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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-PD

**NOTICE OF MOTION AND
MOTION OF RECEIVER
MICHELE VIVES FOR ORDER
APPROVING SETTLEMENT
WITH JOSEPH DEALTERIS,
JACOB WUNDERLIN, MATTHEW
SCHWEINZGER AND JJMT
CAPITAL, LLC, AND FOR
RELATED RELIEF;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Date: September 11, 2023
Time: 10:00 a.m. PT
Judge: Hon. Christina A. Snyder
Courtroom: 8D

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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT, on September 11, 2023, at 10:00 a.m., or
3 as soon thereafter as the matter may be heard in Courtroom 8D, located at the United
4 States Courthouse, 350 West First Street, Los Angeles, California 90012, Michele
5 Vives, not individually, but solely as the federal equity receiver (the “Receiver”) of
6 defendant 1inMM Capital, LLC and its subsidiaries, affiliates and over the assets
7 more particularly described in the *Order on Appointment of Permanent Receiver*,
8 dated January 14, 2022 [ECF #70] (the “Receiver Order”), will and hereby does
9 move the Court for entry of an order approving the settlement with Joseph deAlteris,
10 Jacob Wunderlin, Matthew Schweinzger and JJMT Capital, LLC, and for related
11 relief (the “Motion”).

12 The Motion is based on the Memorandum of Points and Authorities below
13 and is supported by: (a) the *Settlement Agreement and Mutual Release*, dated June
14 26, 2023 (the “Settlement Agreement”), copy attached as **Exhibit 1**; (b) the
15 *Declaration of Michele Vives*, dated July 31, 2023 (“Vives Decl.”), copy attached as
16 **Exhibit 2**; and (c) the *Declaration of Alexander Loftus*, dated July 31, 2023 (“Loftus
17 Decl.”), copy attached as **Exhibit 3**.

18 This Motion is made following the Local Rule 7-3 conference of counsel
19 which took place on July 31, 2023. **No party requests a hearing on the Motion.**

20 Dated: July 31, 2023

Respectfully submitted,

21 **KATTEN MUCHIN ROSENMAN LLP**

22 By: /s/*Terence G. Banich*
23 Terence G. Banich

24 *Attorneys for the Receiver*
25 Michele Vives
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **Factual Background**

3 **A. The Receiver; investigation of transfers**

4 On April 5, 2021, the SEC commenced this action against Zachary J. Horwitz
5 (“Horwitz”) and 1inMM Capital, LLC (“1inMM”; together, “Defendants”), alleging
6 that they committed an offering fraud and Ponzi scheme in violation of the federal
7 securities laws (“Ponzi Scheme”). On January 14, 2022, the Court entered the
8 Receiver Order, appointing Ms. Vives as receiver of 1inMM, its subsidiaries,
9 affiliates and the assets that are attributable to funds derived from investors or clients
10 of Defendants or were fraudulently transferred by Defendants (the “Estate”). The
11 Receiver Order authorizes the Receiver, among other things, to prosecute claims.

12 **B. The Investor Actions; the Mediation**

13 The Receiver determined that Horwitz raised investor funds mostly using
14 certain entities that pooled large amounts of money from many individual investors
15 or lenders (collectively referred to herein as “investors”) for upstream loans to, or
16 investments in, 1inMM (collectively referred to herein as “investments”). (Vives
17 Decl. ¶9.) The largest of these entities was JJMT Capital, LLC (“JJMT”), of which
18 Joseph deAlteris, Jacob Wunderlin and Matthew Schweinzger (collectively, “JJM,”
19 and with JJMT, “JJM Parties”) are members. (*Id.*)

20 Several investors commenced lawsuits alleging claims associated with
21 Defendants’ scheme, including against the JJM Parties (“Investor Actions”). (*Id.*
22 ¶10.) The plaintiffs in the Investor Actions (“Investor Plaintiffs”) claimed millions
23 of dollars were owed, generally asserting that the JJM Parties and other defendants
24 are liable to them in connection with the Ponzi Scheme, loans from the Investor
25 Plaintiffs to JJMT and loans from JJMT to 1inMM (“Investor Claims”). (*Id.* ¶11.)
26 The JJM Parties asserted defenses that could have resulted in the Investor Plaintiffs
27 taking nothing. (*Id.*)
28

1 Counsel for the Investor Plaintiffs worked with the Receiver because she had
 2 claims against the same defendants, while the defendants expressed interest in
 3 settling the Receiver’s potential claims against them, but only if the Receiver could
 4 concurrently resolve or eliminate the Investor Actions. (*Id.* ¶12.) After months of
 5 negotiations, the Receiver and those litigants agreed to mediate, selecting retired
 6 U.S. Magistrate Judge Sidney I. Schenkier as mediator. (*Id.* ¶13.)

7 C. The Transfers

8 As part of the above events, the JJM Parties and their counsel, Corey Weber
 9 of BG Law LLP, Matthew S. Ryan of Cotsirilos, Tighe, Streicker, Poulous &
 10 Campbell, Ltd., and James Kopecky of Kopecky Schumacher Rosenberg LLC,
 11 worked cooperatively with the Receiver. (*Id.* ¶14.) The JJM Parties produced a large
 12 volume of financial documents and related information. (*Id.*) The Receiver
 13 determined that JJM were each net winners of the Ponzi Scheme in the following
 14 amounts: \$8,309,096 (deAlteris); \$9,349,741 (Wunderlin); and \$6,625,309
 15 (Schweinzger) (collectively, the “Transfers”). (*Id.* ¶15.)

16 The Receiver asserted that she may avoid and recover the Transfers as actual
 17 fraudulent transfers pursuant to §3439.04(a)(1) of the California Uniform Voidable
 18 Transactions Act, Cal. Civ. Code §3439 *et seq.* (“UVTA”) (“Receiver Claims”).
 19 (Vives Decl. ¶16.) As the Receiver contended, 1inMM and Horwitz made the
 20 Transfers with the actual intent to hinder, delay, or defraud their creditors, as
 21 Horwitz pled guilty and admitted that he used 1inMM to operate a Ponzi scheme,
 22 which conclusively establishes intent for purposes of a UVTA actual fraudulent
 23 transfer claim. (*Id.*) The Receiver argued that she could recover the Transfers from
 24 JJM under UVTA §3439.08(b)(1)(A) as their first transferee, because even though
 25 1inMM made many of the Transfers to them indirectly through JJMT, JJMT was a
 26 mere conduit that had no dominion over the money 1inMM transferred to it. (*Id.*
 27 ¶17.) JJM asserted several defenses. (*See infra* Part I.A.2.)

1 **D. The Settlement**

2 Following the mediation on January 30-31, 2023, the parties reached a
3 settlement (“Settlement”) whereby the JJM Parties agreed to pay \$9,000,000 to the
4 Estate (“Settlement Payment”)—consisting of three payments over a two-year
5 span—to resolve the Investor Claims and the Receiver Claims (collectively,
6 “Claims”) in exchange for mutual general releases and entry of an order (“Bar
7 Order”) permanently barring and enjoining all persons and non-governmental units
8 from suing the JJM Parties on any claim arising out of or relating to the Ponzi
9 Scheme. (Vives Decl. ¶18.) The Settlement is documented in the Settlement
10 Agreement. (*Id.*)

11 The parties to the Settlement Agreement are the Receiver, the JJM Parties and
12 all Investor Plaintiffs who have sued or threatened to sue the JJM Parties: (a) 109
13 persons/entities represented by Loftus & Eisenberg, Ltd. who invested in JJMT,
14 listed on Schedule 1 to the Settlement Agreement (“L&E Investors”); (b) Nalpak I
15 LP, Nalpak II LP, Nalpak Enterprises LLC and Peter Xilas (“Nalpak Investors”);
16 and (c) Steven and Matthew Aronson (“Aronson Investors”). (*Id.* ¶19.)

