Ltd.*,
21 No. 3:09-CV-0298-N, 2015 WL 10845785, (N.D. Tex. Sept. 23,
22 2015)..... 14
23 *Woodson v. Fireman’s Fund Ins. Co. (In re Woodson)*,
24 839 F.2d 610 (9th Cir. 1988)..... 11
25 *Zacarias v. Stanford Int’l Bank, Ltd.*,
26 945 F.3d 883 (5th Cir. 2019)..... 12

Statutes

27 Fed. R. Civ. P. 16(c) 10
28

1 Krista Freitag (“Receiver”), the Court-appointed permanent receiver for
2 Defendant ANI Development, LLC, Relief Defendant American National
3 Investments, Inc., and their subsidiaries and affiliates (“Receivership Entities”),
4 submits this Memorandum of Points and Authorities in Support of her concurrently-
5 filed Motion for Approval of Settlement Agreements with: 1) Merit Financial, Inc.
6 and Ilan Awerbuch; 2) Randolph C. Houts, the Law Offices of Randolph C. Houts,
7 and Power Process Inc. (“Motion”).¹

8 **I. INTRODUCTION**

9 Subject to Court approval, the Receiver has reached settlements of two matters
10 that will generate a total of \$690,000 for the receivership estate, as well as eliminate
11 \$169,487.18 of MIMO net loss claims against the estate. The settlements are as
12 follows:

13 **Merit Financial and Ilan Awerbuch.** The Receiver has reached a settlement
14 of her clawback action against Merit Financial and Ilan Awerbuch (“Merit Parties”)
15 that will generate \$400,000 for the receivership estate. Four losing investors who
16 brought a separate action against the Merit Parties (“Joining Investors”) have joined
17 the settlement and will also receive \$169,487.18 directly from the Merit Parties,
18 which payments will get them to a 100% recovery of their MIMO net loss claims and
19 effectively eliminate their claims in the receivership (to the benefit of all others with
20 allowed claims). The total settlement amount (\$569,487.18) represents the total
21 remaining assets of Merit Financial and the majority of the net worth of Mr.
22 Awerbuch, based on financial records produced by them to the Receiver in
23 connection with the Early Neutral Evaluation (“ENE”) held by Magistrate Judge
24 Allison Goddard.

25
26
27
28

¹ The Motion and supporting papers have been filed without a hearing, pursuant to the Court’s instructions. The Receiver’s proposal in terms of providing notice of the Motion is discussed in Section III below.

1 A condition of the settlement is an order barring and enjoining any actions
2 against the Merit Parties related to the Ponzi scheme (“Bar Order”) and a Bar Order
3 is entirely appropriate and justified in these circumstances. Moreover, after almost
4 three years since the Ponzi scheme was exposed and stopped, no one besides the
5 Joining Investors² have filed claims against the Merit Parties, so the Bar Order does
6 not adversely affect any claimants.

7 **Randolph Houts and Power Process.** The Receiver has also reached a
8 settlement of the estate’s claims against Randolph Houts and his entities, The Law
9 Offices of Randolph C. Houts and Power Process Inc. (“Houts Parties”). Houts is an
10 attorney who practices in San Diego through his own small firm. The Houts Parties
11 provided legal services to Gina Champion-Cain (“Cain”) and the Receivership
12 Entities prior to the Receiver’s appointment. After analyzing the facts, the Receiver
13 asserted professional negligence and breach of fiduciary duty claims against the
14 Houts Parties (which claims are discussed below). The Receiver and the Houts
15 Parties entered into a tolling agreement and attended mediation with the Hon. Leo
16 Papas (Ret.) of Judicate West. The mediation sessions resulted in a settlement in the
17 amount of \$290,000, subject to Court approval. A condition of the settlement is a
18 Bar Order in favor of the Houts Parties, which is entirely within the Court’s power
19 and appropriate here. Importantly, after almost three years since the Ponzi scheme
20 was exposed and stopped, no one has filed claims against the Houts Parties relating
21 to the Ponzi scheme.

