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7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 SECURITIES AND EXCHANGE
11 COMMISSION,

12 Plaintiff,

13 v.

14 ZACHARY J. HORWITZ; and 1inMM
CAPITAL, LLC,

15 Defendants.

Case No. 2:21-cv-02927-CAS(GJSx)

**QUARTERLY REPORT OF
RECEIVER MICHELE VIVES
(FIRST QUARTER 2022)**

Judge: Hon. Christina A. Snyder
Courtroom: 8D

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1 Michele Vives, the duly appointed permanent receiver (the “Receiver”) of
 2 1inMM Capital, LLC and its subsidiaries and affiliates (“1inMM”), and over assets
 3 that are attributable to funds derived from investors or clients of the Defendants or
 4 were fraudulently transferred by the Defendants (collectively, the “Receivership
 5 Estate”), pursuant to Local Rule 66-6 and the *Order on Appointment of a Permanent*
 6 *Receiver* (“Order of Appointment”) entered on January 14, 2022, hereby submits
 7 this quarterly report (the “Report”) for the period January 14, 2022 through March
 8 31, 2022. The Report details the Receiver’s activities and findings over the past
 9 partial quarter to protect and administer the receivership estate, identify new assets
 10 and lay out the Receiver’s general strategy to maximize the recovery for the benefit
 11 of harmed investors.

12 **I. BACKGROUND INFORMATION**

13 **A. Introduction**

14 The preamble to this receivership mirrors that of a Hollywood movie script.
 15 For the sake of clarity, the following will provide a brief history of events leading
 16 up to the ultimate appointment of the Receiver. On April 4, 2021, the Securities and
 17 Exchange Commission (“SEC”) filed a complaint against Zachary J. Horwitz
 18 (“Horwitz”) and 1inMM Capital, LLC (“1inMM”) alleging Horwitz conducted an
 19 offering fraud and Ponzi scheme in violation of federal securities law.

20 The government alleged that, from March 2014 through at least December
 21 2019, Horwitz, through 1inMM, raised over \$690 million from investors selling
 22 promissory notes issued by 1inMM purporting to invest in various movie film
 23 productions. Horwitz and 1inMM raised that staggering amount of money using five
 24 main feeder funds or aggregators—JJMT Capital LLC, Movie Fund LLC, SAC
 25 Advisory Group, LLC, Vausse Films and Pure Health Enterprises (collectively, the
 26 “Principal Aggregators”)—which are believed to have raised funds from more than
 27 200 downstream individual investors, some of whom raised funds from further
 28 downstream investors (collectively, the “End-Investors”). As a result, most of the

1 End-Investors dealt only with a Principal Aggregator, and thus had only indirect
2 dealings with 1inMM.

3 Returns in excess of 35% were assured to the End-Investors on investments
4 which offered to finance the acquisition and licensing of distribution rights in
5 specific movies, primarily from Latin America, to major media companies including
6 Netflix and Home Box Office (“HBO”). To substantiate deals he had with HBO and
7 Netflix, Horwitz purportedly touted fictitious movie distribution agreements, fake
8 emails and the like. In late 2019, Horwitz began defaulting on outstanding notes
9 issued by 1inMM, blaming HBO and Netflix for their apparent refusal to pay for the
10 distribution rights. From early 2020 to March 2021, Horwitz purportedly promised
11 investors that he was on the verge of reaching agreements with HBO and Netflix and
12 would soon be able to repay investors. Soon thereafter, on April 4, 2021, the SEC
13 filed its complaint against Horwitz. Many of the End-Investors have commenced
14 their own lawsuits (discussed herein at Part IV.D).

15 On October 4, 2021, in a parallel criminal action, Horwitz pled guilty to one
16 count of securities fraud in violation of 15 U.S.C. §§ 78j(b), 78ff and 17 C.F.R. §
17 240.10b-5, in *United States v. Horwitz*, No. 2:21-cr-00214-MCS-1 (the “Criminal
18 Action”). Horwitz appears to have, in essence, operated a massive Ponzi scheme
19 where new investor monies were used to pay off old investor obligations with no
20 real underlying business enterprise. Thus far, it has been suggested that Horwitz
21 acted alone and is the sole person implicated in administering the alleged scheme.
22 Over 200 investors appear to have been defrauded out of potentially hundreds of
23 millions of dollars. On February 14, 2022, Horwitz was sentenced in the Criminal
24 Action to 240 months of imprisonment and ordered to pay restitution in the total
25 amount of \$230,361,884 to the Principal Aggregators. The background to these
26 investment entities will be more fully discussed further in this Report.

27 **B. The Receivership**

28 This particular receivership is unique in two respects: (1) the defendant,

1 Horwitz, has already pled guilty to one count of securities fraud in the Criminal
2 Action prior to the Receiver’s appointment, and (2) the Receiver’s appointment on
3 January 14, 2022 occurred approximately 10 months following the commencement
4 of this civil action by the SEC.

5 The intention behind the timing to appoint the Receiver, as outlined in the
6 Order of Appointment, was that the SEC determined a receiver would benefit the
7 estate in managing the known assets, which include ongoing businesses, and to
8 identifying any other significant, yet unknown, assets that may be available to
9 recover and compensate harmed End-Investors. Accordingly, the Receiver believes
10 that her principal charge is to make the End-Investors in Defendants’ scheme as
11 whole as possible, as opposed to merely collecting assets to pay down the restitution
12 judgment entered in the Criminal Action in favor of the Principal Aggregators.¹

13 **II. INITIAL ACTIVITY OF THE RECEIVER**

14 **A. Receivership Objectives**

15 The Receiver’s primary goal has been to gather and compile all relevant
16 information with a focus on two main objectives: (1) administering and maximizing
17 the value of the currently known assets, and (2) identifying and locating additional,
18 currently unknown assets.

19 The first item, the known assets, are believed to be limited in terms of monetary
20 value when compared to the magnitude of the scheme. While anticipated to provide
21 some recovery, the known assets are thus far anticipated to recover potentially \$3-4
22 million—hundreds of millions less than what investors purportedly lost. The known
23 assets are discussed in more detail below along with the Receiver’s plan to
24 administer them.

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28 ¹ This is particularly because the Receiver likely has substantial litigation claims to bring against
the Principal Aggregators, other feeder funds and their respective insiders.

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1 The limited value of the known assets underscores the importance of carrying
 2 out the Court’s further charge – identifying and marshaling unknown assets to make
 3 the defrauded investors as whole as possible – in a cost efficient and expeditious
 4 manner. Unknown assets may come in various forms including but not limited to
 5 money or property that have purposefully been concealed and hidden, recoveries
 6 from litigation to avoid fraudulent transfers to various persons and entities, including
 7 net winners of the Ponzi scheme, and potentially others.

8 This Report will outline the Receiver’s plan to carry out these primary
 9 objectives successfully.

10 **B. Description of Known Assets**

11 The known assets in the estate currently include: (1) cash proceeds related to
 12 the sale of the 9615 Bolton Rd. property, (2) furniture from the 9615 Bolton Rd.
 13 property, (3) Rogue Black, LLC and (4) LayJax Ventures, LLC. The first asset
 14 relates purely to cash held with the Court Registry Investment System (“Court
 15 Registry”). The third and fourth known assets relate to ongoing businesses in which
 16 1inMM funds were used to invest in other various business enterprises.

17 **1. Cash Proceeds Related to Sale of 9615 Bolton Rd.**

18 Shortly after the SEC filed its enforcement action against the Defendants,
 19 Horwitz’s home, located at 9615 Bolton Road, Los Angeles, CA 90034 (the “Bolton
 20 Property”), was sold pursuant to a joint *Ex Parte* Application made by the SEC and
 21 Horwitz. The Bolton Property was sold for a gross sales price of \$5,930,000.00. On
 22 May 10, 2021, the net sales proceeds of \$1,417,517.16 (the “Bolton Proceeds”) were
 23 deposited into the Court Registry, which is administered by the Clerk of the Court.

24 Though it was clearly contemplated by the SEC’s motion to appoint a receiver
 25 that the Receiver would take possession of and control over the Bolton Proceeds,
 26 during the first quarter the Receiver was unsuccessful in her attempts to obtain the
 27 release of those funds from the Clerk. Accordingly, on March 2, 2022, the Receiver
 28 filed a motion requesting the Court to direct the Clerk of the Court to release to the

1 Receiver the Bolton Proceeds. On March 16, 2022, the Court entered an order
2 directing the Clerk to turn over the Bolton Proceeds to the Receiver. The Clerk,
3 however, determined that the language in the turnover order was not sufficiently
4 specific. When the quarter ended, the Receiver was awaiting entry of an amended
5 turnover order by the Court that would address the Clerk’s concerns.²

6 **2. Furniture**

7 The Receiver has been advised that all of the furniture and other furnishings
8 that were at the Bolton Property are in a storage unit at a location that is currently
9 unknown to the Receiver. The Receiver understands that this furniture is of high-end
10 quality that may have substantial resale value. The Receiver is attempting to obtain
11 control over this furniture and other material to liquidate it and reduce it to cash for
12 the benefit of the Receivership Estate.

13 **3. Rogue Black, LLC**

14 Rogue Black, LLC (“Rogue Black”) is a film company that financed and
15 produced independent films. Other than Horwitz’s association, Rogue Black itself is
16 not believed to have been involved with the fraudulent conduct alleged in this action.
17 Rogue Black was co-owned by another individual, however the co-owner is not a
18 party to this action and is not alleged or believed to have been involved in, or even
19 aware of, Horwitz’s alleged fraud. As the co-owner was not involved in the alleged
20 scheme, and following their request not to be identified, Rogue Black’s co-owner
21 will be referenced herein as “RB Co-Owner”.

22 Rogue Black was formed in June 2017 with a 50% ownership held by ZJH
23 Enterprises, LLC (a company believed to have been formed and solely owned by
24 Horwitz) and the other 50% held by RB Co-Owner. The purpose behind Rogue
25

26 _____
27 ² The Clerk has since wired the Bolton Proceeds to the Receiver. The Receiver will address this in
28 greater detail in her second quarterly report.

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1 Black was to produce and finance independent films.

2 *a. Rogue Black Operations and Purpose*

3 From the beginning, it was agreed that Horwitz would be the financial source
4 to fund film productions for Rogue Black. RB Co-Owner's role, on the other hand,
5 was the sweat equity portion. RB Co-Owner would introduce various film
6 entertainment projects to the company at their development stage for potential
7 financing and/or production opportunities. RB Co-Owner would also effectuate the
8 actual production of the films, once invested, sometimes acting in other various
9 capacities such as the film's co-writer or director. Attached as **Exhibit A** is a copy
10 of the operating agreement with RB Co-Owner's name redacted.

11 Rogue Black served another purpose to Horwitz: to further his career as an
12 actor and provide him opportunities to engage with industry filmmakers and
13 production entities beneficial to establishing his own career in the entertainment
14 industry. This assertion is confirmed in a consulting agreement entered into between
15 1inMM and RB Co-Owner . Horwitz was further cast in a role for one of the films
16 financed by Rogue Black titled *The Gateway*. In essence, Horwitz used investor
17 money in an attempt to further his ambitions of becoming a Hollywood movie star.

18 *b. Rogue Black Films, Investments and Current Cash*

19 Records show that Horwitz caused 1inMM to invest approximately \$21
20 million into Rogue Black during the period 2017 through 2021. Rogue Black went
21 on to produce and complete a total of eight films (collectively, the "Produced Films")
22 during that time which are summarized in **Exhibit B**. Investments ranged from as
23 little as \$225,000, as was the case for a movie *Georgetown*, to as much as \$5,425,000
24 for the film *Minamata*, which starred Johnny Depp. As of March 31, 2022, Rogue
25 Black had cash on hand of \$548,303.00 held in a segregated bank account. Control
26 of this account is currently being transitioned to the Receiver.

27 *c. Rogue Black Outlook and Next Steps*

28 Rogue Black was often not the only financing agent on the Produced Films.

1 As typical in film productions, other investors or lenders were also involved in order
 2 to fully fund the film. Unfortunately, as with many independent films, not all of the
 3 Produced Films have generated profits. At this time, it is anticipated that only a
 4 portion of Rogue Black’s principal investment will be recovered. RB Co-Owner
 5 currently estimates that, over the next two to three years, Rogue Black will collect
 6 approximately \$1,500,000 to \$2,500,000 on account of the Produced Films.

7 The Produced Films are on the tail-end of their distribution and, for the most
 8 part, the only remaining task is to collect on the portion of gross receipts to which
 9 Rogue Black is entitled. Film financing is notoriously complex, as is the case here.
 10 In each production, a “waterfall”—or payment prioritization system—is typical. The
 11 waterfall outlines payment of various vendors and participants in a particular order
 12 from the generated gross receipts of the film. Five of the eight films in Rogue Black
 13 are known to have entered into a collections account management agreement,
 14 whereby an agency was appointed to administer the collection and distribution of
 15 collected gross receipts related to each film based on the agreed upon waterfall. At
 16 this time, the Receiver is currently reviewing multiple options to ensure that the
 17 Receivership Estate collects everything that Rogue Black is entitled to receive on
 18 account of its investments resulting in the Produced Films.