17 As part of the Settlement, JJMT agreed to assign to the Receiver all claims it
18 owns or has the authority to assert against anyone arising out of or relating in any
19 way to the Ponzi Scheme (“Assigned Claims”), with certain exclusions. (*Id.* ¶20.)
20 Additionally, because the Investor Plaintiffs agreed that the entire Settlement
21 Payment should be paid into the Estate for the benefit of all creditors, the Receiver
22 has concluded that the Investor Plaintiffs’ counsel created a common fund from
23 which a negotiated amount of their fees—totaling \$2,560,000—should be paid. (*Id.*
24 ¶21.) Finally, the validity of the Settlement Agreement is subject to the condition
25 precedent that the Court approves it, including the Bar Order. (*Id.*)

26 The Receiver believes the Settlement is in the best interest of the Estate and
27 its creditors—the net losing investors in the Ponzi Scheme. (*Id.* ¶22.) The Settlement
28 Payment constitutes a substantial recovery for the Estate without the expense and

1 risk of litigation, and the Settlement represents an equitable, good-faith resolution of
2 all Claims. (*Id.*) While the Receiver and the Investor Plaintiffs were confident in
3 their respective Claims, the risk of an adverse result always loomed. JJM asserted
4 multiple meaningful defenses that, if successful, may have resulted in the Receiver
5 and Investor Plaintiffs recovering nothing. (*Id.* ¶23.) The Settlement thus avoids
6 protracted and expensive litigation, thereby avoiding litigation risk and conserving
7 Estate resources. (*Id.*)

8 The Settlement Payment—37% of the Transfers—exceeds what the JJM
9 Parties would have paid to resolve the Receiver Claims alone without a bar order.
10 (*Id.*) The JJM Parties simultaneously resolved the Investor Claims, so the efforts of
11 Investor Plaintiffs’ counsel undoubtedly enhanced the final settlement value, all of
12 which is flowing to the Estate. (*Id.* ¶24.) A critical component of the settlement
13 consideration is that the Court enters the Bar Order, which is a common component
14 of these sorts of settlements. And because the Investor Plaintiffs agreed that the JJM
15 Parties remit the entirety of the Settlement Payment to the Estate, the Investor
16 Plaintiffs’ counsel helped create a common fund from which a portion of their
17 attorney’s fees may be paid. (*Id.*)

18 Moreover, the Settlement resolves a particularly complex multiparty dispute.
19 (*Id.* ¶25.) The Investor Claims and Receiver Claims arise from a common nucleus
20 of operative facts—the Ponzi Scheme—but the litigants’ objectives were not
21 necessarily the same. (*Id.*) Specifically, the Investor Plaintiffs pursued the JJM
22 Parties to remedy their own personal damages, while the Receiver focused on
23 benefitting the Estate as a whole. (*Id.*) Those goals often conflicted, resulting in
24 disagreements between the Receiver and Investor Plaintiffs about settlement terms
25 and how to proceed. (*Id.*)

26 The Investor Claims are, nonetheless, derivative of the Receiver Claims and
27 compete with the Receiver for JJM’s assets. (*Id.* ¶26.) The Receiver and the Investor
28 Plaintiffs are pursuing the same people arising out of the same transactions and

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1 occurrences involving the same actors. (*Id.*) As such, the Investor Actions affected
 2 the Estate’s assets and ultimate recoveries; every dollar the Investor Plaintiffs
 3 managed to recover from JJM in the event of a favorable judgment was arguably a
 4 dollar the Receiver could not recover from them. (*Id.*)

5 JJM wanted to achieve finality with a settlement, which they really could only
 6 accomplish through a deal with the Receiver. (*Id.* ¶27.) At the same time, the
 7 Receiver did not think it advisable or practical to exclude the Investor Plaintiffs from
 8 those discussions. (*Id.*) Because the Investor Plaintiffs collectively constitute a
 9 significant percentage of the known population of net losing investors, the Receiver
 10 considered them to function effectively as an ad hoc creditors committee. (*Id.*) JJM,
 11 moreover, made clear that any settlement with the Receiver must include a bar order
 12 enjoining any further creditor suits against them arising from or relating to the Ponzi
 13 Scheme, so the Receiver continually focused on achieving a settlement that met the
 14 legal requirements for a bar order. (*Id.* ¶28.) These factors, among others, made the
 15 litigation complex and particularly difficult to settle on a global basis. (*Id.*)

16 Legal Standards

17 District courts have “extremely broad” power and “wide discretion” in
 18 overseeing the administration of a receivership. *SEC v. Hardy*, 803 F.2d 1034, 1037
 19 (9th Cir.1986). The Ninth Circuit “affords ‘broad deference’ to the [district] court’s
 20 supervisory role” in receivership cases, and “generally uphold[s] reasonable
 21 procedures instituted by the district court that serve th[e] purpose of orderly and
 22 efficient administration of the receivership for the benefit of creditors.” *Commodity*
 23 *Futures Trading Comm’n v. Topworth Int’l, Ltd.*, 205 F.2d 1107, 1115 (9th
 24 Cir.1999) (cleaned up).

25 That broad authority to oversee the administration of a receivership extends
 26 to approving settlements. “[N]o federal rules prescribe a particular standard for
 27 approving settlements in the context of an equity receivership; instead, a district
 28 court has wide discretion to determine what relief is appropriate.” *Gordon v.*

1 *Dadante*, 336 F.App’x 540, 549 (6th Cir.2009) (citing *Liberte Cap. Grp., LLC v.*
 2 *Capwill*, 462 F.3d 543, 551 (6th Cir.2006)); *see also SEC v. Kaleta*, 530 F.App’x
 3 360, 362 (5th Cir.2013) (“because this is a case in *equity*, it is neither surprising nor
 4 dispositive that there is no case law directly controlling” the district court’s order
 5 approving receiver’s settlement).

6 Local Rule 66-8 directs a receiver to “administer the estate as nearly as
 7 possible in accordance with the practice in the administration of estates in
 8 bankruptcy.” District courts sitting in receivership may look to bankruptcy law for
 9 guidance about the administration of a receivership. *See, e.g., SEC v. Cap.*
 10 *Consultants, LLC*, 397 F.3d 733, 745 (9th Cir.2005) (bankruptcy law “analogous”
 11 and therefore persuasive in administration of receivership estates). This is largely
 12 because “the purpose of bankruptcy receiverships and equity receiverships is
 13 essentially the same—to marshal assets, preserve value, equally distribute to
 14 creditors, and, either reorganize, if possible, or orderly liquidate.” *SEC v. Stanford*
 15 *Int’l Bank, Ltd.*, 927 F.3d 830, 841 (5th Cir.2019) (internal citation and quotations
 16 omitted).

17 Courts in this circuit typically apply bankruptcy principles to evaluate
 18 approval of settlements in receivership cases. *SEC v. Champion-Cain*, 2022 WL
 19 126114, at *1 (S.D.Cal. Jan. 13, 2022) (applying bankruptcy principles regarding
 20 approval of settlements in receivership case); *SEC v. Total Wealth Mgmt., Inc.*, 2019
 21 WL 13179068, at *2 (S.D.Cal. Sept. 18, 2019) (same). Bankruptcy courts evaluate
 22 whether a compromise is “fair and equitable,” considering “[a] the probability of
 23 success in litigation, [b] any difficulties that may be encountered in collection, [c]
 24 the complexity of the litigation, the expense, inconvenience, and delay necessarily
 25 attending, and [d] the interest of the receivership entities’ creditors and their
 26 reasonable views.” *Champion-Cain*, 2022 WL 126114, at *1 (quoting *In re*
 27 *Woodson*, 839 F.2d 610, 620 (9th Cir.1988)); *see also Martin v. Kane (In re A&C*
 28 *Props.)*, 784 F.2d 1377, 1381 (9th Cir.1986). “[W]hen engaging in this analysis,

1 bankruptcy courts need not conduct a mini trial on the merits, but need only canvass
2 the issues.” *In re TBH19, LLC*, 2022 WL 16782946, at *6 (B.A.P.9th Cir. Nov. 8,
3 2022).

4 “The analysis under these factors is holistic; the Court must canvass the issues
5 and see whether the settlement falls below the lowest point in the range of
6 reasonableness...[I]t is not necessary to satisfy each of these factors provided that
7 the factors as a whole favor approving the settlement.” *Total Wealth Mgmt., Inc.*,
8 2019 WL 13179068, at *3 (internal citations and quotations omitted); *accord In re*
9 *Open Med. Inst., Inc.*, 639 B.R. 169, 185 (B.A.P. 9th Cir. 2022) (“a settlement can
10 satisfy the *A&C Properties* test even if the evidence supporting one or more of the
11 four factors is relatively weak”). The Court should consider these factors “as a
12 whole, and not individually in a vacuum, to ascertain whether the settlement is a
13 good deal compared to litigation.” *Open Med. Inst.*, 639 B.R. at 185. Further, when
14 assessing a settlement, the Court need not decide issues of disputed fact or questions
15 of law raised in the controversies sought to be settled. *Burton v. Ulrich (In re*
16 *Schmitt)*, 215 B.R. 417, 423 (B.A.P.9th Cir.1997).

17 Ultimately, “courts generally should give deference to a [receiver’s] business
18 judgment in deciding whether to settle a matter for the benefit of the estate.” *In re*
19 *Douglas J. Roger, M.D., Inc., APC*, 393 F.Supp.3d 940, 961 (C.D.Cal.2019)
20 (cleaned up); *see also In re Lahijani*, 325 B.R. 282, 289 (B.A.P.9th Cir.2005).
21 “Approving a proposed compromise is an exercise of discretion that should not be
22 overturned except in cases of abuse leading to a result that is neither in the best
23 interests of the estate nor fair and equitable for the creditors.” *In re MGS Mktg.*, 111
24 B.R. 264, 266-67 (B.A.P.9th Cir.1990).