22 The Receiver submits that both proposed settlements are in the best interests of
23 the receivership estate and generate a greater net recovery than would likely be
24

25 ² One other losing investor, Nurit and Shlomo Bitensky (“Bitensky”), asserted a
26 claim against the Merit Parties, but it was subsequently determined that Bitensky
27 assigned all of their claims against third parties relating to the Ponzi scheme
28 (including any claims against the Merit Parties) to Chicago Title in connection
with the *Atherton* group settlement and Chicago Title then released those claims
as part of the Court-approved resolution of disputes relating to the *Atherton*
settlement and several other settlements, Dkt. 682. Accordingly, Bitensky no
longer has any claims against the Merit Parties.

1 obtained through litigation and the enforcement of prospective judgments. The Bar
2 Orders are essential to the proposed settlements and do not adversely affect any
3 claimants – other than the Joining Investors’ claims against the Merit Parties (which
4 will be resolved as part of the settlement), there are no active claims against the
5 Merit Parties or Houts Parties relating to the Ponzi scheme. The Receiver, therefore,
6 asks that the settlements be approved.

7 **II. BACKGROUND FACTS**

8 Since the completion of her forensic accounting in April 2021, the Receiver
9 has been pursuing claims to recover payments of profits made by the Receivership
10 Entities to investors in the Ponzi scheme (“Clawback Claims”). The Receiver had
11 specifically requested authority to pursue such claims, which had been granted by the
12 Court on December 18, 2020. Dkt. 551.

13 As part of her request for authority to pursue Clawback Claims, the Receiver
14 sought authority to settle Clawback Claims within specified parameters and
15 percentages. Dkt. 493-1. The Receiver noted, however, that there would likely be
16 exceptions due to unique circumstances of certain profiting investors and the
17 Receiver would seek Court approval of these exceptions that fall outside the pre-
18 approved settlement parameters. *Id.*

19 **A. The Merit Parties**

20 This Motion seeks approval of a Clawback settlement agreement with the
21 Merit Parties (“Merit Settlement Agreement”). A true and correct copy of the Merit
22 Settlement Agreement is attached as Exhibit 1 to the Declaration of Krista Freitag
23 filed concurrently herewith (“Freitag Decl.”). Through her accounting, the Receiver
24 determined that Merit Financial received \$1,335,479.75 (“Profit Amount”) from the
25 Receivership Entities and Mr. Awerbuch (as Merit Financial’s principal) received a
26 substantial portion of that sum in payments from Merit Financial to him or for his
27 personal benefit (Mr. Awerbuch also had a net loss of \$277,800 from investments he
28

1 and his wife made in the Ponzi scheme,³ which losses have been considered in
2 assessing the likely amount that would be recoverable from Mr. Awerbuch through
3 the Clawback case). The payments from ANI to Merit Financial were in the nature
4 of fees/commissions – Merit Financial co-managed one of the Receivership Entities
5 (CA Opportunity License Fund, LLC) with ANI. Freitag Decl., ¶ 2.

6 The Receiver, through counsel, contacted the Merit Parties and asserted the
7 receivership estate’s Clawback Claim for return of the Profit Amount as representing
8 a series of voidable transactions under the California Uniform Voidable Transactions
9 Act. The Receiver also offered to settle the Clawback Claim pursuant to the pre-
10 approved settlement parameters. Freitag Decl., ¶ 3.

11 The Merit Parties did not accept the pre-approved settlement offer or respond
12 in a substantive way to the letter from the Receiver’s counsel. Accordingly, the
13 Receiver filed a Clawback complaint on behalf of the receivership estate on
14 September 16, 2021, Case No. 21-cv-01633-LAB-AHG (“Merit Clawback Action”).
15 Freitag Decl., ¶ 4.