19 4. LayJax Ventures, LLC

20 LayJax Ventures, LLC (“LayJax”) is an angel investment company which
 21 invested in early startup business ventures. LayJax is not believed to have been
 22 involved with the fraudulent conduct alleged in this action. Further, LayJax’s co-
 23 manager is not a party to this action, and they too are not alleged or believed to have
 24 been involved in, or even aware of, Horwitz’s alleged fraud. Therefore, LayJax’s co-
 25 manager will be referred to herein as “LJ Co-Manager”.

26 LayJax was formed by Horwitz and LJ Co-Manager in 2018. Beginning in
 27 June 2018 through May 1, 2020, LayJax invested approximately \$2.5 million into
 28 twelve different startup business ventures (the “LayJax Investments”), all of which

1 appears to have been transferred to LayJax from 1inMM.

2 The businesses in which LayJax invested are broad and diverse, ranging from
3 baby monitoring to wine beverages to AI-metaverse technology to anti-acne patches.
4 Capital investments ranged from \$25,000 up to \$800,000. Attached as **Exhibit C** is
5 a summary of each of the businesses in which LayJax provided funding along with
6 additional detail. At this time, generic company descriptions are being used in place
7 of each company’s name to avoid them becoming associated with the alleged
8 fraudulent scheme.

9 In the Receiver’s discussions with LJ Co-Manager, it appears some of the
10 LayJax Investments are struggling and unlikely to provide significant sources of
11 recovery. There are, however, a couple of the investments that may eventually lead
12 to some a degree of return, though it is presently too preliminary to make any specific
13 projections. The Receiver will continue to investigate and monitor all LayJax
14 Investments and keep the Court apprised of any significant developments.

15 **C. Accounting of Receipts and Disbursements**

16 During the first quarter 2022, no funds had yet come under the direct control
17 of the Receiver. Accordingly, there are no cash receipts or cash disbursements to
18 report.³

19 **D. Retention of Counsel**

20 On February 3, 2022, the Receiver filed an unopposed motion to the Court
21 requesting an order authorizing the Receiver to employ Katten Muchin Rosenman
22 LLP (“Katten”) as her counsel retroactive to January 14, 2022. On February 22,
23 2022, the Court granted the Receiver’s motion. During the first quarter, Katten has
24 assisted the Receiver and her team in carrying out her duties and enforcing her rights
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27 ³ The Receiver has, however, had receipts and made disbursements during the second quarter 2022,
28 which the Receiver will address in her second quarterly report.

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1 under the Order of Appointment.

2 **III. INVESTIGATION AND PURSUIT OF UNKNOWN ASSETS**

3 **A. Meeting with the SEC, USAO and FBI**

4 As previously mentioned, this receivership is slightly unique with a criminal
5 investigation already completed and a defendant that has pled guilty to securities
6 violations. In obtaining a conviction, the various regulators and governmental
7 agencies carried out a significant amount of investigatory work. Additionally, the
8 SEC had performed a good deal of accounting work leading up to their initial
9 complaint.

10 Accordingly, the Receiver believed it would be advantageous to meet with the
11 various regulators and investigators to review objective information already
12 gathered and compiled. On March 23, 2022, the Receiver and her team met with lead
13 investigators from the SEC, U.S. Attorney’s Office (“USAO”) and the Federal
14 Bureau of Investigation (collectively, the “Investigatory Agencies”) at the SEC’s
15 offices in Los Angeles. As the Investigatory Agencies already had documents and
16 information in their possession that would likely assist the Receiver with her duties,
17 the Receiver asked for this meeting in an effort to avoid duplicating or reconstructing
18 their efforts.

19 The meeting proved fruitful; representatives of the Investigatory Agencies
20 were helpful and reasonably forthcoming.⁴ The Receiver and her professionals now
21 have a better understanding of what the Investigatory Agencies had already
22 discovered, as well as what information still remained unknown. Because the alleged
23 Ponzi scheme and various fraudulent actions were apparently so obvious, the
24 Investigatory Agencies advised that they did not need to perform deep and protracted

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28 ⁴ The USAO and the FBI advised that principles of grand jury secrecy prevented them from sharing their underlying investigative materials with the Receiver. Fed. R. Crim. P. 6(e).

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1 investigations to prove up their case against the defendants. This appears to be
2 supported by the swift guilty plea of Horwitz in the Criminal Action.

3 As a consequence, only the most elementary aspects of the purported fraud is
4 currently known. Many questions, which are essential to the Receiver’s duties but
5 not necessarily critical to the Investigatory Agencies’ investigations, still exist.
6 These include, for example: How many End-Investors are there? Who are the End-
7 Investors? How much exactly are the End-Investors owed? If there is potentially
8 more than \$230 million of principal investment still owed, where did all that money
9 go? Did Horwitz have assets that the Investigatory Agencies did not detect? The
10 Receiver believes the Court has tasked her with finding the answers to these
11 questions, so as to make the End-Investors as whole as possible.

12 **B. Status of Obtaining Bank Records and Other Requests for**
13 **Information**

14 During the first quarter, the Receiver issued demands for and received all bank
15 statements for seven known bank accounts related to 1inMM and its affiliates. The
16 bank statements span the period 2013 through 2022 and include over 10,000
17 financial transactions which are being analyzed as further detailed in the Forensic
18 Accounting section below. As of the end of March 2022, requests for additional
19 information on specific wire transactions are still pending which, once received, will
20 complete the bank transaction database for known accounts. However, other relevant
21 bank accounts that are currently unknown may exist. The search for which is a part
22 of the Receiver’s investigation.

23 In total, the Receiver has sent subpoenas and related information requests to
24 thirteen financial institutions, six individuals/entities of interest, two technology
25 companies holding relevant data and one law firm. The Receiver expects to receive
26 responses at various times during the second quarter. Further requests and subpoenas
27 are anticipated as the Receiver discovers new information.

28 //

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1 **C. Forensic Accounting**

2 Performing a forensic accounting is an indispensable cornerstone to this
3 receivership. The SEC’s complaint alleges that over \$690 million was invested into
4 1inMM and investors have been left with more than \$234 million in unreturned
5 principal. With the limited value of the currently known assets, the fundamental
6 question arises: where did the rest of the money go? A forensic accounting provides
7 at least three critical benefits:

- 8 • Identifying currently unknown asset purchases or fund transfers
9 to accounts outside the known estate that may provide sources
10 for recoveries;
- 11 • Identifying key individuals or entities that may have integral
12 information or potentially themselves be sources for recovery;
13 and
- 14 • Providing detailed information on the amount of funds invested
15 by investors, the amount of funds paid back to investors, and the
16 shortfall or gains made by individual investors.

17 The Receiver is still in the preliminary stages of her forensic accounting work,
18 which will require the review of nearly 10,000 financial transactions. The Receiver’s
19 team is extremely experienced in carrying out forensic accounting, particularly on
20 Ponzi schemes, and has specialized software allowing for the efficient and
21 expeditious review of a large amount of transaction data. The Receiver expects to
22 present the preliminary results of this analysis in her next report.

23 That said, the Receiver has already made some staggering discoveries. For
24 instance, the Receiver has determined that during the years 2014 through 2021—the
25 approximate duration of the Ponzi scheme—*more than \$200 million* flowed through
26 Horwitz’s personal bank account. An overwhelming majority of these funds
27 originated from 1inMM’s operating account.

28 **D. Potential Litigation**

 As an additional source of recovery to benefit harmed End-Investors, the
Receiver and her team are considering commencing litigation under various theories.
During the second quarter, the Receiver expects to send demand letters to multiple

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1 persons and entities who received transfers that the Receiver believes are avoidable
2 under the California Voidable Transactions Act and other applicable law.

3 **IV. INVESTORS AND THE ANTICIPATED RECOVERY PROCESS**

4 **A. Summary of the 1inMM Investment Structure and its Investors**

5 Investments in 1inMM relied heavily on personal relationships and word-of-
6 mouth referrals to obtain investors. Funds are believed to have been primarily raised
7 from the five Principal Aggregators, namely JJMT Capital LLC, Movie Fund LLC,
8 SAC Advisory Group, LLC, Vausse Films and Pure Health Enterprises. These
9 aggregators are believed to have raised funds from more than 200 End-Investors,
10 some of whom raised funds from further downstream End-Investors.

11 It is not yet fully understood how many End-Investors were a part of each
12 aggregator group and how much they invested. Identifying each of the individual
13 downstream End-Investors, how much money they each invested and how much
14 money they had received back, is a key focus of the Receiver. The Receiver will
15 obtain this information through three sources: (1) subpoenas to the Principal
16 Aggregators and others to obtain investor records and oral testimony, (2) the forensic
17 accounting and (3) an eventual investor claims procedure.

18 The Receiver is still in the preliminary stages of this investigation. However,
19 as additional information is obtained it will be shared with the Court through
20 subsequent reports filed by the Receiver. Investors will also be made aware of a
21 website the Receiver has created to be the main source of information dissemination
22 as detailed further below.

23 **B. Creation of Website to Communicate with End-Investors**

24 To communicate effectively and efficiently with the numerous End-Investors
25 in this matter, the Receiver worked on building a website for that purpose (the
26 “Website”). The Website—www.1inMMReceivership.com—is anticipated to
27 launch in mid-April 2022, and will provide basic information for the End-Investors.
28 That information should include, for example, the background to the receivership,

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1 selected case documents filed with the Court and answers to frequently asked
2 questions (including both general receivership questions and specific questions
3 related to this matter). The Website will also include a tool for investors to contact
4 and provide information to the Receiver.

5 **C. Future End-Investor Claims Process**

6 As noted above, the Receiver perceives her primary charge to be making the
7 End-Investors as whole as possible. To that end, the Receiver anticipates eventually
8 proposing that the Court approve a claims filing, reconciliation and allowance
9 process.

10 With the Receiver’s investigation and asset recovery process still in its
11 nascency, however, it is premature to propose such claims process at this time. Once
12 the Receiver has a better understanding of the creditor body and assets likely
13 available for distribution, the Receiver will propose a claims process and an
14 equitable distribution plan which best addresses the harm caused to injured End-
15 Investors.

16 **D. Litigation Commenced by End-Investors**

17 As part of her initial investigation, the Receiver identified numerous lawsuits
18 pending in federal and state courts across the country arising out of or relating to
19 Defendants’ fraudulent scheme commenced by certain of the End-Investors
20 (collectively, the “Investor Actions”). A list of the Investor Actions currently known
21 to the Receiver is attached hereto as **Exhibit D**.

22 While certain of the Investor Litigation actions are pending against
23 Defendants themselves, the Receiver has discovered that there are also several cases
24 pending against the Principal Aggregators and/or their insiders who aggregated
25 investments in the Defendants from individual End-Investors (and occasionally from
26 still other aggregator entities) who did not have direct contractual agreements with
27 1inMM. Only some of the End-Investors have commenced litigation, and those cases
28 are pending in different jurisdictions and do not appear to be coordinated in any way.

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1 The Receiver, through her counsel, has been monitoring developments in the
2 Investor Actions to assess their impact, if any, on the administration of the
3 Receivership Estate. This is particularly because any recoveries that the End-
4 Investor plaintiffs obtain on their own as a result of the Investor Actions would likely
5 affect any distributions the Receiver would make to such End-Investors (to the extent
6 that they hold allowed claims) during a claims process in this case.

7 The End-Investors are generally pursuing claims that belong uniquely to them,
8 as opposed to claims that are property of the Receivership Estate. Those claims,
9 include, for example: common law fraud; violations of state securities laws;
10 negligent misrepresentation; conspiracy to defraud; breach of contract; and breach
11 of fiduciary duty. Some of the End-Investors are, however, pursuing claims that
12 belong to the Receivership Estate (or are derivative of such claims), particularly
13 where they pursue parties alleged to be “net winners” of Defendants’ Ponzi scheme
14 or where they seek any money paid by 1inMM to any person or entity (“Estate
15 Claims”).⁵

16 The Receiver has, through her counsel, had conversations with counsel for the
17 parties on both sides of Investor Litigation about the Receiver’s duties generally and
18 the anti-litigation stay in the Order of Appointment in particular.⁶ These discussions
19

20
21 ⁵ This is intended to be an illustrative, not an exhaustive, definition of what constitutes Estate
22 Claims.

23 ⁶ The Order of Appointment contains an anti-litigation injunction that broadly “restrain[s] and
24 enjoins[s]” all persons or entities—including “investors”—from directly or indirectly: (a)
25 “commencing, prosecuting, continuing or enforcing any suit or proceeding (other than the present
26 action by the SEC or any other action by the government)” against Defendants, their subsidiaries
27 and affiliates; (b) “using self-help or executing or issuing or causing the execution or issuance of
28 any court attachment, subpoena, replevin, execution or other process for the purpose of
impounding or taking possession of or interfering with or creating or enforcing a lien upon any
property or property interests owned by or in the possession of Defendant 1inMM”; and (c) “doing
any act or thing whatsoever to interfere with taking control, possession or management by the

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1 have all been cooperative and constructive, and to date no party to those cases has
2 taken a position that is adversarial to the Receiver. On the contrary, all parties have
3 indicated a desire to comply with the terms of the Order of Appointment.