Argument

I. The Settlement is fair, equitable and in the best interests of the Estate.

25
26 The Receiver respectfully submits that the Settlement easily satisfies all four
27 *A&C Properties* factors. (Vives Decl. ¶29.)
28

1 **A. Probability of success**

2 The probability of success litigating the Claims is mixed. *See, e.g., Total*
 3 *Wealth Mgmt.*, 2019 WL 13179068, at *3 (court must determine whether settlement
 4 amount is commensurate to litigation risk). Assessing risk here is largely a function
 5 of evaluating JJM’s asserted defenses to the Claims, which, as discussed above, arise
 6 under UVTA.

7 **1. UVTA**

8 The Receiver’s potential claims against JJM arise under UVTA, the purpose
 9 of which is “to prevent debtors from placing, beyond the reach of creditors, property
 10 that should be made available to satisfy a debt by transferring that property to
 11 others.” *RPB SA v. Hyla, Inc.*, 2021 WL 4980092, at *4 (C.D.Cal. June 24, 2021)
 12 (cleaned up). UVTA enables a creditor to bring an action to avoid a fraudulent
 13 transfer of an asset to the extent necessary to satisfy its claim. UVTA §3439.07(a)(1).
 14 A transfer is fraudulent—and thus avoidable—if the debtor transferred the asset
 15 either (1) with actual intent to hinder, delay, or defraud any of its creditors (i.e.,
 16 “actual fraud”), or (2) without receiving reasonably equivalent value in exchange
 17 therefor when it had unreasonably small capital or was insolvent (i.e., “constructive
 18 fraud”). *Id.* §§3439.04(a)(1)-(2). A creditor may bring an action under UVTA
 19 against the “first transferee” of the asset, the person for whose benefit the transfer
 20 was made or any subsequent transferees. *Id.* §§3439.08(b)(1)(A)-(B).

21 Fraudulent transfer claims are among a receiver’s most important tools to
 22 recover monies lost by Ponzi-scheme investors. *Donell v. Kowell*, 533 F.3d 762, 767
 23 (9th Cir.2008). The Ponzi-scheme operator is the “debtor” and each investor is a
 24 “creditor,” although the investors who profited from the scheme on a net basis—
 25 sometimes called “net winners”—are the recipients of the Ponzi-scheme operator’s
 26 fraudulent transfers, and are thus liable under UVTA. *Id.* at 767-771. An equity
 27 receiver has standing to pursue fraudulent transfer claims “to redress injuries that
 28 [the receivership entity] suffered when its managers caused [it] to commit waste and

1 fraud.” *Id.* at 777. A receiver may assert that a transfer was actually or constructively
 2 fraudulent. *Id.* at 770. But the debtor’s admission that it operated a Ponzi scheme
 3 *conclusively* establishes fraudulent intent for a UVTA actual fraud claim (*In re*
 4 *Slatkin*, 525 F.3d 805, 814 (9th Cir.2008)), as well as financial distress for a UVTA
 5 constructive fraud claim (*Donell*, 533 F.3d at 770-71).

6 To determine whether a Ponzi-scheme investor is liable to the estate for
 7 receiving fraudulent transfers, courts apply the “netting rule,” where “[a]mounts
 8 transferred by the Ponzi-scheme perpetrator to the investor are netted against the
 9 initial amounts invested by that individual. If the net is positive, the receiver has
 10 established liability[.]” *Id.* at 771. Generally, “innocent” investors may retain the
 11 payments they received up to the amount invested, but must disgorge the “profits”
 12 received from the Ponzi scheme as they “do not represent a return on legitimate
 13 investment activity.” *Id.* at 772, 777.

14 2. Defenses

15 JJM argued that most of the Receiver Claims were untimely under the UVTA
 16 limitations period. JJM asserted, for example, UVTA’s one-year discovery rule was
 17 triggered no later than January 14, 2022—the date the Receiver was appointed—
 18 because that is when she knew, or should have known, about the fraudulent nature
 19 of the Ponzi Scheme. The Receiver countered with cases holding that the one-year
 20 discovery rule for a UVTA claim does not begin to run until at least sometime after
 21 the receiver is appointed. *See, e.g., Donell v. Mojtahedian*, 976 F.Supp.2d 1183,
 22 1188-89 (C.D.Cal. 2013). Moreover, because the Receiver stands only in the shoes
 23 of the Ponzi Scheme entities, she asserted that any potential prior knowledge on the
 24 part of the SEC or other creditors could not be imputed to her. *See, e.g., Gill v.*
 25 *Blessing*, 2014 WL 12573667, at *3 (C.D.Cal. Oct. 6, 2014). In light of these
 26 conflicting arguments, the Receiver considered this issue a significant litigation risk
 27 factor. (Vives Decl. ¶30.)
 28

1 JJM also vigorously contested the Receiver’s assertion that she could recover
 2 the Transfers 1inMM made to them indirectly via JJMT because JJMT was a “mere
 3 conduit” rather than a transferee. While UVTA authorizes plaintiffs to recover an
 4 avoided transfer from the “first transferee” of the asset transferred, it does not define
 5 that term. The Ninth Circuit has observed that “[t]ransferee’ is not a self-defining
 6 term; it must mean something different from ‘possessor’ or ‘holder’ or ‘agent,’” and
 7 that “treating anyone who touches the money as a ‘transferee’ could lead to absurd
 8 results....” *In re Walldesign, Inc.*, 872 F.3d 954, 962 (9th Cir.2017). The Ninth
 9 Circuit applies the “dominion test” to determine whether a party is a first transferee
 10 or a mere conduit. *In re Incomnet, Inc.*, 463 F.3d 1064, 1071 (9th Cir.2006). Under
 11 that test, the “minimum requirement [for] status as a ‘transferee’ is dominion over
 12 the money or other asset,” i.e., “the *right* to put the money to one’s own purposes.”
 13 *Walldesign*, 872 F.3d at 962. Thus, JJMT would be deemed the first transferee if it
 14 had dominion over the money 1inMM transferred to it earmarked for JJM on account
 15 of their investments; otherwise, JJMT was merely a conduit for 1inMM to transfer
 16 the money to JJM, the first transferees.

17 JJM asserted that JJMT had dominion over the Transfers, thereby making it
 18 the first transferee, as it had discretion to put the funds to other uses. The Receiver,
 19 however, countered that the express language from JJMT’s contracts with its
 20 investors, plus JJMT’s actual course of performance, showed that JJMT was
 21 contractually bound to disburse the Transfers immediately to JJM and other
 22 investors. The Ninth Circuit has held that a recipient’s contractual obligation to
 23 disburse money to another constitutes a lack of dominion. *See, e.g., Danning v.*
 24 *Miller (In re Bullion Reserve of N. Am.)*, 922 F.2d 544, 549 (9th Cir.1991);
 25 *Northpoint Commc’ns Grp., Inc.*, 2007 WL 7541001, at *4-5 (B.A.P.9th Cir. Nov.
 26 7, 2007). Despite the Receiver’s characterization of JJMT as an “aggregator” or
 27 “feeder fund,” she asserted that JJMT’s role in receiving repayments of loans from
 28

1 1inMM was actually comparable to that of a bank, merely holding funds for the
2 benefits of specific, named “depositors.” *Bullion Reserve*, 922 F.2d at 549.

3 In light of the arguments above, the mere conduit issue presented an important
4 litigation risk for the Receiver, as the vast majority of the Transfers flowed from
5 1inMM through JJMT to JJM. (Vives Decl. ¶31.) If the Court ruled that JJMT was
6 the first transferee, then the UVTA would bar the Receiver from avoiding most of
7 the Transfers to JJM. Rather than risk such a ruling, the Receiver decided it was
8 preferable to settle. (*Id.*)

9 The Receiver believes that JJM are liable under UVTA as net winners, but it
10 is not guaranteed that litigation would have resulted in the Receiver avoiding and
11 recovering *all* of the Transfers. *Cf. In re ISE Corp.*, 2012 WL 1377085, at *8
12 (Bankr.S.D.Cal. Apr. 13, 2012) (“the success of litigation also entails consideration
13 of the risk of uncertainty and the desire for expediency”). The Court may have
14 sustained some of JJM’s defenses, which would be an outcome worse than the
15 Settlement. Rather than take that risk, the Receiver compromised. (Vives Decl. ¶32.)
16 *See, e.g., SEC v. Cap. Cove Bancorp LLC*, 2016 WL 11752897, at *2 (C.D.Cal. Dec.
17 15, 2016) (approving settlement, reasoning it “provide[d] a recovery that is
18 proportionate to the successful prosecution of this action when discounts are
19 factored in for the risk, time, and expense of fully litigating the case, and
20 maximize[d] the funds available for distribution to creditors”); *Open Med. Inst.*, 639
21 B.R. at 183-84 (same, where trustee averred the odds of success as a “coin flip” and
22 “thought it was safer to settle”).

23 For these reasons—informed by Judge Schenkier’s reactions to the arguments
24 discussed above during the parties’ two-day mediation—the Receiver concluded that
25 the Settlement appropriately takes into account the mixed probability of success on
26 the merits. (Vives Decl. ¶33.)
27
28

B. Collection difficulties

“Assessing the difficulties in collection is largely a bird-in-the-hand consideration that weighs the certainty of settlement against the potential uncertainty of collection even where a receiver secures a favorable judgment.” *Total Wealth Mgmt.*, 2019 WL 13179068, at *3.