16 Shortly after the Merit Clawback Action was filed, Magistrate Judge Goddard
17 scheduled an Early Neutral Evaluation in the case. Several ENE sessions were held
18 by Judge Goddard between January and June 2022, and the Merit Parties ultimately
19 produced financial records that allowed the Receiver to verify representations they
20 had made regarding their bank account activity and status, assets, liabilities, and
21 ultimately net worth. During this time, the Merit Parties were contacted by a group
22 of losing investors who, through their counsel, asserted claims against the Merit
23 Parties for their MIMO net losses plus consequential damages, totaling more than
24 \$300,000. Given the Merit Parties’ limited assets, the negotiated settlement with the
25 Merit Parties also addresses these claims (on a MIMO basis). Freitag Decl., ¶ 5.

26
27
28

³ Mr. Awerbuch and his wife do not have claims in the receivership for their MIMO net losses from their investments due to the substantially greater amount of net profits they received from the Ponzi scheme through Merit Financial.

1 The Receiver and the Merit Parties ultimately negotiated a settlement that
2 provided for a total payment by the Merit Parties of \$569,487.18, of which amount a
3 minimum of \$400,000 would be paid to the receivership estate and up to
4 \$169,487.18 would be paid directly to the losing investors if all of them joined the
5 settlement agreement (or, alternatively, part of the \$169,487.18 would be paid to the
6 losing investors who joined if less than all of them joined, as provided in the
7 schedule attached to the Merit Settlement Agreement as Exhibit A). The Merit
8 Settlement Agreement included a Joinder Agreement as Exhibit B, which allowed
9 the four losing investors to join the settlement and receive their portion of the
10 \$169,487.18 directly from the Merit Parties, which payment would get each of the
11 losing investors to a 100% recovery on their MIMO net losses. Freitag Decl., ¶ 6.

12 Once the Merit Settlement Agreement was signed by the Receiver and the
13 Merit Parties, it was presented to the four losing investors, through their counsel.
14 The four losing investors then all decided to join the Merit Settlement Agreement
15 and provided their signatures, through their counsel. Freitag Decl., ¶ 7.

16 **B. The Houts Parties**

17 Attorney Randolph Houts, through his firm, provided legal services to Cain
18 and the Receivership Entities prior to the Receiver's appointment. Much of the legal
19 services related to setting up entities, acting as registered agent for those entities
20 (through Power Process Inc.), and handling other straight forward corporate matters.
21 From his various interactions with Cain, Houts became aware of the liquor license
22 lending program, including that Cain was running the program through escrows at
23 Chicago Title. Most importantly, Houts became aware that Cain had set up an entity
24 called Chicago Escrows and T. Cain told Houts not to speak to anyone about the
25 entity, to which he agreed. Freitag Decl., ¶ 8.

26 Houts also assisted Cain in setting up CA Opportunity License Fund. In fact,
27 Houts agreed to jointly represent ANI and Merit Financial in setting up the entity,
28 through which millions of dollars was then raised from investors for the liquor

1 license loan program. Despite knowing about the liquor license loan program, that
2 Cain was raising money from investors for the program, that the program was run
3 through escrows at Chicago Title, and that Cain had set up a secret entity with a
4 name strikingly similar to Chicago Title, the Houts Parties did nothing to alert
5 anyone at ANI, Merit Financial, or otherwise about Cain's highly suspicious secret
6 entity. Accordingly, the Receiver believes the receivership estate has strong claims
7 that the Houts Parties committed malpractice and breached their fiduciary duties to
8 ANI. Freitag Decl., ¶ 9.