4 The Receiver is working with counsel for the plaintiffs in the Investor
5 Litigation to ensure that they do not pursue any Estate Claims, as those are subject
6 to the stay in the Order of Appointment. The Receiver is also considering
7 establishing a more formal level of cooperation with certain parties to the Investor
8 Actions to clarify the interrelationship between those actions and the Receivership
9 Estate and to maximize recoveries for the End-Investors, among other reasons.

10 It has become apparent that there is some degree of confusion among the
11 parties to the Investor Actions regarding the scope of the anti-litigation stay in the
12 Order of Appointment. The principal issue is whether the stay applies only to cases
13 in which Defendants and/or their subsidiaries or affiliates are party-defendants, or
14 more broadly to cases in which End-Investors seek the return of their money or
15 related relief from their direct counterparty (i.e., one of the Principal Aggregators)
16 based on factual allegations that their investments ultimately wound up in the hands
17 of Defendants, who were running a Ponzi scheme. Put another way, there seems to
18 be some good-faith confusion as to whether the anti-litigation injunction enjoins
19 *indirect* claims against Defendants by End-Investors.

20 At least one federal district court⁷ has recently ruled that it does, concluding
21 that an investor’s claim against a former employee of an intermediate aggregator
22 alleged to be a “net winner” was stayed because the claim involved assets that are

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25 permanent receiver appointed hereunder of the property and assets owned, controlled or managed
26 by or in the possession of Defendant 1inMM, or in any way to interfere with or harass the
27 permanent receiver or her attorneys, accountants, employees, or agents or to interfere in any
28 manner with the discharge of the permanent receiver’s duties and responsibilities hereunder.”
(Receiver Order Art. V.)

⁷ *Gould v. Crookston*, No. 1:21 CV 06049 (N.D. Ill.) (Alonso, J.).

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1 attributable to funds derived from investors or clients of Horwitz and 1inMM.
2 (Transcript of Proceedings, Feb. 3, 2022, at 3:22-4:24, copy attached as **Exhibit E.**)
3 The Receiver and her counsel are monitoring these developments and conferring
4 with counsel in the Investor Actions regarding them.

5 As a result of her lawyers’ discussions with counsel for the plaintiffs in the
6 Investor Actions, it appears that these End-Investors feel as though they have no
7 choice but to litigate to recover their investments, and many End-Investors perceive
8 themselves to be in competition with other End-Investors in a race to obtain a
9 judgment. While the Receiver recognizes that those End-Investors have the right to
10 their day in court, the Receiver is considering ways to rationalize the proceedings so
11 that efforts are not duplicated and this receivership realizes one of the objectives for
12 the receivership as articulated by the SEC in its motion to appoint a receiver:

A receiver is also justified to assist with pursuing an efficient collection and distribution of assets to the hundreds of victims of Horwitz’s scheme, some of whom are proceeding independently in investor suits to recover available assets. Since the Commission filed its emergency action, certain of Horwitz’s investors have already filed lawsuits against 1inMM and other investors in an effort to recover funds for themselves.

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18 [ECF #65-1 pp. 7-8]

19 **V. NOTICE**

20 Local Rule 66-7(c) requires a receiver to “give notice by mail to all parties to
21 the action and to all known creditors of the defendant of the time and place for [the]
22 hearing” on a receiver’s report. LR 66-7(c). As discussed above, however, the
23 Receiver is still attempting to ascertain the identities and contact information for the
24 End-Investors, who the Receiver perceives to be main creditors of the Receivership
25 Estate. Moreover, even if the Receiver had contact information for all of the End-
26 Investors—of which the Receiver understands there are in excess of 200—it would
27 be expensive to serve them with paper copies of a notice of hearing.
28

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1 Accordingly, the Receiver has given notice by CM/ECF of the hearing on this
2 Report only to the parties who have appeared in this action (except for Rogue Black,
3 which is now under the Receiver’s control). The Receiver will post a copy of this
4 Report to the Website so it will be available to the general public, including the End-
5 Investors. The Receiver anticipates being able to serve the End-Investors with copies
6 of future quarterly reports and other important filings as she obtains information
7 about their identities and contact information.

8 The Receiver submits that, under the present circumstances, no further or
9 other notice is required, and requests that the Court dispense with any additional
10 notice requirements under Local Rule 66-7(c).

11 **VI. CONCLUSION**

12 Contemporaneously herewith, the Receiver is filing a motion to (a) approve
13 this Report, including all disbursements made or to be made listed herein; (b) limit
14 the notice of the hearing on the Report to that given, and dispensing with any
15 additional notice requirements under Local Rule 66-7(c); and (c) grant such further
16 relief as the Court deems necessary and appropriate.

17 Dated: May 2, 2022

Respectfully submitted,

18 By: */s/Michele Vives*
Michele Vives, Receiver

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Exhibit A

Rogue Black Operating Agreement

LIMITED LIABILITY COMPANY AGREEMENT
OF
ROGUE BLACK, LLC
A DELAWARE LIMITED LIABILITY COMPANY

THE SECURITIES REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 NOR REGISTERED OR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER APPLICABLE STATE AND FEDERAL SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE COMPANY, SUCH QUALIFICATION AND REGISTRATION IS NOT REQUIRED. ANY TRANSFER OF THE SECURITIES REPRESENTED BY THIS AGREEMENT IS FURTHER SUBJECT TO OTHER RESTRICTIONS, THE TERMS AND CONDITIONS OF WHICH ARE SET FORTH IN THIS AGREEMENT.

LIMITED LIABILITY COMPANY AGREEMENT

OF

ROGUE BLACK, LLC

A DELAWARE LIMITED LIABILITY COMPANY

This Limited Liability Company Agreement is made as of June 1, 2017, by and between the Members party hereto, with reference to the following facts:

A. The parties desire to form Rogue Black, LLC (the “**Company**”) as a limited liability company under the laws of the State of Delaware and, to that end, have caused to be filed a Certificate of Formation with the Delaware Secretary of State.

B. The parties now desire to adopt a limited liability company agreement to govern their respective rights and obligations as members and managers of the Company.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt of which is acknowledged, the parties agree that the following shall be the Limited Liability Company Agreement of the Company.

Capitalized terms used and not otherwise defined herein have the meanings set forth in Exhibit B, attached hereto.

ARTICLE I

ORGANIZATIONAL MATTERS

1.1 Name. The name of the Company shall be “Rogue Black, LLC”. The business of the Company may be conducted under that name or, upon compliance with applicable law, under any other name that the Managers deem appropriate or advisable.

1.2 Term. The term of the Company’s existence commenced upon the filing of its Certificate of Formation with the Delaware Secretary of State on June 1, 2017 and shall continue until such time as it is terminated pursuant to ARTICLE IX.

1.3 Office and Agent. The principal office of the Company shall be at 850 New Burton Road, Suite 201, Dover, DE 19904, or at such other place as the Managers may determine from time to time. The Company may also have such other offices within and/or outside of the State of Delaware, as the Managers may from time to time determine. The name and business address of the agent for service of process for the Company in the State of Delaware is Cogency Global, Inc., 850 New Burton Road, Suite 201, Dover, DE 19904, or such other Person as the Managers may appoint from time to time.

1.4 Purpose of Company. The Company may engage in any lawful activity for which a limited liability company may be organized under the Act; however, its primary purpose shall be to finance, produce, and exploit one or more entertainment properties.

1.5 Intent. It is the intent of the Members that the Company shall always be operated in a manner consistent with its treatment as a “partnership” for federal and state income tax purposes. It also is

the intent of the Members that the Company not be operated or treated as a “partnership” for purposes of Section 303 of the United States Bankruptcy Code. No Member or Manager shall take any action inconsistent with that express intent.

1.6 Members. The names, addresses, Capital Contributions and Percentage Interests of the Members as of the date of this Agreement are set forth in Exhibit A.

1.7 Formation Expenses. The Members hereby authorize the Company to pay the Company’s expenses of organization and to pay or reimburse each of [REDACTED] and ZJH for all fees and expenses incurred by them in connection with the formation and organization of the Company, including, without limitation, all legal and accounting fees and expenses incurred by them in connection with the negotiation, preparation, execution and delivery of this Agreement and all related agreements and instruments. The Company shall pay all filing fees, minimum franchise or other similar taxes and other governmental charges incident to its formation and qualification to do business.

ARTICLE II

CAPITAL CONTRIBUTIONS

2.1 Initial Capital Contributions; Additional Capital Contributions. The Capital Contribution of each Member is set forth in Exhibit A. No Member shall be required (or permitted) to make any additional Capital Contributions without the consent of the Managers and a Majority in Interest of the Members.

2.2 Capital Accounts. The Company shall establish and maintain an individual Capital Account for each Member.

2.3 No Priorities of Members; No Withdrawals of Capital. Except as otherwise specified in ARTICLE VI and in the Act, no Member shall have a priority over any other Member as to any Distribution, whether by way of return of capital or by way of profits, or as to any allocation of Net Profits or Net Losses. No Member shall have the right to withdraw or reduce its Capital Contributions in the Company except as a result of the dissolution of the Company or as otherwise provided in Section 3.2 or the Act, and no Member shall have the right to demand or receive property other than cash in return for its Capital Contributions.

2.4 No Interest. No Member shall be entitled to receive any interest on its Capital Contributions.

2.5 Loans; No Compensation. No Member shall be required to lend any funds to the Company and no Member shall have any personal liability for the repayment of any Capital Contribution of any other Member. No Member shall receive any interest, salary or drawing with respect to its Capital Contributions or its Capital Account or for services rendered on behalf of the Company or otherwise in its capacity as a Member, except as otherwise specifically provided in this Agreement.

ARTICLE III

MEMBERS

3.1 Admission of Additional Members. Subject to compliance with applicable law and to the approval of a Majority in Interest of the Members pursuant to Section 4.3, the Managers acting jointly may

admit additional Members to the Company from time to time upon such terms and conditions as the Managers may determine in his or her sole and absolute discretion.

3.2 Withdrawal or Resignation. No Member may withdraw or resign from the Company except with the prior written consent of the Managers and all other Members, which consent may be given or withheld, conditioned or delayed in the Managers' and the other Members' sole discretion. Any such permitted withdrawal or resignation of a Member shall constitute a Membership Termination Event and, upon the occurrence thereof, that Member's Membership Interest may, at the election of the Managers, be converted to a bare Economic Interest.

3.3 Members Are Not Agents. The management of the Company is vested exclusively in the Managers. No Member, acting solely in its capacity as a Member, may be an agent of the Company, nor may any Member, in that capacity, bind or execute any agreement, instrument or document on behalf of the Company without the prior written consent of the Managers acting jointly.

3.4 Meetings of Members; Written Consent.

(a) Meetings. Nothing in this Agreement is intended to require that meetings of the Members be held, it being the intent of the Members that meetings of the Members are not required.

(b) Written Consent. Any action which may be taken by the Members at a meeting may also be taken without a meeting if a consent in writing setting forth the action so taken is signed by Members having not less than the minimum votes that would be necessary to authorize that action at a meeting of the Members duly called and noticed at which all Members entitled to vote were present. A consent transmitted by electronic transmission by a Member or other Person authorized to act for that Member shall be deemed to be written and signed by that Member for these purposes and the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

3.5 Membership Interest Certificates. The Company shall not be required to issue certificates evidencing Membership Interests to Members of the Company.

ARTICLE IV

MANAGEMENT AND CONTROL OF THE COMPANY

4.1 Management of the Company by the Managers.

(a) Exclusive Management by the Managers. The business, property and affairs of the Company and its subsidiaries shall be managed exclusively by the Managers acting jointly. Except for matters as to which the approval of the Members is expressly required by the Act or Section 4.3, the Managers shall have full, complete and exclusive authority, power and discretion to manage and control the business, property and affairs of the Company and its subsidiaries, to make all decisions regarding those matters, to supervise, direct and control the actions of the officers, if any, of the Company and its subsidiaries, and to perform any and all other actions customary or incident to the management of the Company's business, property and affairs. The Members shall have no power to participate in the management of the Company or its subsidiaries except as expressly authorized by this Agreement or except as expressly required by any non-waivable provision of the Act. Without the written authorization of the Managers to do so, no Member shall have any power or authority to bind or act on behalf of the Company or its subsidiaries in any way, to pledge its assets or to render it liable for any purpose.

(b) Agency Authority of the Managers; Delegation by the Managers. Either one of the Managers, acting alone, are authorized to endorse all checks, drafts and other evidences of indebtedness made payable to the order of the Company and to execute all agreements, contracts, commitments, checks, instruments and other documents on behalf of the Company. The Managers may also delegate any or all of their authority, rights or obligations, whether arising hereunder, under the Act or otherwise, to any one or more officers, agents or other duly authorized representatives of the Company.

(c) Devotion of Time. The Managers shall not be obligated to devote all of their time or business efforts to the affairs of the Company and they shall each devote such time, effort and skill as they deem appropriate for the management and operation of the Company's affairs.