The Receiver understands that JJM, collectively and/or individually, do not have assets that would be sufficient to satisfy a judgment avoiding all of the Transfers, let alone that *plus* an adverse judgment entered in favor of the Investor Plaintiffs. (Vives Decl. ¶34.) So this factor weighs in favor of settling.

C. Complexity/expense

It would be complex, expensive and time-consuming for the parties to litigate the Claims. (*Id.* ¶35.) This factor is particularly important in liquidations like here where the goal is “obtaining the best possible realization upon the available assets and without undue waste by needless or fruitless litigation.” *In re Law*, 308 F.App’x 152, 153 (9th Cir.2009). For example, the Receiver’s knowledge under UVTA’s one-year discovery rule is a question of fact, which necessarily entails discovery and trial to resolve, along with the associated time and expense.

Given the evidence and defense arguments, the Receiver believes such litigation against JJM would be expensive and time-consuming, as it would likely require extensive discovery, retention of experts and numerous witnesses. (Vives Decl. ¶36.) A trial and appeal would likely take at least two years to complete and cost the estate several hundred thousand dollars in fees and expenses. (*Id.*) This factor, therefore, weighs heavily in favor of approving the Settlement. *See, e.g., TBH19*, 2022 WL 16782946, at *3 (complexity element weighed in favor of settlement where dispute would require extensive discovery, cost the estate hundreds of thousands of dollars and take years to complete).

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1 **D. Creditors**

2 “The opposition of the creditors of the estate to approval of a compromise
3 may be considered by the court, but is not controlling and will not prevent approval
4 of the compromise where it is evident that the litigation would be unsuccessful and
5 costly...In short, creditors have a voice but not a veto.” *In re Bondanelli*, 2020 WL
6 1304140, at *4 (B.A.P.9th Cir. Mar. 18, 2020). As discussed below, the Receiver is
7 giving notice of this Motion to all known creditors of the Estate.

8 In sum, the Receiver believes the Settlement is fair, equitable and adequate
9 under the circumstances to realize the value of the Estate’s interest in the Transfers.
10 Litigation is, certainly, an alternative course, but “while the [Receiver] might do
11 better in litigation, she is not likely to do so.” *In re Tidwell*, 2018 WL 1162511, at
12 *3 (Bankr.C.D.Cal. Mar. 1, 2018) (cleaned up).

13 **II. The Court should approve the Bar Order.**

14 **A. The Court has the power to enter the Bar Order.**

15 The Court’s “extremely broad” power and “wide discretion” to determine the
16 appropriate relief in an equity receivership includes the “inherent equitable authority
17 to issue a variety of ‘ancillary relief’ measures in actions brought by the SEC to
18 enforce the federal securities laws.” *Hardy*, 803 F.2d at 1037; *SEC v. Hickey*, 322
19 F.3d 1123, 1131 (9th Cir.2003). “Ancillary relief” in SEC enforcement actions may
20 include “injunctions to stay proceedings by nonparties against the receivership.”
21 *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir.1980)

22 “Courts use ancillary relief in the form of bar orders to secure settlements in
23 receivership proceedings and...to bar claims against third parties settling with
24 receiverships.” *SEC v. Stanford Int’l Bank Ltd.*, 2017 WL 9989250, at *2 (N.D.Tex.
25 Aug. 23, 2017), *aff’d sub nom. Zacarias v. Stanford Int’l Bank, Ltd.*, 945 F.3d 883
26 (5th Cir.2019) (bar orders may “foreclos[e] suit against third-party defendants with
27 whom the receiver is also engaged in litigation”). Bar orders enable federal receivers
28 “to curb investors’ individual advantage-seeking in order to reach settlements for the

1 aggregate benefit of investors under the court’s supervision.” *Zacarias*, 945 F.3d at
 2 896. “The availability of such [bar] orders facilitates settlement, promotes equitable
 3 recoveries by creditors, and maximizes assets available to creditors in the aftermath
 4 of a Ponzi scheme.” *SEC v. Aequitas Mgmt., LLC*, 2020 WL 7318305, at *1 (D.Or.
 5 Nov. 10, 2020).

6 Bar orders have become a common feature in settlements with receivers in
 7 cases arising from violation of the federal securities laws. *See, e.g., SEC v. DeYoung*,
 8 850 F.3d 1172, 1183 n.5 (10th Cir.2017) (collecting cases); *SEC v. Nadel*, 2012 WL
 9 12910648, at *1 (M.D.Fla. Feb. 10, 2012) (same). Federal courts generally require
 10 that bar orders be (1) fair, just, equitable and in the best interest of the estate, and (2)
 11 “necessary” to the proposed settlement. *See, e.g., DeYoung*, 850 F.3d at 1178, 1183;
 12 *Kaleta*, 530 F.App’x at 362-63; *Stanford*, 2017 WL 9989250, at *3; *SEC v. Alleca*,
 13 2021 WL 4843987, at *12 (N.D.Ga. Sept. 9, 2021), *vacated on other grounds*, 2022
 14 WL 16631325 (11th Cir. Nov. 2, 2022). The Bar Order here satisfies both elements.¹

15 **B. The Bar Order is fair, equitable and in the best interest of the**
 16 **Estate.**

17 A bar order typically meets this first element if it facilitates a higher settlement
 18 value and/or avoids protracted litigation. *See, e.g., DeYoung*, 850 F.3d at 1178;
 19 *Nadel*, 2012 WL 12910648, at *1-2; *Alleca*, 2021 WL 4843987, at *12-13; *SEC v.*
 20 *Adams*, 2021 WL 8016843, at *2 (S.D.Miss. Feb. 25, 2021). A bar order is in the
 21 best interest of the receivership estate if it resolves “complex claims” and “rights and
 22 obligations of parties” that “are so inextricably intertwined that resolution of the
 23 claims independently, as opposed to collectively, would be difficult and inefficient,
 24 would substantially increase costs to the [r]eceivership [e]state, and would likely
 25 reduce the ultimate recovery to the [investors].” *DeYoung*, 850 F.3d at 1178; *accord*

26 _____
 27
 28 ¹ The Court has already approved a bar order in this case for similar reasons. [ECF #230 ¶4]

1 *Alleca*, 2021 WL 4843987, at *13 (bar order was fair and equitable in light of amount
 2 defendants agreed to pay, as well as receiver’s ability to avoid “the litigation
 3 risk...and the expenses associated with it”). Finally, a bar order is fair to creditors if
 4 it permits enjoined claims to be channeled to the receivership’s claim process. *See*,
 5 *e.g.*, *Kaleta*, 530 F.App’x at 362-63; *Adams*, 2021 WL 8016843, at *2.

6 The Settlement meets these requirements. (Vives Decl. ¶37.) It avoids
 7 protracted litigation of the Investor Claims and the Receiver Claims, the outcome of
 8 which was uncertain due to JJM’s defenses. (*Id.* ¶¶22-23, 30-33.) By settling, the
 9 Estate avoided significant expenses and time associated with litigating. (*Id.* ¶¶23,
 10 35-36.) The Bar Order also drove a higher settlement value, as JJM paid more to
 11 settle all Claims with a bar order than they would have paid to settle the Receiver
 12 Claims alone. (*Id.* ¶24.) *See, e.g.*, *Nadel*, 2012 WL 12910648, at *1 (bar order
 13 warranted in part because it “facilitate[d] a higher settlement value and, therefore, a
 14 larger recovery for claimants tha[n] would otherwise be available without the bar
 15 order”).

16 Moreover, the Bar Order helped resolve complex claims that would have been
 17 difficult—if not impossible—to resolve independently. (Vives Decl. ¶25.) Absent a
 18 settlement, the Receiver and the Investor Plaintiffs would be left to litigate claims
 19 and, to the extent they obtained favorable judgments, compete for JJM’s assets, a
 20 result that would have “frustrat[ed] the receiver’s pro rata distribution to investors—
 21 a core element of its draw upon equity.” *Zacarias*, 945 F.3d at 900. (Vives Decl.
 22 ¶38.) And because JJMT agreed to assign the Assigned Claims to the Receiver, she
 23 can step into JJMT’s shoes and assert certain claims that she may not otherwise have
 24 been able to pursue. (*Id.* ¶39.)