9 The challenge with these claims, however, is with causation and damages.
10 Although Houts, at a minimum, ignored significant conflicts of interest between and
11 among Cain, ANI and Merit Financial, due to the obligation to preserve client
12 confidences, it is not clear Houts would have been able to take action that would
13 have stopped Cain from continuing to defraud investors. It is possible a court could
14 find that Houts' permissible actions would have been limited to withdrawing from
15 the representation and that his withdrawal alone may not have stopped any
16 investments into the Ponzi scheme. For these reasons, the claims against Houts,
17 while meritorious, could have some potential challenges in terms of establishing
18 causation and damages to ANI. Freitag Decl., ¶ 10.

19 The Houts Parties have an insurance policy that potentially provides \$1 million
20 in coverage for the receivership estate's claims. The Houts Parties have provided
21 confidential financial records to the Receiver, which records demonstrate that the
22 Houts Parties have very little in the way of assets that would be collectible through
23 enforcement of a judgment. With all of these factors in mind, the Receiver and the
24 Houts Parties agreed to settle and resolve all disputes, subject to Court approval, in
25 exchange for a lump sum payment of \$290,000.00 to the receivership estate. Freitag
26 Decl., ¶ 11.

27
28

1 **III. NOTICE**

2 As noted above, with the exception of Bitensky, who asserted claims against
3 the Merit Parties they had previously assigned to Chicago Title, there have been no
4 claims asserted against the Merit Parties or Houts Parties that relate to the Ponzi
5 scheme (other than the claims of the Joining Investors who have signed the Merit
6 Settlement Agreement). Therefore, no one will be adversely affected by the
7 proposed Bar Orders. With respect to notice, in addition to the notice automatically
8 provided through the ECF system, the Receiver has served the Motion and
9 supporting papers (and will serve notice of the hearing date and deadline for
10 opposition, once set by the Court) on counsel for Bitensky. The Receiver will also
11 post this Motion and supporting papers on the website used to disseminate
12 information relating to the receivership (www.anireceivership.com) and send an
13 email to all known investor email addresses with a link to the Motion and related
14 papers. The Receiver believes these methods of providing notice are sufficient under
15 the circumstances to apprise interested parties of the Motion and provide them with
16 the opportunity to be heard, if they wish to be.

17 **IV. DISCUSSION**

18 **A. Settlement Approval**

19 A federal equity receiver’s power to compromise claims is subject to court
20 approval. As noted by the Ninth Circuit Court of Appeals in *SEC v. Hardy*, 803 F.2d
21 1034, 1037 (9th Cir. 1986), “[a] district court’s power to supervise an equity
22 receivership and to determine the appropriate action to be taken in the administration
23 of the receivership is extremely broad.” With regard to settlements entered into by a
24 federal equity receiver, the Court’s supervisory role includes reviewing and
25 approving those settlements in light of federal court policy to promote settlements
26 before trial. *See* Fed. R. Civ. P. 16(c), Advisory Committee Notes.

27 Federal courts of equity may look to bankruptcy law for guidance in the
28 administration of receivership estates. *See SEC v. Capital Consultants, LLC*,

1 397 F.3d 733, 745 (9th Cir. 2005); *SEC v. Am. Capital Invs., Inc.*, 98 F.3d 1133,
2 1140 (9th Cir. 1996); *SEC v. Basic Energy & Affiliated Res.*, 273 F.3d 657, 665
3 (6th Cir. 2001). A bankruptcy court may approve a compromise of claims asserted
4 by or against the estate if the compromise is “fair and equitable.” *Woodson v.*
5 *Fireman’s Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988). The
6 approval of a proposed compromise negotiated by a court appointed fiduciary “is an
7 exercise of discretion that should not be overturned except in cases of abuse leading
8 to a result that is neither in the best interest of the estate nor fair and equitable for the
9 creditors.” *In re MGS Mktg.*, 111 B.R. 264, 266-67 (B.A.P. 9th Cir. 1990).

10 The Court has great latitude in approving compromises. In passing on the
11 proposed compromise, the Court should consider the following:

- 12 a. The probability of success in litigation;
- 13 b. The difficulties, if any, to be encountered in the matter of collection;
- 14 c. The complexity of the litigation involved and the expense,
15 inconvenience, and delay necessarily attending; and
- 16 d. The paramount interest of the creditors and a proper deference to their
17 reasonable views in the premises.