(d) Decisions of the Managers. In order to constitute the act or decision of the Managers, any decision or action must be taken or approved by both of the Managers (whether verbally or in writing, whether in person or by proxy and whether or not at a formal meeting). Specifically with respect to investments made by the Company in any entertainment properties, such decisions or actions related thereto may be undertaken by the signature of either one of the Managers, acting alone, provided that Manager has obtained at least verbal authorization to do so from the other Manager. The Managers may, however, delegate to any one or more Managers, acting alone, the authority to make specific decisions. A consent, authorization, decision or action transmitted by electronic transmission by a Manager or other Person authorized to act for that Manager shall be deemed to be taken by that Manager for these purposes and the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

(e) Meetings of Managers. Nothing in this Agreement is intended to require that meetings of the Managers be held, it being the intent of the Members that meetings of the Managers are not required.

4.2 Election and Term of Managers. One of the Managers shall be designated by [REDACTED] and one of the Managers shall be designated by ZJH. Each of [REDACTED] and ZJH shall have the right to change the identity of the Manager appointed by it at any time and for any reason by written notice to the other Member and each Manager so appointed shall serve in that capacity until he, she or it resigns or is removed by the Member which appointed him, her, or it, in its absolute discretion. Notwithstanding anything herein to the contrary, the failure of any Member to appoint the Manager which that Member is entitled to appoint shall limit the right of the remaining Manager to carry on the business of the Company. Initially, [REDACTED] shall be the Manager appointed by [REDACTED], and Zach Horwitz (professionally known as Zach Avery) shall be the Manager appointed by ZJH.

4.3 Limitations on Power of the Managers. Notwithstanding any other provisions of this Agreement, the following actions require the affirmative vote or written consent of a Majority in Interest of the Members:

- (a) the sale, exchange or other disposition of all, or a material portion, of the Company's assets occurring as part of a single transaction or plan, or in a series of transactions, except in the orderly liquidation and winding up of the business of the Company upon its duly authorized dissolution;
- (b) any Company borrowing of money;
- (c) any alteration of the primary purpose of the Company set forth in Section 1.4;

- (d) any decision to place the Company into Bankruptcy;
- (e) any confession of a judgment against the Company;
- (f) any loan by the Company to any Person, any guaranty by the Company of any other Person's obligations or any investment by the Company in the business of any other Person;
- (g) the merger, consolidation or reorganization of the Company;
- (h) any decision to compromise the obligation of a Member to make a Capital Contribution or to return money or property paid or distributed in violation of the Act;
- (i) any decision to admit a Person as a Member of the Company or to issue Membership Interests or Economic Interests;
- (j) any transaction between the Company and a Member or Manager or any Affiliate of a Member or Manager, or any transaction in which a Member or Manager or any Affiliate of a Member or Manager has a financial interest; or
- (k) any amendment to the Certificate of Formation or this Agreement; provided, however, that (i) an amendment or modification increasing any liability or obligation of a Member, requiring a Member to make any contribution to the Company or changing the provisions of Sections 5.2 or 5.3 with respect to any Member will be effective only with such Member's consent, (ii) an amendment or modification reducing the required percentage of Percentage Interests or the required vote of the Managers for any consent or vote in this Agreement will be effective only with the consent or vote of Members holding the aggregate Percentage Interests theretofore required or the required vote of the Managers set forth in the relevant provision and (iii) an amendment to this Section 4.3(k) will be effective only with the consent of each Member.

For the avoidance of doubt, the Managers shall have the shall have full, complete and exclusive authority, power and discretion to approve or amend any budget adopted in connection with the operations of the Company or any of its subsidiaries, and the consent or approval of any Member shall not be required in connection with any such approval or amendment.

4.4 Officers. The Managers may, at his or her discretion, appoint officers of the Company at any time to conduct, or to assist the Managers in the conduct of, the day-to-day business and affairs of the Company. The officers of the Company may include a Chairperson, a President or Chief Executive Officer, one or more Senior Vice Presidents, one or more Vice Presidents, a Secretary, one or more Assistant Secretaries, a Chief Financial Officer, a Treasurer, one or more Assistant Treasurers and a Controller. The officers shall serve at the pleasure of the Managers acting jointly, subject to all rights, if any, of an officer under any contract of employment. Any individual may hold any number of offices. Officers of the Managers may serve as officers of the Company if jointly appointed by the Managers. The officers shall exercise such powers and perform such duties as are typically exercised by similarly titled officers in a corporation or as shall be determined from time to time by the Managers acting jointly but subject in all cases to the supervision and control of the Managers acting jointly. If any such officer is entitled to a salary for his or her services, the payment of such salary may be paid by the Company.

4.5 Competitive Activities; Company Opportunities. The Managers, the Members and their respective Affiliates, and each of the foregoing Person's respective officers, directors, equityholders, partners, members, managers, agents and employees, may engage or invest in, independently or with others, any business activity of any type or description, including without limitation those that might be the same

as or similar to the Company's business and that might be in direct or indirect competition with the Company's business. Neither the Company nor any other Manager or Member shall have the right in or to such other ventures or activities or to the income or proceeds derived therefrom. Neither the Managers nor the Members shall be obligated to present any investment opportunity or prospective economic advantage to the Company or the other Managers or Members even if the opportunity is one of the character that, if presented to the Company or the other Managers or Members, could be taken by the Company or any of the other Managers or Members. The Managers and the Members shall have the right to hold any investment opportunity or prospective economic advantage for their own account or to recommend such opportunity to Persons other than the Company or the other Managers or Members. The Members acknowledge that the Managers and the other Members and their Affiliates own or manage other businesses, including businesses that may compete with the Company and for the Managers' and Members' time. The Members hereby waive any and all rights and claims which they may otherwise have against the Managers, the other Members and their respective Affiliates, and each of the foregoing Person's respective officers, directors, equityholders, partners, members, managers, agents and employees, as a result of any such activities.

ARTICLE V

ALLOCATIONS OF NET PROFITS, NET LOSSES AND DISTRIBUTIONS

5.1 Special Allocations; Code Section 704(b) Compliance. In each Fiscal Year, the Company shall (a) make any required allocations to the Members under the rules of "minimum gain chargeback," "partner minimum gain chargeback," and "qualified income offset," all as set forth in the applicable Treasury Regulations under Code Section 704(b); (b) allocate "nonrecourse deductions" to the Members in proportion to their Interests as required by the applicable Treasury Regulations; and (c) allocate "partner nonrecourse deductions" as required by the applicable Treasury Regulations.

5.2 Allocation of Net Profits and Net Losses. After giving effect to the special allocations in Sections 5.1, Net Profits or Net Losses for each Fiscal Year shall be allocated to the Members in accordance with their respective Percentage Interests.

5.3 Distributable Cash. Distributable Cash shall be distributed among the Members at such times as determined by both Managers:

(a) first, to the Members, in proportion to each Member's Adjusted Capital Contributions, until the Adjusted Capital Contributions of each is reduced to zero (0); and

(b) second, to the Members in accordance with their respective Percentage Interests.

5.4 Tax Distributions. Prior to the dissolution of the Company, but subject to the restrictions governing distributions under the Act and the availability of Distributable Cash, as soon as practicable after the end of each Fiscal Year, the Company shall distribute to the Members in proportion to their Interests, an amount equal to the excess, if any, of (i) the Assumed Tax Rate multiplied by the federal taxable income of the Company for such Fiscal Year, over (ii) all cash Distributions made to all Interest Holders. during such Fiscal Year. Distributions made pursuant to this Section 5.4 will be taken into account in computing subsequent Distributions to the Members so that, to the extent possible, each Member receives the same aggregate Distributions it would have received over the term of the Company had all Distributions been made solely pursuant to Sections 5.3 and 9.4.

5.5 Allocation of Net Profits and Losses in Respect of a Transferred Interest. The portion of income, gain, losses, credits, and deductions of the Company for any fiscal year during which a Membership Interest or Economic Interest is Transferred by an Interest Holder that is allocable with respect to such

interest shall be apportioned between the transferor and the transferee of such interest on whatever reasonable, consistently applied basis as is selected by the Managers and permitted by the applicable Treasury Regulations under Code Section 706.

5.6 Tax Allocation Matters. Each Member's allocable share of the taxable income or loss of the Company, depreciation, depletion, amortization and gain or loss with respect to any contributed property, or with respect to revalued property where the Company's property is revalued pursuant to Paragraph (b)(2)(iv)(f) of Section 1.704-1 of the Treasury Regulations, shall be determined in the manner (and as to revaluations, in the same manner as) provided in Section 704(c) of the Code and the Treasury Regulations thereunder. The Company shall apply Section 704(c)(1)(A) by using the "traditional method" as set forth in Section 1.704-3(b) of the Treasury Regulations.

5.7 Allocation of Liabilities. Each Member's interest in Company profits for purposes of determining that Member's share of the Nonrecourse Liabilities of the Company, as used in Section 1.752-3(a)(3) of the Treasury Regulations, shall be equal to that Member's Percentage Interest.

5.8 Form of Distribution. No Member, regardless of the nature of its Capital Contribution, has the right to demand and receive any Distribution from the Company in any form other than money. No Member may be compelled to accept from the Company a Distribution of any asset in kind in lieu of a proportionate Distribution of money being made to other Member(s) and, except upon a dissolution and the winding up of the Company, no Member may be compelled to accept a Distribution of any asset in kind.

5.9 Amounts Withheld. If the Company, pursuant to the applicable laws of any jurisdiction, is required to withhold from a Member any amount otherwise distributable to such Member, or on the basis of income allocable to such Member, or otherwise: (a) the Company shall withhold the required amount and pay such amount over to the applicable governmental entity (including any taxing jurisdiction); (b) any amount so withheld shall be deemed to have been distributed to such Member; and (c) to the extent the amount required to be withheld is larger than the amount otherwise distributable to such Member, the excess amount shall be treated as an advance against future Distributions to such Member.

ARTICLE VI

TRANSFER OF INTERESTS

6.1 Transfer of Interests. Except as permitted in Sections 6.2 or 6.3, no Member or Economic Interest Holder shall be entitled to Transfer all or any part of its Membership Interest or Economic Interest except with the prior written consent of a Majority in Interest of the Members, which consent may be given or withheld, conditioned or delayed (as allowed by this Agreement or the Act) as such Members may determine in their sole and absolute discretion. Any attempted Transfer without such prior written consent shall be null and void *ab initio* and the transferee shall not become a Member or an Economic Interest Holder. After the consummation of any permitted Transfer of all or any part of a Membership Interest, the Membership Interest so Transferred shall continue to be subject to the terms and provisions of this Agreement and any further Transfers shall be required to comply with the terms and provisions of this Agreement.

6.2 Permitted Transfers. Subject to the provisions of Section 6.5, the restrictions upon Transfer specified in Section 6.1 shall not apply to any Transfer of all or any part of a Member's Economic Interest to a corporation, partnership, limited liability company or other entity controlled by that Member. Any transferee(s) permitted under the preceding sentence shall hold the Transferred Economic Interest or part thereof subject to all the provisions of this Agreement. For the purposes of this ARTICLE VI, "control" of

a Person means the ability, by ownership of voting securities, contract or otherwise, to direct the management and affairs of that Person.

6.3 Right of First Refusal.

(a) Bona Fide Offer; Option to Purchase. If a Member (the “**Transferring Member**”) decides to Transfer all or any part of its Membership Interest (the “**Offered Interest**”) pursuant to a Bona Fide Offer, the Transferring Member shall give written notice to the Company and to the other Members who are not Affiliates of the Transferring Member (the “**Eligible Members**”), setting forth in full the terms of such Bona Fide Offer and the identity of the offeror(s). The Company (acting through the Managers, other than any Manager who is also the Transferring Member, or through a Majority in Interest of the non-Transferring Members, if the sole Manager is the Transferring Member) shall then have the right and option, for a period ending thirty (30) calendar days following its receipt of the written notice, to elect to purchase all or any part of the Offered Interest at the purchase price and upon the terms specified in the Bona Fide Offer and the Eligible Members, pro rata in accordance with the ratio of their Percentage Interests, shall then have the right and option, for a period ending on the earlier of (a) twenty (20) calendar days following receipt of written notice from the Company that it has elected not to purchase all of the Offered Interest and (b) fifty (50) calendar days following their receipt of the original written notice from the Transferring Member with respect to the Offered Interest, to elect to purchase all or any part of the Offered Interest not elected to be purchased by the Company at the purchase price and upon the terms specified in the Bona Fide Offer. Notwithstanding the foregoing, however, to the extent that the Company or any Eligible Member elects to purchase all or any part of the Offered Interest, that purchaser shall be entitled to set off against the purchase price otherwise payable by it hereunder the full amount of all indebtedness then owed by the Transferring Member to that purchaser (without regard to whether or not such indebtedness is then due and payable in whole or in part). If all Eligible Members do not elect to purchase the entire balance of the Offered Interest, then the Eligible Members electing to purchase shall have the right and option, for a period ending on the earlier of (a) ten (10) calendar days following receipt of written notice from the other Eligible Members that they have elected not to purchase all of the Offered Interest and (b) sixty (60) calendar days following their receipt of the original written notice from the Transferring Member with respect to the Offered Interest, and pro rata in accordance with the ratio of their Percentage Interests, to elect to purchase the balance of the Offered Interest available for purchase.