25 The Bar Order is also fair to those 1inMM net losing investors who would be
 26 enjoined from asserting claims against the JJM Parties. The scope of the Bar Order
 27 is appropriately tailored because it does not enjoin “independent and non-derivative
 28 [claims] that do not involve assets claimed by the receivership.” *Zacarias*, 945 F.3d

1 at 897. Instead, the Bar Order expressly enjoins *only those claims that arise out of*
 2 *or relate to the Ponzi Scheme*, including JJM’s involvement with, and acts or
 3 omissions relating to, JJMT (as more fully described in the Settlement Agreement
 4 and the Bar Order). Such claims are derivative of and dependent upon the Receiver
 5 Claims. *See, e.g., Zacarias*, 945 F.3d at 897 (scope of bar order appropriate where
 6 enjoined claims were “derivative of and dependent on the receiver’s claims, and their
 7 suits directly affect[ed] the receiver’s assets”); *DeYoung*, 850 F.3d at 1178
 8 (affirming bar order that limited scope of enjoined conduct to “any claims against
 9 [the settling defendants] arising out of, or in connection with, or relating to any
 10 [customer account associated with the securities fraud]”); *Kaletka*, 530 F.App’x at
 11 362-63 (scope of bar order appropriate where “investors continue[d] to retain all
 12 other putative claims against the [settling parties] that d[id] not arise from the
 13 allegedly fraudulent notes [underlying] this action”); *Stanford*, 2017 WL 9989250,
 14 at *2 (entering bar order permanently enjoining any other pending or future claims
 15 against settling defendants “arising from their relationship with [the Ponzi-scheme
 16 operator]”).

17 The Bar Order is also fair because it channels any future claims against the
 18 JJM Parties to the Estate’s claims process, which safeguards creditors’ right to be
 19 heard. *See, e.g., Zacarias*, 945 F.3d at 897 (bar order affirmed that channeled
 20 investors’ claims to estate’s claim process); *Kaletka*, 530 F.App’x at 362 (same).

21 **C. The Bar Order is necessary to the Settlement.**

22 A bar order is necessary if it is “essential,” meaning the parties otherwise
 23 would not have resolved their dispute without it. *See, e.g., DeYoung*, 850 F.3d at
 24 1183; *Alleca*, 2021 WL 4843987, at *12; *Kaletka*, 530 F.App’x at 362-63. Here, the
 25 Bar Order is necessary because the JJM Parties would not have settled with the
 26 Receiver without a bar order enjoining all future claims against them arising out of
 27 or relating to the Ponzi Scheme and/or JJMT. (Vives Decl. ¶40.); Indeed, entry of
 28 the Bar Order is a condition precedent under the Settlement Agreement. (Ex. 1 ¶16.)

1 The Bar Order is, therefore, necessary. *See, e.g., Alleca*, 2021 WL 4843987, at *13
 2 (bar order necessary where settling defendant “would not have agreed to settle [the
 3 dispute] without the bar order,” and settlement agreement was contingent on entry
 4 of bar order); *Gordon v. Dadante*, 2008 WL 1805787, at *14 (N.D. Ohio Apr. 18,
 5 2008) (similar), *aff’d*, 336 F.App’x 540 (6th Cir.2009).

6 **III. The Court should approve the Administrative Claims.**

7 The Investor Plaintiffs’ agreement that JJM pay the entire amount of the
 8 Settlement Payment into the Estate for the benefit of all creditors will result in the
 9 Estate having more cash for administration and creditor claims. (Vives Decl. ¶41.)
 10 In recognition of that, the Receiver agreed that the Investor Plaintiffs’ counsel should
 11 hold allowed administrative claims in certain negotiated amounts² in exchange for
 12 their contributions to the Estate (“Administrative Claims”).³ (*Id.*) After all, the
 13 Receiver and Investor Plaintiffs’ counsel—who function like counsel to a creditors’
 14 committee in a bankruptcy case—are attempting to achieve the same goal of
 15 bringing as much money in the Estate as possible for the benefit of net losing
 16 investors. *Cf. Rodriguez v. Seabreeze Jetlev LLC*, 2022 WL 3327925, at *7
 17 (N.D. Cal. Aug. 11, 2022) (“in bankruptcy cases, the debtor in possession and the
 18 committee of creditors share a duty to maximize the debtor’s estate”) (cleaned up).

19 The Settlement reflects these principles. In deciding whether to approve a
 20 settlement in a receivership, the Court is not constrained by a particular standard or
 21 set of rules but instead “has wide discretion to determine what relief is appropriate.”
 22 *Cap. Cove Bancorp*, 2017 WL 11643414, at *2. So the Court could approve the
 23 Administrative Claims and associated disbursements using its discretion alone.

24
 25
 26 ² \$1,610,000 for L&E Investors’ counsel; \$450,000 for Aronson Investors’ counsel; \$500,000 for
 27 Nalpak Investors’ counsel.

28 ³ The Court has previously granted the same counsel allowed administrative claims for similar
 reasons. [ECF #230 ¶3]

1 The Court may also do so because Investor Plaintiffs’ counsel helped create a
 2 common fund in the Estate. Under the “common fund” doctrine, “a private plaintiff,
 3 or his attorney, whose efforts create, discover, increase or preserve a fund to which
 4 others also have a claim is entitled to recover from the fund the costs of his litigation,
 5 including attorneys’ fees.” *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th
 6 Cir.1977); *accord Baten v. Mich. Logistics, Inc.*, 2023 WL 2440244, at *7 (C.D.Cal.
 7 Mar. 8, 2023). The common fund doctrine “is designed to spread litigation costs
 8 proportionately among all the beneficiaries so that the active beneficiary does not
 9 bear the entire burden alone and the ‘stranger’ beneficiaries do not receive benefits
 10 at no cost to themselves.” *Vincent*, 557 F.2d at 769.

11 The Ninth Circuit recently held that where a lawyer for a creditor of an entity
 12 in receivership “undeniably caused the creation, discovery, increase, or preservation
 13 of a common fund that benefited investors,” the receivership court must award the
 14 lawyer a reasonable fee under the common fund doctrine. *SEC v. Pritzker Levine*
 15 *LLP*, 2022 WL 671020, at *1 (9th Cir. Mar. 7, 2022). In *Pritzker*, the law firm
 16 Pritzker Levine LLP pursued certain litigation claims on behalf of a creditor that
 17 resulted in the identification of millions in assets that became part of a state court
 18 receivership. *Id.* Later, the SEC commenced a securities fraud action against the
 19 same defendants and the court appointed a federal receiver, who obtained the assets
 20 of the state receivership, including the funds realized from Pritzker’s litigation
 21 efforts. *Id.* The Ninth Circuit held that because Pritzker helped create a fund of cash
 22 that became part of the receivership estate, it should receive a reasonable fee award
 23 from the estate under the common fund doctrine, which “should be treated as an
 24 allowed administrative claim” paid “from the fund itself, as a prior charge before the
 25 beneficiaries receive it.” *Id.* at *1-2.

26 Likewise, Investor Plaintiffs’ counsel—who doggedly pursued the Investor
 27 Actions—played an essential role in increasing the amount that JJM agreed to pay
 28 in settlement, all of which cash is coming into the Estate for eventual distribution to

1 the net losing investors. (Vives Decl. ¶42.) The three-way nature of the settlement
 2 negotiations necessitated this. On the one hand, JJM wanted to achieve finality with
 3 a settlement, which they really could only accomplish through a deal with the
 4 Receiver that would include a bar order. (*Id.* ¶27.) But, on the other hand, as the
 5 Receiver was unwilling to settle with JJM over the objections of the Investor
 6 Plaintiffs—constituting over 100 of the Estate’s creditors—any settlement had to
 7 resolve the Investor Claims too. (*Id.*)

8 The Investor Plaintiffs’ agreement that JJM make the Settlement Payment to
 9 the Estate for the benefit of all creditors was, from the Receiver’s perspective, the
 10 lynchpin of this three-way compromise. (*Id.* ¶43.) It “undeniably caused
 11 the...increase” of the Estate’s cash assets available for distribution to creditors
 12 beyond what the Receiver would have recovered by settling the Receiver Claims
 13 alone. (*Id.*) *Pritzker*, 2022 WL 671020, at *1. Counsel for the L&E Investors in
 14 particular contributed a significant level of work to achieve this outcome. (Loftus
 15 Decl. ¶¶6-34.) Thus, the Investor Plaintiffs’ and counsel’s actions were a cause-in-
 16 fact benefitting the common fund in the Estate. *Pritzker*, 2022 WL 671020, at *1
 17 (“the common fund doctrine requires that the work of the attorney seeking an extra
 18 fee be *a* cause-in-fact of any claimed benefit to the fund, but not the *only* cause-in-
 19 fact”). This is so even if one might speculate that the Receiver might have recovered
 20 the same amount on her own. *Id.* (“The district court’s speculation that the
 21 funds...might still have been recovered by the federal receiver in the absence of
 22 [Pritzker’s efforts] therefore finds no support in the record and in any event does not
 23 demonstrate that Pritzker’s efforts were not a ‘cause-in-fact’ of the creation,
 24 increase, or preservation of a common fund.”). So the Receiver respectfully submits
 25 that the Investor Plaintiffs’ counsel helped increase a common fund in the Estate.
 26 (Vives Decl. ¶44.)