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

19 Here, the Receiver reviewed the financial records of the Merit Parties and
20 determined that their assets that would potentially be collectible, factoring in the
21 costs of further litigation or a bankruptcy, would be very limited. Therefore,
22 although the Receiver believes the Clawback Claim against the Merit Parties is
23 strong, she also believes the settlement amount of \$400,000 to the receivership
24 estate, plus the elimination of the four losing investors’ claims against the
25 receivership estate through the payment to them of \$169,487.18, is a favorable
26 outcome and generates a greater net recovery/benefit to the estate than would likely
27 be obtained through further litigation, enforcement of a judgment, or potentially a
28 bankruptcy. Freitag Decl., ¶ 12.

1 Similarly, the Receiver reviewed the financial records of the Houts Parties and
2 determined that their assets that would potential be collectible (other than the
3 \$1 million in potentially available insurance coverage), would be very limited.
4 Moreover, the \$1 million in insurance coverage would be further consumed through
5 litigation and there are some considerable challenges in the case (specifically relating
6 to causation and damages, as discussed above) that would need to be overcome.
7 Accordingly, the Receiver believes the proposed settlement amount of \$290,000 is
8 fair and reasonable, and in the best interests of the receivership estate. Freitag Decl.,
9 ¶ 13.

10 **B. Approval of the Bar Orders**

11 It is well-established that District Courts supervising equity receiverships have
12 the power to issue a variety of “ancillary relief” to prevent interference with their
13 administration of receiverships, including orders staying or barring claims against
14 third parties (known as bar orders) where necessary to protect the receivership *res*.
15 *See S.E.C. v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980), *Zacarias v. Stanford Int’l*
16 *Bank, Ltd.*, 945 F.3d 883, 896-97 (5th Cir. 2019); *SEC v. DeYoung*, 850 F.3d 1172,
17 fn. 5 (10th Cir. 2017) (stating that “numerous district courts have entered a claims
18 bar order” and collecting such cases). In fact, the Court already determined that it
19 has the power to issue bar orders where necessary to protect a settlement between the
20 receivership and third parties, stating:

21 The Court may issue such a stay where necessary protect
22 the receivership *res*. *See, e.g., Zacarias v. Stanford Int’l*
23 *Bank, Ltd.*, 945 F.3d 883, 897 (5th Cir. 2019) (court has
24 jurisdiction to bar claims that “directly affect the receiver’s
25 assets”). This authority is an exception to the Anti-
26 Injunction Act, 28 U.S.C. § 2283, and so it “should not be
27 enlarged by loose statutory construction.” *Atl. Coast Line*
28 *R. Co. v. Bd. Of Loco. Eng’rs*, 398 U.S. 281, 287 (1970).

29 ...

30 Some courts have found it necessary to protect a
31 receivership *res* by enjoining investors in the receivership
32 entities from pursuing state litigation. *See, e.g., Zacarias*,
33 945 F.3d at 894; *S.E.C. v. Stanford Int’l Bank*, 927 F.3d

1 830, 850–51 (5th Cir. 2019); *S.E.C. v. DeYoung*, 850 F.3d
2 1172, 1183 (10th Cir. 2017); *S.E.C. v. Wencke*, 622 F.2d
3 1363, 1369 (9th Cir. 1980). In those cases, the courts acted
4 either to protect the receivership *res* from suits brought
5 directly against the receivership entities, *Wencke*, 622 F.2d
6 at 1369, or to protect the receivership’s settlements with
7 third parties where the third parties had conditioned
8 settlement on the issuance of a bar order protecting them
9 from investor suits. *Zacarias*, 945 F.3d at 894; *Stanford*,
10 927 F.3d at 850–51; *DeYoung*, 850 F.3d at 1183.