(b) Transfer to Proposed Transferee. Notwithstanding the foregoing, however, if the Company or the Eligible Members do not elect to purchase all of the Offered Interest subject to the right of first refusal pursuant to this Section 6.3, the Transferring Member may Transfer all of the Offered Interest to the original proposed transferee upon the terms set forth in the written notice provided to the Company, whereupon the original proposed transferee shall take and hold the Offered Interest subject to this Agreement and to all of the obligations and restrictions upon the Transferring Member and shall observe and comply with this Agreement and with all such obligations and restrictions. Any such Transfer of the Offered Interest to the original proposed transferee must be effected within ninety (90) calendar days after the date of the termination of the Eligible Members’ options provided above. If no such Transfer is effected within the ninety (90) calendar day period, then any subsequent proposed Transfer of the Offered Interest shall once again be subject to the provisions of this Section 6.3.

(c) Non-Cash Consideration. For these purposes, if any consideration offered for the Offered Interest in the Bona Fide Offer consists of rights, interests or property other than money or an obligation to pay money, the Managers (other than any Manager who is also the Transferring Member), or a Majority in Interest of the non-Transferring Members if the sole Manager is the Transferring Member, shall, in good faith, determine the Fair Market Value of that consideration in monetary terms as of the date the Bona Fide Offer was received by the Transferring Member. The Fair Market Value of that consideration in monetary terms, as so determined, shall be included in the purchase price payable by the Company or

the purchasing Members hereunder, but, in order to exercise their rights of first refusal granted above, neither the Company nor the purchasing Members need transfer to the Transferring Member the actual rights, interests or property offered in the Bona Fide Offer nor afford the Transferring Member the same tax treatment which would have been available to it under the Bona Fide Offer.

(d) No Transfer of Right of First Refusal. The right of first refusal set forth in this Section 6.3 may not be assigned or transferred.

6.4 Purchase Restrictions Imposed by Law. Notwithstanding anything to the contrary stated herein, the Company's right to exercise any option provided in this ARTICLE VI shall be subject to the restrictions governing prohibited Company Distributions set forth in the Act and such other pertinent federal and state laws, rules, regulations or other governmental restrictions as may now or hereafter be in effect.

6.5 Further Restrictions on Transfer. In addition to any other restrictions found in this Agreement, no Member may Transfer its Membership Interest or any part thereof (a) without compliance with the Securities Act, and any other applicable securities laws or (b) if the Transfer could result in the termination of the Company for federal or state income tax purposes or the Company not being classified as a partnership for federal or state income tax purposes, in each case as determined by both Managers. Any attempted or purported Transfer in violation of this Section 6.5 shall be null and void *ab initio*, and the transferee shall not become either a Member or an Economic Interest Holder.

6.6 Substitution of Members. Notwithstanding anything in this Agreement to the contrary, no transferee of the whole or any part of a Membership Interest shall become a substituted Member in the place of its transferor unless each of the following conditions are satisfied:

(a) the Transferring Member and the transferee execute and acknowledge such other instrument or instruments as the Managers may deem necessary or desirable to effectuate the admission, including the written acceptance and adoption by the transferee of all of the terms and conditions of this Agreement as the same may have been amended and the spouse or registered domestic partner, if any, of the transferee executes and delivers to the Managers a consent in such form and content as the Managers may deem necessary or desirable; and

(b) The transferee pays to the Company a transfer fee which is sufficient, in the reasonable discretion of the Managers, to cover all expenses incurred by the Company in connection with the Transfer and substitution.

6.7 Enforcement. The Transfer restrictions contained in this Agreement are of the essence of the ownership of a Membership Interest or an Economic Interest. Upon application to any court of competent jurisdiction, the Company shall be entitled to a decree against any Person violating or about to violate such restrictions, requiring their specific performance, including those requiring a Member to sell all or part of its Membership Interest to the Company or the other Members, or prohibiting a Transfer of all or part of a Membership Interest.

6.8 Effect of Transfers in Violation of Agreement. If, for any reason, a court refuses to enforce the provisions of Section 6.1 to the effect that a transfer in violation of this ARTICLE VI is null and void, then, upon any such Transfer of a Membership Interest or part thereof in violation of this ARTICLE VI, the transferee shall have no right to vote or participate in the management of the business, property and affairs of the Company or to exercise any rights of a Member. The transferee shall only be entitled to become an Economic Interest Holder to the extent of the Membership Interest attempted or purported to be Transferred to it in violation of this Agreement and thereafter shall only receive the share of the Company's Net Profits,

Net Losses, Tax Credits, Distributable Cash and other Distributions to which the Transferring Member would otherwise have been entitled.

ARTICLE VII

CONSEQUENCES OF MEMBERSHIP TERMINATION EVENTS

7.1 Dissolution of Company. The occurrence of a Membership Termination Event as to any Member other than the last and only remaining Member shall not dissolve the Company. Upon the occurrence of a Membership Termination Event as to the last and only remaining Member, the Company shall dissolve unless the personal representative or other successor-in-interest of the last and only remaining Member consents in writing within ninety (90) days of such Membership Termination Event to the continuation of the Company and to the admission of such personal representative or other successor-in-interest, or its designee or nominee, as a Member, in which case, such personal representative or other successor-in-interest shall be admitted as a Member of the Company in the place and stead of such former Member to the extent of such former Member's Membership Interest.

ARTICLE VIII

ACCOUNTING, RECORDS, REPORTING BY MEMBERS

8.1 Books and Records. The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in accordance with the method of accounting selected by the Managers or as is required to be followed for federal income tax purposes. The books and records of the Company shall reflect all the Company transactions and shall be appropriate and adequate for the Company's business. The Company shall maintain each of the following at its principal office with copies available at all times during normal business hours for inspection upon reasonable notice by any Member or its authorized representatives for any purpose reasonably related to the Membership Interest of that Member: (a) a current list of the full name and last known business, residence or mailing address of each Member, Economic Interest Holder, and Managers; (b) copies of the Certificate of Formation and all amendments thereto, (c) copies of the Company's federal, state and local income tax or information returns and reports, if any, for the six (6) most recent Fiscal Years; (d) copies of this Agreement and any and all amendments thereto; (e) copies of the financial statements of the Company, if any, for the six (6) most recent Fiscal Years; and (f) the Company's books and records pertaining to the internal affairs of the Company for at least the current and past four (4) Fiscal Years; and

8.2 Reports: Annual Statements.

(a) Governmental Reports. The Managers shall cause to be filed all documents and reports required to be filed with any governmental agency in accordance with the Act.

(b) Tax Reports. The Company shall cause to be prepared at least annually, at the Company's expense, information necessary for the preparation of the Members' federal and state income tax returns. The Company shall send or cause to be sent to each Member within ninety (90) days after the end of each Fiscal Year such information as is necessary to complete federal and state income tax or information returns.

8.3 Bank Accounts. All funds of the Company shall be deposited in such account or accounts of the Company as may be determined by the Managers and shall not be commingled with the funds of any other Person.

8.4 Tax Matters for the Company Handled by Tax Matters Partner. The Managers shall have authority to cause the Company to make any and all tax elections. The Tax Matters Partner shall represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities and all administrative or judicial proceedings by the Internal Revenue Service or any government authority involving any return of the Company, and shall have the full authority of a "tax matters partner" under the Code, and may expend the Company's funds for professional services and costs associated therewith. All determinations and acts made by, and all omissions of, the Tax Matters Partner shall be final and binding on the Company and the Members in all respects and for all purposes.

8.5 Accounting Matters. All decisions as to accounting matters shall be made by the Managers.

8.6 Revised Partnership Audit Rules Under Bipartisan Budget Act of 2015.

(a) No Early Adoption; Election of Non-application. The Company shall not elect to have the provisions of Subchapter 63C of the Code, as amended by the Bipartisan Budget Act of 2015, P.L. 114-74 ("New Subchapter 63C"), apply to the Company before its general effective date, and each year for which New Subchapter 63C is effective, the Company shall duly and timely elect to have New Subchapter 63C not apply to the Company for any such year for which the Company is eligible to make such election and shall notify each Member of such election.

(b) Audit Provisions under New Subchapter 63(c). If for any reason New Subchapter 63C (other than Code Section 6221(b) thereunder) applies to the Company, notwithstanding anything herein to the contrary. The Tax Matters Partner shall serve as the "partnership representative" ("Representative") under Code Section 6223 of New Subchapter 63C, and shall the full authority of a "partnership representative under the Code.

8.7 Confidentiality. All books, records, financial statements, tax returns, budgets, business plans and projections of the Company, all other information concerning the business, affairs and properties of the Company and all of the terms and provisions of this Agreement shall be held in confidence by the Managers and the Members and their respective Affiliates, subject to any obligation to comply with (a) any applicable law, (b) any rule or regulation of any legal authority or securities exchange or (c) any subpoena or other legal process to make information available to the Persons entitled thereto, provided that, to the extent permitted by applicable law, such Person has given the Company prior written notice of such disclosure and an opportunity to contest such disclosure. Such confidentiality shall be maintained to the same degree as each Manager and each Member maintains its own confidential information and shall be maintained until such time, if any, as any such confidential information either is, or becomes, generally available to the public.

ARTICLE IX

DISSOLUTION AND WINDING UP

9.1 Dissolution. The Company shall be dissolved, its assets disposed of and its affairs wound up upon (and only upon) the first to occur of the following:

- (a) the affirmative vote or written consent of a Majority in Interest of the Members; or
- (b) the occurrence of a Membership Termination Event as to the last and only remaining Member, if that Member's personal representative or other successor-in-interest fails to consent to the continuation of the Company in accordance with Section 7.1 within ninety (90) days after the occurrence of that event.

9.2 Date of Dissolution. Dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, but the Company shall not terminate until the assets of the Company have been liquidated and distributed as provided herein. Notwithstanding the dissolution of the Company, prior to the termination of the Company the business of the Company and the rights and obligations of the Members, as such, shall continue to be governed by this Agreement.

9.3 Winding Up. Upon the occurrence of any event specified in Section 9.1, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets and satisfying the claims of its creditors. The Managers shall be responsible for overseeing the winding up and liquidation of the Company, shall take full account of the assets and liabilities of the Company and shall cause the Company to (a) sell or otherwise liquidate all of the Company's assets as promptly as practicable, except to the extent the Managers determine to distribute any assets to the Members in kind, (b) allocate any Net Profits or Net Losses resulting from such sales to the Members' Capital Accounts in accordance with this Agreement, (c) discharge or make reasonable provision for all liabilities of the Company, including all liabilities to the Managers and the Members to the extent permitted by law (other than liabilities for unpaid distributions to Members under the Act), and all costs relating to the dissolution, winding up and liquidation and distribution of assets, (d) establish such reserves as may be reasonably necessary to provide for contingent liabilities of the Company (for purposes of determining the Capital Accounts of the Members, the amounts of such reserves shall be deemed to be an expense of the Company), (e) discharge or make reasonable provision for any remaining liabilities of the Company to the Members, other than on account of their interests in Company capital or profits and to the Managers, and (f) distribute the remaining assets to the Members in the manner specified in Section 9.4.

9.4 Liquidating Distributions to Members. The remaining assets of the Company shall promptly be distributed to the Members in accordance with and Section 5.3.

9.5 Distributions in Kind. Any non-cash asset distributed to one or more Members shall first be valued at its Fair Market Value to determine the Net Profit or Net Loss that would have resulted if that asset had been sold for that value, the Net Profit or Net Loss shall then be allocated pursuant to ARTICLE V and the Members' Capital Accounts shall be adjusted to reflect those allocations. The amount distributed and charged to the Capital Account of each Member receiving an interest in the distributed asset shall be the Fair Market Value of the interest (net of any liability secured by the asset that the Member assumes or takes subject to). The Fair Market Value of that asset shall be determined by the Managers.

9.6 Provision for Debts and Liabilities. The payment of a debt or liability, whether the whereabouts of the creditor is known or unknown, has been adequately provided for if the payment has been provided for by either of the following means:

(a) payment has been assumed or guaranteed in good faith by one or more financially responsible Persons or by the United States government or any agency thereof and the provision, including the financial responsibility of the Person, was determined in good faith and with reasonable care by the Managers to be adequate at the time of any distribution of the assets pursuant to Section 9.4; or

(b) the amount of the debt or liability has been deposited as provided in Title 12, Section 1197 of the Delaware Code.

This Section 9.6 shall not prescribe the exclusive means of making adequate provision for debts and liabilities.

9.7 No Liability. Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations, if any Member

has a negative Capital Account balance (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all Fiscal Years, including the year during which such liquidation occurs), neither that Member nor the Managers or any other Member shall have any obligation to make any contribution to the capital of the Company and the negative balance of that Member's Capital Account shall not be considered a debt owed by that Member or the Managers or any other Member to the Company or to any other Person for any purpose whatsoever.