27 The amount the Receiver agreed to pay the Investor Plaintiffs’ counsel—
 28 about 28.4% of the Settlement Payment—is reasonable and appropriate under the

1 common fund doctrine. *See, e.g., In re Omnivision Techs.*, 559 F.Supp.2d 1036, 1046
 2 (N.D.Cal. 2008) (“a total award of approximately 9% of the possible
 3 damages...weighs in favor of granting the requested 28% fee”); *Jenson v. First Tr.*
 4 *Corp.*, 2008 WL 11338161, at *10-11 (C.D.Cal. June 9, 2008) (33% fee award
 5 appropriate for counsel’s effort that resulted in recovering approximately 9.3% of
 6 the class’s estimated loss); *In re Heritage Bond Litig.*, 2005 WL 1594403, at *19
 7 (C.D.Cal. June 10, 2005) (awarding 33% fee from \$27.7 million settlement fund
 8 representing 36% of plaintiffs’ estimated damages); *In re Gen. Instrument Sec.*
 9 *Litig.*, 209 F.Supp.2d 423,431,434 (E.D.Pa. 2001) (one-third fee awarded from \$48
 10 million settlement representing 11% of plaintiffs’ estimated damages). The proposed
 11 distributions to Investor Plaintiffs’ counsel are consistent with these authorities.

12 “When all is said and done, the court can slice the pieces of this pie only so
 13 large. [Defendants] are to blame for the fact that the slices are so small. Had the
 14 professionals not persisted in their efforts, however, the pie would have been even
 15 smaller.” *Gaskill v. Gordon*, 942 F.Supp.382, 388 (N.D.Ill. 1996) (awarding 38% of
 16 receivership assets under common fund doctrine to a receiver, his accountants, and
 17 interim class counsel), *aff’d*, 160 F.3d 361 (7th Cir.1998). The same is true here.

18 Finding a way to compensate the Investor Plaintiffs’ counsel for their efforts
 19 in augmenting the Estate was a hard-fought material term of the overall Settlement.
 20 (Vives Decl. ¶45.) The Receiver agreed to the Administrative Claim amounts in the
 21 exercise of her business judgment, which she felt was necessary to achieve a global
 22 settlement. (*Id.*) That decision is entitled to deference. *See, e.g., Roger*, 393
 23 F.Supp.3d at 961; *Lahijani*, 325 B.R. at 289. For these reasons, the Receiver asks
 24 the Court to approve the Administrative Claims and associated disbursements, which
 25 the Court may do pursuant to its wide discretion to approve receivership settlements
 26 generally and the common fund doctrine specifically.

Notice to Creditors

1
2 “Creditors are entitled to ‘notice reasonably calculated, under all the
3 circumstances, to apprise interested parties of the pendency of the action and afford
4 them an opportunity to present their objections.’” *Perez v. Safety-Kleen Sys., Inc.*,
5 253 F.R.D. 508, 518 (N.D.Cal. 2008) (quoting *Mullane v. Central Hanover Trust*
6 *Co.*, 339 U.S. 306, 314 (1950)). “[D]ue process...is not a technical conception with
7 a fixed content unrelated to time, place and circumstances[.]” *Grimm v. City of*
8 *Portland*, 971 F.3d 1060, 1065 (9th Cir.2020). Instead, “due process is flexible and
9 calls for such procedural protections as the particular situation demands.” *Muñoz v.*
10 *United States Dep’t of State*, 50 F.4th 906, 922 (9th Cir.2022). The Court may
11 “exercise[] significant control over the time and manner” of any proceeding to hear
12 a creditor’s objections. *Liberte Cap. Grp.*, 462 F.3d at 552.

13 The Receiver will give notice of the Motion by: (a) CM/ECF to
14 parties/interested parties; (b) email to all known creditors of the Estate (or, if
15 represented, their counsel) with a link to this Motion and supporting exhibits; (c)
16 posting it on the receivership website; and (d) publishing a notice once in the *Wall*
17 *Street Journal* and once in the *Los Angeles Times* in the form annexed hereto as
18 **Exhibit 4** (“Published Notice”). (Vives Decl. ¶46.) These communications will
19 include instructions on how to advise the Receiver of any objections to the Motion
20 by no later than seven days before the hearing. (*Id.* ¶47.) The Receiver will thereafter
21 file a status report. (*Id.*)

22 The Court should deem this notice sufficient under the circumstances. *See,*
23 *e.g., Fed. Trade Comm’n v. Cardiff*, 2020 WL 9938072, at *4 (C.D.Cal. Mar. 10,
24 2020) (receiver’s notice of settlement satisfied due process where receiver posted
25 motion to its website and served on all parties, known creditors and interested
26 parties); *Adams*, 2021 WL 8016843, at *2 (same, where receiver provided mail
27 notice to interested parties, publicized settlement on receivership website and gave
28 interested parties instructions how to submit comment or objection to settlement);

1 *Nadel*, 2012 WL 12910648, at *1 (same, where receiver published notice once in
2 two newspapers).

3 **WHEREFORE**, the Receiver respectfully requests the Court enter an order:
4 (a) granting the Motion; (b) finding notice of the Motion, including the Published
5 Notice, is sufficient under the circumstances and satisfies due process, and waiving
6 any further notice otherwise required by Local Rule 66-7; (c) approving the terms of
7 the Settlement memorialized in the Settlement Agreement as fair and equitable,
8 including without limitation, the Bar Order and the Administrative Claims; (d)
9 authorizing the Receiver to take such further actions as may be necessary to
10 consummate the transactions in the Settlement Agreement, including, without
11 limitation, paying the Administrative Claims to the respective holders thereof in the
12 amounts specified in the Settlement Agreement; and (e) granting such further relief
13 as the Court deems necessary and appropriate.

14 Dated: July 31, 2023

Respectfully submitted,

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Certificate of Compliance with L.R. 11-6.2

The undersigned, counsel of record for the Receiver, Michele Vives, certifies that this brief contains 6,975 words, which complies with the word limit of L.R. 11-6.1.

Dated: July 31, 2023

Respectfully submitted,

/s/ Terence G. Banich
Terence G. Banich
Attorney for the Receiver

KATTEN MUCHIN ROSENMAN LLP
525 W. MONROE ST.
CHICAGO, IL 60661
(312) 902-5200

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PROOF OF SERVICE

STATE OF ILLINOIS, COUNTY OF COOK

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Cook, State of Illinois. My business address is 525 W. Monroe St., Chicago, Illinois 60661. On July 31, 2023, I served the following document(s) described as:

MOTION OF RECEIVER MICHELE VIVES FOR ORDER APPROVING SETTLEMENT WITH JOSEPH DEALTERIS, JACOB WUNDERLIN, MATTHEW SCHWEINZGER AND JJMT CAPITAL, LLC, AND FOR RELATED RELIEF

as follows:

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Katten Muchin Rosenman LLP practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused the document(s) to be sent from e-mail address terence.banich@katten.com to the persons at the e-mail address(es) listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

- Corey R. Weber – cweber@bg.law
- Matthew S. Ryan – mryan@cotsiriloslaw.com
- James L. Kopecky – jkopecky@ksrlaw.com
- Alexander Loftus – alex@loftusandebenberg.com
- Monte Mann – mmann@atllp.com
- Andrew Campbell – acampbell@atllp.com
- Scott Frost – sfrost@howardandhoward.com

BY OVERNIGHT MAIL (FedEx): I enclosed said document(s) in an envelope or package provided by FEDEX and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of FEDEX or delivered such document(s) to a courier or driver authorized by FEDEX to receive documents.

E-FILING: By causing the document to be electronically filed via the Court’s CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

I declare under penalty of perjury under the laws of the State of Illinois that the foregoing is true and correct. Executed on July 31, 2023, at Winnetka, Illinois.

/s/Terence G. Banich
Terence G. Banich

KATTEN MUCHIN ROSENMAN LLP
525 W. MONROE ST.
CHICAGO, IL 60661
(312) 902-5200

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (this “Agreement”) is made and entered into as of this 26th day of June, 2023 (the “Effective Date”), between and among:

- (a) Michele Vives, not individually, but solely as the receiver (the “Receiver”) as more particularly described in the second recital of this Agreement;
- (b) The persons and entities listed on Schedule 1 represented by the law firm Loftus & Eisenberg, Ltd. (collectively, the “L&E Investors”);
- (c) Nalpak I LP, Nalpak II LP, Nalpak Enterprises LLC and Peter Xilas (collectively, the “Nalpak Investors”); and
- (d) Steven Aronson and Matthew Aronson (together, the “Aronson Investors, and collectively with the L&E Investors and the Nalpak Investors, the “Investor Plaintiffs”);

on the one hand, and on the other hand,

- (e) Joseph deAlteris (“deAlteris”), Jacob Wunderlin (“Wunderlin”) and Matthew Schweinzger (“Schweinzger”) (collectively, “JJM”); and
- (f) JJMT Capital, LLC (“JJMT,” and collectively with JJM, the “JJM Parties”).

The Receiver, the L&E Investors, the Nalpak Investors, the Aronson Investors, and the JJM Parties are referred to collectively herein as the “Parties.”