7 Dkt. 737, pp. 6-7.

8 Moreover, in conditionally granting the Receiver’s motion for authority to sue
9 Chicago Title, the Court denied Chicago Title’s request for a stay of the investor
10 cases in state court, stating “[t]he investors suits in question here don’t seek to
11 recover from the Receivership Entities, *nor have the Receiver and CTC agreed to*
12 *any settlement that would fall apart absent a stay.*” Dkt. 737, p.7. (emphasis added).

13 Here, the Receiver has entered into two proposed Settlement Agreements that
14 resolve the receivership estate’s claims against the Merit Parties and the Houts
15 Parties on very favorable terms for the benefit of all losing investors and creditors
16 with allowed claims. The Settlement Agreements are conditioned on entry of Bar
17 Orders. The Bar Orders are limited to claims that arise from or relate to the Ponzi
18 scheme, meaning that unrelated, non-derivative claims against the Merit Parties or
19 Houts Parties would not be affected. Moreover, after three years since the Ponzi
20 scheme was exposed and stopped, no one has filed claims against the Merit Parties or
21 Houts Parties that will be barred by the Bar Orders.⁴ The Receiver cannot settle the
22 receivership estate’s claims against the Merit Parties or the Houts Parties without the
23 Bar Orders, making the Bar Orders necessary to protect the receivership *res*, which
24
25
26

27 _____
28 ⁴ As noted above, the only exception is Bitensky, who no longer have claims
against the Merit Parties due to the assignment of those claims to Chicago Title
under the Court-approved settlement in the *Atherton* matter.

1 includes the estate’s claims to recover from third parties. The Court has the power
2 and broad discretion to issue the Bar Orders.⁵

3 The factors courts generally consider in approving bar orders weigh strongly in
4 favor of the proposed Bar Orders. *See SEC v. Stanford Int’l Bank, Ltd.*, No. 3:09-
5 CV-0298-N, 2015 WL 10845785, at *3 (N.D. Tex. Sept. 23, 2015); *see also SEC v.*
6 *Kaleta*, No. 4:09-cv-3674, 2012 WL 401069, at *4 (S.D. Tex. Feb. 7, 2012) (“courts
7 may consider factors such as the value of the proposed settlement, the value and
8 merits of Receiver’s potential claims, the value and merits of any foreclosed parties’
9 potential claims, the complexity and costs of future litigation, the risk that litigation
10 costs would dissipate receivership assets, the implications of any satisfaction of an
11 award on other claimants, and any other equities attendant to the situation.”)

12 Here, the proposed settlements were reached after extensive investigation of
13 the facts, through the Receiver’s investigation and forensic accounting. The
14 proposed settlements and Bar Orders (a) result from vigorous, good faith, arms’
15 length, mediated negotiations through Judge Goddard and Judge Papas (Ret.), (b)
16 generate a favorable recovery for the benefit of the receivership estate and all losing
17 investors and creditors with allowed claims, and (c) do not prejudice any interested
18 parties, considering that no one has asserted a viable claim against the Merit Parties
19 or Houts Parties that will be affected by the Bar Orders.

20
21
22
23
24
25

26 ⁵ Pursuant to this power and broad discretion, the Court previously approved claims
27 bar orders in connection with settlements involving William Adams, the Levin
28 investors, and the Atherton investors. Dkt. 682. The Court also tentatively
approved settlements involving bar orders in favor of Chicago Title and
Nossaman at the hearing held on August 31, 2022, subject to further briefing on
one discreet issue and entry of a written order.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. CONCLUSION

For the foregoing reasons, the Receiver requests entry of the proposed order approving the Motion and the Settlement Agreements, including the Bar Orders.

Dated: September 1, 2022

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: s/Edward G. Fates

DAVID R. ZARO
EDWARD G. FATES
MATTHEW D. PHAM
Attorneys for Receiver
KRISTA FREITAG