9.8 Limitations on Payments Made in Dissolution. Each Member shall be entitled to look only to the assets of the Company for the return of that Member's positive Capital Account balance and shall have no recourse for its Capital Contributions or share of Net Profits (upon dissolution or otherwise) against the Managers or any other Member.

9.9 Certificate of Cancellation. Upon completion of the winding up of the Company's affairs, the Managers shall file a Certificate of Cancellation with the Delaware Secretary of State.

9.10 No Action for Dissolution. The Members acknowledge that irreparable damage would be done to the goodwill and reputation of the Company if any Member should voluntarily cause a Membership Termination Event or bring an action in court to dissolve the Company under circumstances where dissolution is not required by Section 9.1. Each of the Members further acknowledges that this Agreement has been drawn carefully to provide fair treatment to all parties and equitable payment in liquidation of the Membership Interests. Accordingly, except as expressly permitted in this Agreement, no Member may take any voluntary action that directly causes the Company to dissolve and, unless the Managers fail to liquidate the Company as required by this ARTICLE IX, each Member waives and renounces its right to initiate legal action to seek the appointment of a receiver or trustee to liquidate the Company or to seek a decree of judicial dissolution of the Company on the ground that it is not reasonably practicable to carry on the business of the Company in conformity with the Certificate of Formation or this Agreement or that dissolution is reasonably necessary for the protection of the rights or interests of the complaining Member.

ARTICLE X

EXCULPATION AND INDEMNIFICATION

10.1 Exculpation of Covered Persons.

(a) Standard of Care. No Covered Person shall be liable to the Company or any other Covered Person for any loss, damage or claim incurred by reason of any action taken or omitted to be taken by such Covered Person in good-faith reliance on the provisions of this Agreement, so long as such action or omission does not constitute fraud or willful misconduct by such Covered Person.

(b) Good Faith Reliance. A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements (including financial statements and information, opinions, reports or statements as to the value or amount of the assets, liabilities, Net Profits or Net Losses of the Company or any facts pertinent to the existence and amount of assets from which Distributions might properly be paid) of the following Persons or groups: (i) another Manager; (ii) one or more officers or employees of the Company; (iii) any attorney, independent accountant, appraiser or other expert or professional employed or engaged by or on behalf of the Company; or (iv) any other Person selected in good faith by or on behalf of the Company, in each case as to matters that such relying Person reasonably believes to be within such other Person's professional or expert competence. The preceding sentence shall in no way limit any Person's right to rely on information to the extent provided in the Act.

10.2 Liabilities and Duties of Covered Persons.

(a) Limitation of Liability. This Agreement is not intended to, and does not, create or impose any fiduciary duty on any Covered Person. Furthermore, each of the Members and the Company hereby waives any and all fiduciary duties that, absent such waiver, may be implied by applicable law and, in doing so, acknowledges and agrees that the duties and obligations of each Covered Person to each other and to the Company are only as expressly set forth in this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Covered Person. The debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company and no Covered Person shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Covered Person.

(b) Duties. Whenever in this Agreement a Covered Person is permitted or required to make a decision (including a decision that is in such Covered Person's "discretion" or under a grant of similar authority or latitude), the Covered Person shall be entitled to consider only such interests and factors as such Covered Person desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Company or any other Person.

10.3 Indemnification.

(a) Indemnification. To the fullest extent permitted by the Act, as the same now exists or may hereafter be amended, substituted or replaced (but, in the case of any such amendment, substitution or replacement only to the extent that such amendment, substitution or replacement permits the Company to provide broader indemnification rights than the Act permitted the Company to provide prior to such amendment, substitution or replacement), the Company shall indemnify, hold harmless, defend, pay and reimburse any Covered Person against any and all losses, claims, damages, judgments, fines or liabilities, including reasonable legal fees or other expenses incurred in investigating or defending against such losses, claims, damages, judgments, fines or liabilities, and any amounts expended in settlement of any claims (collectively, "**Losses**") to which such Covered Person may become subject by reason of:

(i) any act or omission or alleged act or omission performed or omitted to be performed on behalf of the Company, any Member or any direct or indirect subsidiary of the foregoing in connection with the business of the Company; or

(ii) the fact that such Covered Person is or was acting in connection with the business of the Company as a partner, member, equityholder, controlling Affiliate, manager, director, officer, employee or agent of the Company, any Member or any of their respective controlling Affiliates or that such Covered Person is or was serving at the request of the Company as a partner, member, manager, director, officer, employee or agent of any Person including the Company or any subsidiary of the Company;

provided, that (A) such Covered Person acted in good faith and in a manner believed by such Covered Person to be in, or not opposed to, the best interests of the Company and, with respect to any criminal proceeding, had no reasonable cause to believe their conduct was unlawful, and (B) such Covered Person's conduct did not constitute fraud or willful misconduct, in either case as determined by a final, nonappealable order of an arbitrator or a court of competent jurisdiction. In connection with the foregoing, the termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that (x) the Covered Person did not act in good faith, (y) with respect to any criminal proceeding, had reasonable cause to believe that

such Covered Person's conduct was unlawful or (z) that the Covered Person's conduct constituted fraud or willful misconduct.

(b) Reimbursement. The Company shall promptly reimburse (or advance to the extent reasonably required) each Covered Person for reasonable legal or other expenses (as incurred) of such Covered Person in connection with investigating, preparing to defend or defending any claim, lawsuit or other proceeding relating to any Losses for which such Covered Person may be indemnified pursuant to this Section 10.3; provided, that if it is finally determined by an arbitrator or a court of competent jurisdiction that such Covered Person is not entitled to the indemnification provided by this Section 10.3, then such Covered Person shall promptly reimburse the Company for any reimbursed or advanced expenses.

(c) Entitlement to Indemnity. The indemnification provided by this Section 10.3 shall not be deemed exclusive of any other rights to indemnification to which those seeking indemnification may be entitled under any agreement or otherwise. The provisions of this Section 10.3 shall continue to afford protection to each Covered Person regardless of whether such Covered Person remains in the position or capacity pursuant to which such Covered Person became entitled to indemnification under this Section 10.3 and shall inure to the benefit of the executors, administrators, legatees and distributees of such Covered Person.

(d) Insurance. To the extent available on commercially reasonable terms, the Company may purchase, at its expense, insurance to cover Losses covered by the foregoing indemnification provisions and to otherwise cover Losses for any breach or alleged breach by any Covered Person of such Covered Person's duties in such amount, and with such deductibles, as the Managers may determine; provided, that the failure to obtain such insurance shall not affect the right to indemnification of any Covered Person under the indemnification provisions contained herein, including the right to be reimbursed or advanced expenses or otherwise indemnified for Losses hereunder. If any Covered Person recovers any amounts in respect of any Losses from any insurance coverage, then such Covered Person shall, to the extent that such recovery is duplicative, reimburse the Company for any amounts previously paid to such Covered Person by the Company in respect of such Losses.

(e) Funding of Indemnification Obligation. Notwithstanding anything contained herein to the contrary, any indemnity by the Company relating to the matters covered in this Section 10.3 shall be provided out of, and to the extent of, Company assets only and no Member (unless such Member otherwise agrees in writing) shall have personal liability on account thereof or shall be required to make additional Capital Contributions to help satisfy such indemnity by the Company.

(f) Savings Clause. If this Section 10.3 or any portion hereof shall be invalidated on any ground by any arbitrator or court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Covered Person pursuant to this Section 10.3 to the fullest extent permitted by any applicable portion of this Section 10.3 that shall not have been invalidated and to the fullest extent permitted by applicable law.

(g) Amendment. The provisions of this Section 10.3 shall be a contract between the Company, on the one hand, and each Covered Person who served in such capacity at any time while this Section 10.3 is in effect, on the other hand, pursuant to which the Company and each such Covered Person intend to be legally bound. No amendment, modification or repeal of this Section 10.3 that adversely affects the rights of a Covered Person to indemnification for Losses incurred or relating to a state of facts existing prior to such amendment, modification or repeal shall apply in such a way as to eliminate or reduce such Covered Person's entitlement to indemnification for such Losses without the Covered Person's prior written consent.

10.4 Survival. The provisions of this ARTICLE X shall survive the dissolution, liquidation, winding up and termination of the Company.

ARTICLE XI

MISCELLANEOUS

11.1 Amendments. No amendment to this Agreement may be made without compliance with Section 4.34.3(k). All amendments to this Agreement must be in writing.

11.2 Offset Privilege. Any monetary obligation owing from the Company to any Member or Manager may be offset by the Company against any monetary obligation then owing from that Member or Manager to the Company.

11.3 Arbitration.

(a) General. In the event of any dispute, claim or controversy among the parties arising out of or relating to this Agreement or the Certificate of Formation, whether in contract, tort, equity or otherwise, and whether relating to the meaning, interpretation, effect, validity, performance or enforcement of this Agreement or the Certificate of Formation, such dispute, claim or controversy shall be resolved by and through an arbitration proceeding to be conducted under the auspices and the commercial arbitration rules of JAMS (or any like organization successor thereto) in Los Angeles, California. The arbitrability of the dispute, claim or controversy shall likewise be determined in the arbitration. The arbitration proceeding shall be conducted in as expedited a manner as is then permitted by the commercial arbitration rules (formal or informal) of JAMS. Both the foregoing agreement of the parties to arbitrate any and all such disputes, claims and controversies, and the results, determinations, findings, judgments or awards rendered through any such arbitration, shall be final and binding on the parties and may be specifically enforced by legal proceedings in any court of competent jurisdiction.

(b) Governing Law. The arbitrator(s) shall follow any applicable federal law and Delaware state law (with respect to all matters of substantive law) in rendering an award.

(c) Costs of Arbitration. The cost of the arbitration proceeding and any proceeding in court to confirm or to vacate any arbitration award, as applicable (including, without limitation, each party's reasonable, documented and out-of-pocket attorneys' fees and costs), shall be borne by the unsuccessful party or, at the discretion of the arbitrator(s), may be prorated between the parties in such proportion as the arbitrator(s) determine(s) to be equitable and shall be awarded as part of the arbitrators' award.

11.4 Remedies Cumulative. Except as otherwise provided herein, the remedies under this Agreement are cumulative and shall not exclude any other remedies to which any Person may be lawfully entitled.

11.5 Notices. Any notice to be given to the Company or any Member, Economic Interest Holder or Manager in connection with this Agreement must be in writing, signed by the sender and will be deemed to have been given and received: (a) when delivered to the address specified by the party to receive the notice by courier or other means of personal service; (b) when received if sent by facsimile, portable document format or other form of electronic transmission (as defined in the Act); or (c) three (3) days after deposit of the notice by first class mail, postage prepaid, or certified mail, return receipt requested. Any such notice must be given to the Company at its principal place of business, and to any Member, Economic Interest Holder or Manager at the address specified in Exhibit A. Any party may, at any time by giving five (5) days' prior written notice to the other parties, designate any other address as the new address to which

notice must be given. In the case of notice by facsimile, portable document format or other form of electronic transmission, a copy thereof shall be personally delivered or sent by registered or certified mail, in the manner specified above, within three (3) business days thereafter.

11.6 Attorneys' Fees. Subject to the provisions of Section 11.3 requiring that disputes be submitted to arbitration, in the event that any dispute between the Company, the Members or the Managers should result in litigation, the prevailing party in that dispute shall be entitled to recover from the other party all reasonable, documented and out-of-pocket fees, costs and expenses of enforcing any right of the prevailing party, including without limitation, reasonable, documented and out-of-pocket attorneys' fees and expenses.

11.7 Governing Law; Jurisdiction. The Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to any conflicts of laws principles of the State of Delaware or any other jurisdiction that would call for the application of the law of any jurisdiction other than the State of Delaware. Subject to the requirement that all disputes are to be submitted to arbitration pursuant to Section 11.3, each Member and Manager consents to the exclusive jurisdiction of the state and federal courts setting in Los Angeles, California in any action on a claim arising out of, under or in connection with this Agreement or the transactions contemplated by this Agreement. Each Member and Manager further agrees that personal jurisdiction over it may be effected by service of process by registered or certified mail addressed as provided in Section 11.5 and that when so made shall be as if served upon it personally.

11.8 Complete Agreement. This Agreement and the Certificate of Formation constitute the complete and exclusive statement of agreement among the Members and Managers with respect to their respective subject matters and supersede all prior and contemporaneous written and oral agreements or statements by and among the Members and Managers. No representation, statement, condition or warranty not contained in any such agreement shall be binding on the Members or Managers or have any force or effect whatsoever.

11.9 No Third Party Rights. No Person other than a Member, Manager or a Person entitled to indemnification pursuant to ARTICLE X shall have any legal or equitable right, remedy or claim, or be a beneficiary, under or in respect of this Agreement.

11.10 Binding Effect. Subject to the provisions of this Agreement relating to Transfers, this Agreement shall be binding upon and inure to the benefit of the Members and Managers and their respective permitted successors and assigns.

11.11 Article and Section Headings. All Article, Section and Exhibit headings contained in this Agreement are inserted only for convenience of reference and are not to be considered in the interpretation or construction of any provision of this Agreement.