Recitals

WHEREAS, on April 6, 2021, the Securities and Exchange Commission commenced the civil action styled *Securities & Exchange Commission v. Horwitz*, No. 2:21-cv-02927-CAS-PD (the “Action”), in the United States District Court for the Central District of California (the “Court”) against Zachary J. Horwitz and 1inMM Capital, LLC (“1inMM,” and together with Horwitz, the “1inMM Defendants”), alleging that they conducted an offering fraud and Ponzi scheme in violation of federal securities laws (the “1inMM Ponzi Scheme”);

WHEREAS, on January 14, 2022, the Court entered that certain *Order on Appointment of Permanent Receiver* (the “Appointment Order”) in the Action that, among other things, appointed the Receiver to be the federal equity receiver of 1inMM and its subsidiaries and affiliates, as well as over the assets that are attributable to funds derived from investors or clients of the 1inMM Defendants or were fraudulently transferred by the 1inMM Defendants (the “Receivership Estate”);

WHEREAS, the Appointment Order authorizes the Receiver to, among other things, investigate and prosecute claims and causes of action against persons and entities who may be liable to the Receivership Estate;

WHEREAS, following a diligent investigation, including the review and analysis of the books and records of the 1inMM Defendants as well as documents and information provided by JJM and JJMT to the Receiver, the Receiver asserts that she has identified transfers from the 1inMM Defendants to or for the benefit of some or all of the JJM Parties as either *initial* transferees, *subsequent* transferees (as to transfers from the 1inMM Defendants to JJMT and then from JJMT to or for the benefit of JJM), or *mediate* transferees (as to transfers from the 1inMM Defendants to JJMT and then from JJMT to JJMT Management

Co LLC, and then from JJMT Management Co LLC to or for the benefit of JJM) as follows: \$8,309,096 as to deAlteris, \$9,349,741 as to Wunderlin and \$6,625,309 as to Schweinzer (collectively, the “Transfers”);

WHEREAS, the Receiver contends that the Transfers are subject to avoidance and recovery under the Uniform Voidable Transactions Act as enacted in California (California Civil Code §§ 3439-3439.14) (“UVTA”), and that consequently, the Receiver has, on behalf of the Receivership Estate, claims for relief against the JJM Parties under the UVTA to avoid and recover the Transfers or their value (the “Receiver Claims”);

WHEREAS, the JJM Parties have asserted various defenses to the Receiver Claims and deny that they are liable to the Receivership Estate on account of the Receiver Claims;

WHEREAS, the L&E Investors and the Aronson Investors have commenced, and the Nalpak Investors have stated that they will commence, civil actions against JJM and JJMT (the Nalpak Investors’ currently operative fourth amended complaint includes deAlteris and JJMT as defendants), alleging that some or all of the JJM Parties are liable to them in connection with their loans to JJMT, JJMT’s loans to 1inMM and in relation to the 1inMM Ponzi Scheme (collectively, and irrespective how styled, the “Investor Claims,” and the civil actions in which the Investor Claims are asserted, the “Investor Litigation,” a list of which appears on Schedule 2);

WHEREAS, the Investor Claims and the damages that the Investor Plaintiffs seek on account thereof, and the Receiver Claims and the amount that the Receiver seeks on account thereof, all arise out of and relate to the 1inMM Ponzi Scheme;

WHEREAS, the JJM Parties have asserted various defenses to the Investor Claims and deny that they are liable to the Investor Plaintiffs on account of the Investor Claims;

WHEREAS, the Receiver has not asserted claims against JJMT given that JJMT was a significant net loser in the 1inMM Ponzi Scheme, but the Receiver has asserted that JJMT acted as a conduit or pass-through entity through which loans were aggregated by JJMT and then made to 1inMM and then loans were repaid by 1inMM to JJMT, with JJMT then passing through the loan repayments to lenders to JJMT. JJM and JJMT deny these allegations by the Receiver, including, but not limited to, the allegations that JJMT was a conduit or pass-through entity;

WHEREAS, the Receiver has concluded that the Investor Plaintiffs’ counsel have provided a material benefit and substantial contribution to the Receivership Estate and has created a common fund in connection therewith (the “Substantial Contribution”); and

WHEREAS, the Receiver, Investor Plaintiffs, JJM and JJMT, wishing to avoid the expense, delay, and uncertainty of litigation, have agreed to settle and resolve all claims and disputes between or among them arising out of or relating to the 1inMM Ponzi Scheme, the 1inMM Defendants, JJMT, the Transfers, the Receiver Claims, the Investor Claims and any other actual or potential claims and causes of action for the avoidance and recovery of preferences/preferential transfers or fraudulent transfers or any other claims or causes of action based on statutes or common law other than as expressly preserved in this Agreement (collectively, the “Disputes”) on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which the Parties acknowledge, the Parties agree as follows:

Agreement

1. **Recitals Incorporated.** All of the foregoing recitals are true and correct and are incorporated herein as part of the Agreement for all purposes.

2. **Settlement Payment; Bar Order.** The JJM Parties agree to pay the sum of Nine Million Dollars (\$9,000,000) (the “Settlement Payment”) to the Receiver to settle the Disputes, as more particularly described in the Recitals. The Settlement Payment may be made by any or all of the JJM Parties, and payment by any of the JJM Parties will reduce the amount of the Settlement Payment due from the JJM Parties. The Settlement Payment shall be paid solely to the Receiver. The Investor Plaintiffs agree to accept from the Receivership Estate payments based on administrative claims, or general unsecured claims in the Receivership Estate, or any other payment that the Receiver, in her sole discretion, deems appropriate, and which is approved by the Court. Accordingly, and in consideration for the releases exchanged in paragraphs 6-11 of this Agreement, and for a Bar Order (as defined below), the JJM Parties agree to remit the Settlement Payment to the Receiver as follows by wire transfer per instructions that the Receiver will provide:

(a) No later than sixty (60) calendar days after the Approval Date (as defined in paragraph 16(c)) (the “First Due Date”), the JJM Parties shall remit no less than the sum of Two Million Dollars (\$2,000,000) to the Receiver;

(b) No later than the first anniversary of the First Due Date (the “Second Due Date”), the JJM Parties shall remit an incremental amount, such that the sum of all payments made prior to the Second Due Date is no less than Four Million Five Hundred Thousand Dollars (\$4,500,000) to the Receiver; and

(c) No later than the second anniversary of the First Due Date (the “Third Due Date”), the JJM Parties shall remit an incremental amount, such that the sum of all payments to the Receiver made on or before the Third Due Date is Nine Million Dollars (\$9,000,000).

(d) The Receiver agrees to move the Court, as part of the relief requested in her motion to enter the Approval Order (as defined in paragraph 16(a)) (the “Approval Motion”) to permanently enjoin and bar all persons and non-governmental entities from commencing a civil action or other proceeding against any of the JJM Parties in any jurisdiction alleging any claim, cause of action or request for relief arising out of or relating to the 1inMM Ponzi Scheme, the 1inMM Defendants, JJMT, the Transfers, the Receiver Claims and/or the Investor Claims (a “Bar Order”) in the form of words appearing on, or substantially similar to, Schedule 3 hereto. As set forth in paragraph 16 of this Agreement, the Court’s entry of a Bar Order is a condition precedent to the effectiveness of this Agreement.

3. **Settlement Disbursements.** The Receiver and the Investor Plaintiffs: (i) agree to the following provisions of paragraph 3 of this Agreement, and, (ii) along with the other parties, agree that the JJM Parties are not bound by any of the provisions of this paragraph 3, are not and will not be liable to make any of the payments provided for in paragraph 3, and in no way agree with or admit to any obligation, right or statement set forth in, or resulting from, the following provisions of paragraph 3.

(a) The Investor Plaintiffs agree to accept from the Receivership Estate payments based on administrative, or general unsecured claims in the Receivership Estate, or any other payments that the Receiver, in her sole discretion, deems appropriate, and which are approved by the Court, specifically the amounts identified in subparagraph (b) of this paragraph.

(b) In light of the Substantial Contribution provided by Investor Plaintiffs’ counsel to the Receivership Estate, the Receiver agrees to move the Court, as part of the relief requested in the Approval Motion, to order that Investor Plaintiffs’ counsel hold allowed administrative expense claims against the Receivership Estate for certain amounts of their reasonable attorney’s fees that the Receiver deems to have provided benefit to the Receivership Estate, and to authorize the Receiver to pay those amounts from the Receivership Estate, as follows—

(i) To Loftus & Eisenberg, Ltd. (on behalf of the L&E Investors, as their counsel), the sum of \$1,610,000;

- (ii) To Howard & Howard Attorneys, PLLC (on behalf of the Aronson Investors, as their counsel), the sum of \$450,000; and
- (iii) To Armstrong Teasdale LLP (successor by merger to Novack and Macey, LLP) (on behalf of the Nalpak Investors, as their counsel), the sum of \$500,000.

In addition, the payments referenced in this paragraph 3(b) shall not result in any Investor Plaintiff receiving any amount greater than their pro rata share of any distributions from the Receivership Estate as determined by and through the Receiver's claims process to be approved by separate order of the Court.