11.12 Interpretation. In the event any claim is made by any Member or Manager relating to any conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular Member or Manager or that Member's or Manager's counsel.

11.13 Severability. If any provision of this Agreement or the application of that provision to any Person or circumstance shall be held invalid, the remainder of this Agreement, or the application of that provision to Persons or circumstances other than those to which it is held invalid, shall not be affected and such provision shall not be affected thereby in any other jurisdiction.

11.14 Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[Remainder of Page Left Intentionally Blank; Signature Page Follows]

IN WITNESS WHEREOF, all of the Members and Managers of the Company have executed this Agreement, effective as of the date first written above.

MEMBER:

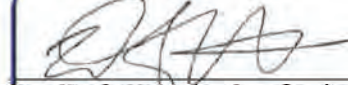
A large black rectangular redaction box covering the signature and name of the member.

Its: Authorized Signatory

MEMBER:

ZJH ENTERPRISE LLC

DocuSigned by:

A handwritten signature in black ink, appearing to be 'Zach Avery', written over a horizontal line.

By: Zach Horwitz (professionally known as Zach Avery)

Its: Authorized Signatory

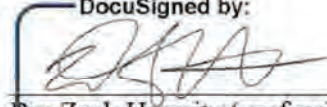
MANAGERS:

[REDACTED]

Its: Authorized Signatory

ZJH ENTERPRISE LLC

DocuSigned by:



By: Zach Horvitz (professionally known as Zach Avery)

Its: Authorized Signatory

EXHIBIT A
NAMES, ADDRESSES, CAPITAL CONTRIBUTIONS AND PERCENTAGE INTERESTS OF
MEMBERS AND NAME AND ADDRESS OF
MANAGER AS OF

JUNE 1, 2017

<u>Member's Name</u>	<u>Member's Address</u>	<u>Member's Capital Contribution</u>	<u>Member's Percentage Interest</u>
[REDACTED]	[REDACTED]	Certain services to be provided by the Member to the Company from time to time.	50%
ZJH Enterprise LLC	<u>341 N Crescent Heights Blvd</u> <u>Los Angeles, CA 90048</u>	Certain services to be provided by the Member to the Company from time to time.	50%

<u>Manager's Name</u>	<u>Manager's Address</u>
[REDACTED]	[REDACTED]
ZJH Enterprise LLC	<u>341 N Crescent Heights Blvd</u> <u>Los Angeles, CA 90048</u>

EXHIBIT B
Definitions and Rules of Construction

Definitions. When used in this Agreement, the following terms not otherwise defined herein have the following meanings:

“**Act**” means the Limited Liability Company Act of the State of Delaware.

“**Adjusted Capital Account**” of a Member means the Capital Account of that Member increased by the Member’s share of Company Minimum Gain and Member Minimum Gain.

“**Adjusted Capital Contribution**” of a Member as of any date of determination means the excess of (a) that Member’s Capital Contribution as of that date over (b) the sum of all prior Distributions to that Member pursuant to Sections 5.3(a) and 9.4.

“**Affiliate**” of a Member or Manager means (a) a Person directly or indirectly (through one or more intermediaries) controlling, controlled by or under common control with that Member or Manager; (b) a Person owning or controlling ten percent (10%) or more of the outstanding voting securities or beneficial interests of that Member or Manager; or (c) an officer, director, partner or member, or a member of the immediate family of an officer, director, partner or member, of that Member or Manager; provided, however, that (i) neither the Company nor any of its subsidiaries will be deemed an Affiliate of a Member or Manager and (ii) neither a Member nor a Manager nor any of their respective Affiliates will be deemed an Affiliate of the Company or any of the Company’s subsidiaries. For these purposes “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Agreement**” means this Limited Liability Company Agreement of Rogue Black, LLC, as originally executed and as amended from time to time.

“**[REDACTED]**” means **[REDACTED]** or any permitted successor-in-interest to its entire Membership Interest.

“**Assumed Tax Rate**” means the highest effective marginal combined federal, state and local income tax rate applicable to an individual or corporation resident in Los Angeles, California or New York, New York (as applicable), taking into account the character (e.g., long-term or short-term capital gain or ordinary or tax-exempt) of the applicable income and the deductibility of state and local income tax for federal income tax purposes and by assuming all such items are allocable solely to Los Angeles, California or New York, New York (as applicable).

“**Bankruptcy**” of a Member means the institution of any proceedings under any federal or state law for the relief of debtors, including the filing by or against that Member of a voluntary or involuntary case under the United States Bankruptcy Code, which proceedings, if involuntary, are not dismissed within sixty (60) days after their filing; an assignment of the property of that Member for the benefit of creditors; the appointment of a receiver, trustee or conservator of any substantial portion of the assets of that Member, which appointment, if obtained ex parte, is not dismissed within sixty (60) days thereafter; the seizure by a sheriff, receiver, trustee or conservator of any substantial portion of the assets of that Member; the failure by that Member generally to pay its debts as they become due within the meaning of Section 303(h)(1) of the United States Bankruptcy Code, as determined by the Bankruptcy Court; or that Member’s admission in writing of its inability to pay its debts as they become due.

“**Bona Fide Offer**” means an offer in writing to a Member offering (subject to no financing contingencies) to purchase all or any part of that Member’s Membership Interest or any interest therein and setting forth all of the material terms and conditions of the proposed purchase from an offeror who is ready, willing and able to consummate the purchase and who is neither the Company nor an Affiliate of that Member.

“**Capital Account**” of a Member means the capital account of that Member determined from the inception of the Company strictly in accordance with the rules set forth in Section 1.704-1(b)(2)(iv) of the Treasury Regulations.

“**Capital Contribution**” of a Member means each amount of money or the gross Fair Market Value of each property on the date contributed (net of any liability assumed by the Company to which that property is subject as determined by the Manager in their sole and absolute discretion) which that Member contributes to the capital of the Company in accordance with the provisions of ARTICLE II.

“**Certificate of Formation**” means the Certificate of Formation of the Company as filed under the Act with the Delaware Secretary of State, as the same may be amended from time to time.

“**Code**” means the Internal Revenue Code of 1986.

“**Company**” has the meaning specified in Recital A.

“**Covered Persons**” means (a) each Member, (b) each officer, director, shareholder, partner, member, controlling Affiliate, employee, agent or representative of each Member and each of their controlling Affiliates and (c) the Manager and each officer of the Company.

“**Disability**” of a Member means any physical or mental disability or impairment that renders that Member unable to function in a reasonably effective manner as a Member of the Company including, without limitation, to make decisions or vote as a Member on matters coming before the Members for a vote.

“**Distributable Cash**” at any time means that portion of the cash then on hand or in bank accounts of the Company available for distribution to the Members, taking into account (a) the amount of cash required for the payment of all current expenses, liabilities and obligations of the Company (whether for expense items, capital expenditures, improvements, retirement of indebtedness or otherwise) and (b) the amount of cash necessary to establish prudent reserves for the payment of future capital expenditures, improvements, retirements of indebtedness, operations and contingencies, known or unknown, liquidated or unliquidated, including, but not limited to, liabilities which may be incurred in litigation and liabilities undertaken pursuant to the indemnification provisions of this Agreement.

“**Distribution**” means the transfer of money or property by the Company to one or more Members without separate consideration.

“**Economic Interest**” means a share, expressed as a percentage, of one or more of the Company’s Net Profits, Net Losses, Tax Credits, Distributable Cash or other Distributions, but does not include any other rights of a Member, including, without limitation, the right to vote or participate in the management of the Company or the right to information concerning the business and affairs of the Company.

“**Economic Interest Holder**” means a Person who is not a Member but holds merely an Economic Interest.

“**Eligible Members**” has the meaning specified in Section 6.3(a).

“**ERISA**” means the Employee Retirement Income Security Act of 1974.

“**Fair Market Value**” means, with respect to an asset, the price at which that asset would be sold for cash payable at closing between a willing buyer and a willing seller, each having reasonable knowledge of all relevant facts concerning the asset and neither acting under any compulsion to buy or sell.

“**Fiscal Year**” means the Company’s taxable year, which shall be the calendar year or such other taxable period as required by Section 706 of the Code.

“**Losses**” has the meaning specified in Section 10.3(a).

“**Majority in Interest**” of all the Members means Members holding Percentage Interests which, taken together, exceed fifty percent (50%) of the aggregate of all Percentage Interests held by all Members entitled to vote or grant consent with respect to the matter in question.

“**Manager(s)**” means the one or more managers of the Company selected by the Members pursuant to Section 4.2 and shall be deemed to refer to the sole Manager at all times when there exists only one Manager.

“**Member**” means each Person who (a) is an initial signatory to this Agreement, has been admitted to the Company as a Member in accordance with the Certificate of Formation or this Agreement or is a transferee of a Member who has become a Member in accordance with ARTICLE VI and (b) has not suffered a Membership Termination Event.

“**Membership Interest**” means a Member’s total interest as a Member of the Company, including that Member’s share of the Company’s Net Profits, Net Losses, Tax Credits, Distributable Cash or other Distributions, its right to inspect the books and records of the Company and its right, to the extent specifically provided in this Agreement or in the Act and not otherwise restricted herein, to participate in the business, affairs and management of the Company and to vote or grant consent with respect to matters coming before the Company.

“**Membership Termination Event**” with respect to any Member means one or more of the following: the insanity, Disability, withdrawal, resignation, Bankruptcy or death of that Member which does not result in a Transfer of that Member’s Membership Interest in accordance with the provisions of ARTICLE VI or the occurrence of any other event which terminates the continued membership of that Member in the Company, other than a Transfer of that Member’s Membership Interest made in accordance with the provisions of ARTICLE VI.

“**Net Profits**” and “**Net Losses**” means, for each fiscal period, the taxable income and taxable loss, respectively, of the Company determined strictly in accordance with federal income tax principles (including items required to be separately stated, taking into account income that is exempt from federal income taxation, items that are neither deductible nor chargeable to a Capital Account, and rules governing depreciation and amortization), except that in computing taxable income or taxable loss, the “book” value of an asset will be substituted for its adjusted tax basis if the two differ; and the items specially allocated pursuant to Section 5.1 shall be excluded from the computation.

“**New Subchapter 63C**” has the meaning specified in Section 8.6(a).

“**Offered Interest**” has the meaning specified in Section 6.3.

“Percentage Interest” means the percentage interest of a Member set forth opposite the name of that Member in Exhibit A, as such percentage may be adjusted from time to time pursuant to the provisions of this Agreement.

“Person” means any entity, corporation, company, association, joint venture, joint stock company, partnership (whether general, limited or limited liability), trust, limited liability company, real estate investment trust, organization, individual (including any personal representative, executor or heir of a deceased individual), nation, state, government (including any agency, department, bureau, board, division or instrumentality thereof), trustee, receiver or liquidator.

“Representative” has the meaning specified in Section 8.6.

“Securities Act” means the Securities Act of 1933.

“Tax Credits” means all credits against income or franchise taxes and credits allowable to Members under state, federal or other tax statutes.

“Tax Matters Partner” means ██████████ or any successor in interest to ██████████’s entire Membership Interest, except as otherwise provided in Section 8.4.

“Transfer” means, with respect to a Membership Interest, an Economic Interest or any interest therein, the sale, assignment, transfer, disposition, pledge, hypothecation or encumbrance, whether direct or indirect, voluntary, involuntary or by operation of law, and whether or not for value, of (a) all or any part of that Membership Interest, Economic Interest or interest therein or (b) a controlling interest in any Person which directly or indirectly through one or more intermediaries holds that Membership Interest, Economic Interest or interest therein. Transfer includes any transfer as a result of or in connection with any property settlement or judgment incident to a divorce, dissolution of marriage or separation, and any transfer by decree of distribution or other court order in proceedings arising from the death of any Member or such Member’s spouse.

“Transferring Member” has the meaning specified in Section 6.3(a).

“Treasury Regulations” means the regulations promulgated by the United States Treasury Department pertaining to the federal income tax.

“United States Bankruptcy Code” means the United States Bankruptcy Code at Title 11, United States Code.

References in this Agreement to “Articles,” “Sections,” “Exhibits” and “Schedules” shall be to the Articles, Sections, Exhibits and Schedules of this Agreement, unless otherwise specifically provided; the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; the word “or” is not exclusive; all Exhibits and Schedules to this Agreement are incorporated herein by reference; any of the terms used in this Agreement may, unless the context otherwise requires, be used in the singular or the plural and in any gender depending on the reference; the words “herein,” “hereof” and “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement; and except as otherwise specified in this Agreement, all references in this Agreement (a) to any Person shall be deemed to include such Person’s heirs, personal representatives, successors and permitted assigns; (b) to any agreement, any document or any other written instrument shall be a reference to such agreement, document or instrument together with all exhibits, schedules, attachments and appendices thereto, and in each case as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof; (c) to any law,

statute or regulation shall be deemed references to such law, statute or regulation as the same may be supplemented, amended, consolidated, superseded or modified from time to time; and (d) to any law, shall be deemed to include any regulations promulgated thereunder.

“**ZJH**” means ZJH Enterprise LLC or any permitted successor-in-interest to its entire Membership Interest.

Exhibit B

Summary of Rogue Black Films

Rogue Blacks Primary Project Matrix
Case No. 2:21-cv-02927-CAS-GJS
 4/27/2022

Movie Title	Movie Summary	Ratings	Potential Funding From Rogue Black	Budgeted Cost
The White Crow (2018) R 2h 7m	Young Rudolf Nureyev becomes a top ballet dancer in Russia, but a life-changing visit to Paris soon makes him seek asylum in France.	IMDb Rating 6.6/10 (6k) Rotten Tomatoes 67/100% (135)	EUR 2,750,000	EUR 13,259,824
Farming (2018) R 1h 47m	Farming is a 2018 British film written and directed by Adewale Akinuoye-Agbaje, based on his own childhood. The plot is about a child whose Yorubá parents give him to a white working-class family in London in the 1980s, and who grows up to join a white skinhead gang led by a white supremacist.	IMDb Rating: 6.0/10 (1.4k) Rotten Tomatoes: 55/100% (33)	GBP 1,067,550	GBP 2,999,121
My Zoe (2019) R 1h 40m	Isabelle (Julie Delpy), a geneticist recovering from a toxic marriage, is raising her only daughter, Zoe, with her contentious ex-husband (Richard Armitage). Zoe means everything to her mother and so when tragedy strikes the fractured family, Isabelle uses her expertise to take matters into her own hands. As this mother's love knows no bounds, Isabelle travels to Russia in seeking the help of a world-renowned fertility physician (Daniel Brühl) who Isabelle believes can help bring back her little girl.	IMDb Rating: 5.9/10 (1k) Rotten Tomatoes: 76/100% (50)	USD 1,450,000	EUR 4,550,000
Last Moment of Clarity (2020) R 1h 30m	After his girlfriend is murdered by European mobsters, Sam flees to Paris to hide out. Years later, he sees a woman in a Hollywood film who he's certain is Georgia. In L.A. to investigate, he encounters Kat, who impulsively decides to help him.	IMDb Rating: 5.2/10 (2.3k) Rotten Tomatoes: N/A	USD \$3,500,000	Being Reviewed
Georgetown (2019) R 1h 39m	Ulrich Mott, an ambitious social climber, marries a wealthy widow in Washington D.C. in order to mix with powerful political players.	IMDb Rating: 6.1/10 (2.2k) Rotten Tomatoes: 59% (27)	USD \$2,250,000	USD \$6,750,000
The Quarry (2019) R 1h 38m	A drifter (Shea Whigham) kills a traveling preacher and takes his place at a small-town church, but the police chief (Michael Shannon) suspects foul play.	IMDb Rating: 5.4/10 (3k) Rotten Tomatoes: 41% (46)	USD \$250,000	USD \$3,900,000
The Gateway (2020) R 1h 31m	A troubled but dedicated social worker assisting a working and struggling single mother and her daughter intervenes when the father returns from prison and drags his family back to his habitual world of crime.	IMDb Rating: 4.7/10 (623) Rotten Tomatoes: 53% (36)	USD \$3,352,306	USD \$3,352,306
Minamata (2020) R 1h 55m	War photographer W. Eugene Smith travels back to Japan where he documents the devastating effect of mercury poisoning in coastal communities.	IMDb Rating: 7.6/10 (16k) Rotten Tomatoes: 77% (70)	USD 5,425,000	USD 11,203,727

Exhibit C

LayJax Investment Summary

LayJax Primary Project Matrix
Case No. 2:21-cv-02927-CAS-GJS
4/27/2022

	Business Industry	Investment	Date	Valuation / Cap	Status
1	Anti-Acne Dermal Patch	\$800,000	8/1/2018	Invested at \$14mm cap pre-money / Series A Closed at \$32mm pre-money	Active
2	Vegan Popsicles	\$307,691	11/11/2018	\$300K invested at \$8.5mm pre-money cap	Active
3	Traveling App.	\$300,000	8/1/2018	Invested at \$5.7mm pre-money in their Pre-seed round. Raised \$3mm	Being sold for return of 30% of investment
4	Hospitality Shopping	\$300,000	3/1/2019	Euros seed at \$12mm pre-money Pre-money cap \$5mm	Struggling due to COVID (hospitality).
5	Wine Beverage	\$200,000	2/8/2019	\$12mm Cap, 80% discount rate Converted at Pre-money valuation of \$15mm	Active
6	AI-Metaverse Technology	\$150,000	10/1/2018	No cap Seed round 80% Discount rate	Struggling
7	Baby Monitoring	\$125,000	6/14/2018	Valuation Cap: \$35mm Converted at valuation of \$20mm	Still active but in need of substantial investment
8	Detox-Cleansing Beverage	\$100,000	9/19/2019	Original discount: 80% discount rate Original pre-money cap: \$5mm Converted at pre-money valuation of \$4mm	Fighting with Creditor on foreclosure
9	Beauty/Wellness Supplies	\$100,000	7/2/2019	\$4mm pre-money cap 80% Discount Rate	Struggling
10	Physical Therapy	\$25,000	4/16/2019	\$7mm pre-money cap Discount rate: 80%	Active
11	Clothing Brand	\$25,000	7/10/2019	Invested at \$900K Pre-money valuation	Active but struggling
12	Wellness Supplements-Beverage	\$25,000	5/1/2020	Invested at \$8mm Pre-money cap	Active

Exhibit D**Known Investor Actions**

Case Caption	Case Number	Jurisdiction & Judge
Nalpak I LP, <i>et al.</i> v. Breakout SPE, LLC, <i>et al.</i>	20-L-4620	Cook County, Illinois (Hon. Margaret Ann Brennan)
Aronson <i>et al.</i> v. JJMT Capital, LLC, <i>et al.</i>	21-CV-1867	Northern District of Illinois (Hon. Franklin U. Valderrama)
Zaleski v. JJMT Capital, LLC	21-CH-1939	Cook County, Illinois (Hon. Pamela M. Meyerson)
Ferrari v. JJMT Capital, LLC	21-L-2462	Cook County, Illinois (Hon. Jerry A. Esrig)
MEK Investments LLC v. JJMT Capital, LLC	21-L-2954	Cook County, Illinois (Hon. Michael Otto)
Gould v. Crookston	21-CV-06049	Northern District of Illinois (Hon. Jorge L. Alonso)
Beepa Cheech Paulo, LLC, <i>et al.</i> v. deAlteris, <i>et al.</i>	21-L-4262	Cook County, Illinois (Hon. Jerry A. Esrig)
Fiene <i>et al.</i> v. Schweinzger	21-CV-5740	Northern District of Illinois (Hon. Charles Norgle)
Carter v. Spiegel	21-CV-3990	Northern District of California (Hon. Thomas Hixson)
Lending Arena, LLC v. Movie Fund, LLC	A-21-842037-B	Clark County, Nevada (Hon. Susan Johnson)
Whitmore, <i>et al.</i> v. Horwitz, <i>et al.</i>	21-CV-3393	Central District of California (Hon. George H. Wu)
Horwitz v. Horwitz	21STFL06379	L.A. County, California (Hon. Audra Mori)
KR Blackwelder, LLC v. Horwitz, <i>et al.</i>	21STCV17990	L.A. County, California (Hon. Laura A. Seigle)

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Exhibit E

Transcript of Telephonic Status Hearing Held on February 3, 2022

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHAEL GOULD,)	Case No. 21-CV-6049
)	
Plaintiff,)	STATUS HEARING
)	(held telephonically)
vs.)	
)	Chicago, Illinois
TYLER CROOKSTON,)	Date: February 3, 2022
)	Time: 9:30 a.m.
Defendant.)	

TRANSCRIPT OF TELEPHONIC STATUS HEARING
HELD TELEPHONICALLY BEFORE
THE HONORABLE JUDGE JORGE L. ALONSO
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

For the Plaintiff: (No appearance.)

For the Defendant: Jena L. Levin, Esq.
Foley & Lardner LLP
321 North Clark Street, Suite 2800
Chicago, Illinois 60654
312-832-4500
(appeared telephonically)

Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

Court Reporter: Annette M. Montalvo, CSR, RDR, CRR
Official Court Reporter
United States Courthouse, Room 1902
219 South Dearborn Street
Chicago, Illinois 60604
312-818-6683

1 (Proceedings commenced at 10:03 a.m., in open court, via
2 teleconference, to wit:)

3 THE COURTROOM DEPUTY: 21-CV-6049, *Gould v.*
4 *Crookston.*

5 MS. LEVIN: Good morning, Your Honor. Jena Levin for
6 the defendant. And, Your Honor, I'm not sure, it doesn't
7 sound like plaintiff's counsel is on the call.

8 I had -- I didn't see an e-mail with the dial-in
9 number, but I had it from the last hearing, so I forwarded it
10 to counsel just before, around 9:15, but -- so I'm not sure if
11 he's planning on joining this morning.

12 THE COURT: Okay. So we didn't enter the order this
13 morning? The number is on the docket from the prior court
14 date. Ms. Levin, do you mind reaching out to him?

15 Oh, you're right. It's listed on the last court date
16 and it gives the phone number for this court date.

17 Do you mind reaching out to him? Is it Mr. Loftus?

18 MS. LEVIN: I already did, Your Honor.

19 THE COURT: Okay.

20 MS. LEVIN: I haven't heard back.

21 THE COURT: Okay. And have you heard from Mr. Loftus
22 or Mr. Eisenberg regarding the receiver?

23 MS. LEVIN: I have not. I have not heard anything.
24 And when we were last up on presentment of our motion to stay,
25 Mr. Loftus had indicated that he wanted to not file, but

1 submit something from the SEC or the receiver, which as far as
2 I know, he has not done. I assume I would have been copied if
3 he submitted anything to chambers.

4 But so nothing has been filed. And so, you know,
5 last time we were here, I think he proposed doing that in lieu
6 of filing any kind of written response or arguing a
7 substantive response to our motion. So I don't know, you
8 know, if the Court wants to give him time to file such a
9 response or what, but.

10 THE COURT: Okay. He requested this date, as you
11 stated. He was in contact with the receiver, and he thought
12 that he could ascertain her intent regarding these assets.

13 MS. LEVIN: Yes. That's what he suggested. We
14 are -- the defendant's position is, I mean, we are highly
15 skeptical that he will be able to submit anything indicating
16 that either the receiver or the SEC, you know, has no intent
17 to go after the assets of the defendant in this case. That
18 would be contrary to specifically what the SEC stated in its
19 motion for receiver and the reason that it was seeking to have
20 a receiver appointed. So we don't think that he's going to be
21 able to submit anything to that effect, but.

22 THE COURT: Okay. I'm going to grant the motion that
23 was entered and continued. It is number 11. It is a motion
24 to stay. It is opposed. The reasons for the opposition are
25 not frivolous, by any stretch. But I believe that the motion

1 makes sense.

2 Ms. Levin, as you point out, as you point out in your
3 motion, the SEC specifically identified this lawsuit, at least
4 this lawsuit --

5 MS. LEVIN: Yes.

6 THE COURT: -- when it was before -- before it was
7 removed.

8 MS. LEVIN: Correct.

9 THE COURT: So despite the concerns and the
10 opposition of the plaintiff, the motion is going to be
11 granted. The allegations are that the defendant in this case,
12 who is working as an investment banker or broker for JJMT Cap
13 LLC, advised plaintiff to invest with the third party, 1inMM
14 Cap. That organization turned out to be a Ponzi scheme.
15 Mr. Horwitz was arrested in the subsequent SEC action in
16 California. The district court has entered an order
17 appointing a receiver over the assets that are, quote,
18 attributable to funds derived from investors or clients of
19 Horwitz and 1inMM. Of course, there's an issue as to how
20 directly attributable the funds have to be. Defendant
21 received these funds not directly from plaintiff, but from his
22 employer, JJMT.

23 So after consideration of the plaintiff's objections,
24 the motion is going to be granted, and counsel did not appear
25 today. I don't have additional information, which may or may

1 not have been helpful, but counsel admitted on the last court
2 date that the receiver was drinking through a fire hose at
3 present, and it is unlikely that she would have had a
4 definitive position at this point.

5 All right. The motion is granted. The stay is
6 entered.

7 I am going to set a status date in three months,
8 which takes us to the beginning of May. I will set it for May
9 3. And I will direct the parties to file a joint status
10 report at least three days before that court date, advising me
11 of the status and making recommendations as to the necessity
12 of that status report -- of that status hearing.

13 Thank you, Ms. Levin.

14 MS. LEVIN: Thank you, Your Honor.

15 (Proceedings concluded at 10:10 a.m.)

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REPORTER'S CERTIFICATE

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20 I, ANNETTE M. MONTALVO, do hereby certify that the
21 above and foregoing constitutes a true and accurate transcript
22 of my stenographic notes and is a full, true and complete
23 transcript of the proceedings.

22

Dated this 18th day of February, 2022.

23

/s/Annette M. Montalvo
Annette M. Montalvo, CSR, RDR, CRR
24 Official Court Reporter

25