(c) The Receiver will pay (x) 22.22% of the amounts stated in subparagraph (b) within 10 calendar days of receiving the amount identified in paragraph 2(a); (y) 50.0% of the amounts stated in subparagraph (b) within 10 calendar days of receiving the amount identified in paragraph 2(b); and (c) the remaining percentage of the amounts stated in subparagraph (b) within 10 calendar days of receiving the amount identified in paragraph 2(c).

(d) This Agreement is not contingent on Court approval of the allowance or payment of the disbursements described in paragraph 3(b). Any amounts paid by the Receivership Estate to the Investor Plaintiffs or their counsel shall be made solely at the discretion of the Receiver and subject to Court approval. For the avoidance of doubt, the payment of such attorney fees described in paragraph 3(b) is a matter solely between the Receiver and the Investor Plaintiffs (or their counsel), subject to Court approval, and the JJM Parties have no obligation to pay such attorney fees described in paragraph 3(b).

4. **JJMT Capital (Assignment of Claims).**

(a) Except as provided in subparagraphs (b) and (c), JJMT hereby assigns to the Receiver any and all claims or causes of action that it owns, possesses or has the authority to assert against any person or entity arising out of or relating in any way to the 1inMM Ponzi Scheme, it being the Parties' intent that the Receiver will have the sole and exclusive right, but not the obligation, to prosecute, settle and release such claims or causes of action in the additional capacity as assignee of whatever rights, claims or defenses JJMT has under applicable law (collectively, the "Assigned Claims"); *provided, however*, neither JJMT nor any of the JJM Parties makes any representation or admission as to whether JJMT owns any rights giving rise to any Assigned Claims.

(b) The Assigned Claims exclude the following:

- (i) Any right to deduct the Settlement Payment;
- (ii) Any right to claim or benefit from Internal Revenue Code Section 1341 treatment with respect to the Settlement Payment;
- (iii) Any tax refund, tax claim, tax defense, tax right, tax item or tax attribute;
- (iv) Any right to file a tax return, claim or report for any of the JJM Parties;
- (v) Any tangible asset;
- (vi) Any attorney-client privilege, joint defense privilege, common interest privilege or attorney work product related privilege;
- (vii) Any intangible asset not explicitly assigned by this paragraph 4; or

- (viii) Any claim or right that it is necessary for JJMT to retain in order for it or any of the JJM Parties to deduct the Settlement Payment or benefit from Internal Revenue Code Section 1341 treatment with respect to the Settlement Payment.

(c) The Receiver agrees not to file or pursue any Assigned Claim against any person or entity on account of transfers from JJMT unless such person or entity or such transfers were directly associated with payments related to specific JJMT promissory notes on account of specific 1inMM transactions or unless such claim is against banks, financial institutions and/or law firms not included in the exclusions below. In addition, the Receiver shall not be entitled or authorized to file or pursue any Assigned Claims against the JJM Released Parties (as defined below) or against any of the following entities or their officers, directors, managers, members, partners, attorneys and accountants, which provided services to the JJM Parties : (1) Varnum LLP; (2) Graf Coyne, a legal professional association; (3) Winston & Strawn LLP (4) ArentFox Schiff; (5) Katten Muchin Rosenman LLP; (6) King & Spalding LLP; (7) Morrison & Foerster LLP; (8) Kopecky Schumacher Rosenburg LLC; (9) Cotsirilos, Tighe, Streicker, Poulos & Campbell, LLP; (10) BG Law LLP fka Brutzkus Gubner Rozansky Seror Weber LLP; (11) KSM Business Services, Inc.; (12) Mowery & Schoenfeld, LLC; (13) JJMT Management Company, LLC; (14) TransPerfect Legal Solutions; (15) ADP, Inc.; (16) MakeOffices LLC; (17) WeWork Companies, LLC; (18) Industrious; (19) Box, Inc./Box.com; (20) Expensify, Inc./Expensify.com; (21) Sling TV L.L.C., AirTV L.L.C., Dish Network Corporation and Sling.com; (22) Google LLC; (23) Taxbandits.com/SPAN Enterprises LLC; (24) The UPS Store, Inc.; (24) FedEx Corporation/FedEx; (25) the State of Illinois/the Illinois Department of Revenue; (26) the Illinois Secretary of State; (27) the United States of America/Internal Revenue Service; (28) Blue Cross Blue Shield Association / Blue Cross Blue Shield; (29) Stiebel Law Firm LLC; (30) Miller Johnson, Snell & Cumiskey, P.L.C., dba Miller Johnson, and (31) bank and maintenance service fees paid by JJMT to JP Morgan Chase & Co. / JP Morgan Chase Bank, N.A. / Chase, First Republic Bank, Bank of America, N.A / Bank of America Corporation / Bank of America and Wintrust Financial Corp. / Wintrust.

5. **Receiver's Waiver of Membership and Ownership Interests in the Windy City Entities; Receiver's Waiver of Claims Against the Windy City Entities.** The Receiver represents that the Receivership Estate includes and encompasses ZJH Enterprise, LLC as an affiliate of 1inMM and that the Receiver has the authorization and right to act on behalf of ZJH Enterprise, LLC. The Receiver and the Receivership Estate expressly waive the right to any and all membership and ownership interests, including but not limited to membership and ownership interests of ZJH Enterprise, LLC and/or the 1inMM Defendants in: (a) Windy City Investment Holdings, LLC; and (b) Windy City SPV1, LLC (collectively, the "Windy City Entities"). Any such membership and ownership interests owned or claimed to be owned by ZJH Enterprise, LLC, the 1inMM Defendants and/or the Receiver on their behalf shall be solely owned by the other remaining members and managers of the Windy City Entities. The Receiver shall not assert or initiate any lawsuit, claim, cause of action, counterclaim, cross-claim, adversarial proceeding or request for relief against or related to the Windy City Entities, including but not limited to for declaratory relief as to ownership or membership interests or other declaratory relief as to the Windy City Entities, avoidance or recovery of preferences/preferential transfers, avoidance or recovery of fraudulent transfers under the UVTA or other applicable statutes or case law, or for unjust enrichment or other common law or statutory claims or causes of action, and that the releases contained herein extend to release any actual or potential claims of the Receiver and the Receivership Estate against the Windy City Entities or against the members and managers of the Windy City Entities in relation to the Windy City Entities.

6. **Release of JJM Released Parties by Receiver; Covenant Not to Sue.** The Receiver, on behalf of herself, the Receivership Estate, respective successors and assigns, present and former agents, employees, officers, directors, partners, managers, members, parents, subsidiaries, affiliates, assigns, insurers, beneficiaries, principals, fiduciaries, heirs, executors, administrators, attorneys and legal representatives of the Receiver, the Receivership Estate, 1inMM and its subsidiaries and affiliates and their predecessor and successor entities, and anyone claiming through or under any of the foregoing, and each of them (collectively, the "Receiver Releasing Parties"), hereby forever releases, remises and discharges

JJM and their wives, children and respective current and former employers and their subsidiaries and affiliates, JJMT and its members, managers, officers, employees, and agents, JJMT Management Co., LLC, J.T.H.D. Investments, LLC, JJMT Group, LLC, Chi Town Capital, LLC, the Windy City Entities, GMCS Investments, LLC, the JTHD Trust U/A/D 7/1/2016 and its settlors, trustees and beneficiaries, the deAlteris Family Legacy Trust U/A/D 4/1/2021 and its settlors, trustees and beneficiaries, the Wunderlin Family Legacy Trust U/A/D 4/20/2021 and its settlors, trustees and beneficiaries, the Wunderlin 2019 Trust U/A/D 9/5/2019 and its settlors, trustees and beneficiaries, the MCS Trust I U/A/D 7/12/2016 and its settlors, trustees and beneficiaries, the Matthew Schweinzger Legacy Trust U/A/D 3/19/2021 and its settlors, trustees and beneficiaries, GLD Trust No. 1 and its settlors, trustees and beneficiaries, Mohawk RE Trust No. 1 and its settlors, trustees and beneficiaries, DJW Consulting, LLC, and each of their respective present and former agents, employees, principals, officers, directors, partners, managers, members, parents, subsidiaries, affiliates, assigns, insurers, beneficiaries, principals, fiduciaries, executors, administrators, attorneys in fact and in law and legal representatives, heirs, predecessor and successor entities, successors, assigns, agents, shareholders, parents, subsidiaries, affiliates, insurers and attorneys (collectively, the “JJM Released Parties”), from any and all manner of actions, actual or potential claims, counterclaims, actions, causes of action, lawsuits, proceedings, adjustments, offsets, contracts, obligations, liabilities, indemnities, controversies, rights, judgments, debts, damages, demands, penalties, costs, expenses, attorney’s fees and losses whatsoever, whether past, present, suspected or unsuspected, known or unknown, disclosed or concealed, asserted or unasserted, liquidated or unliquidated, contingent or absolute, accrued or unaccrued, matured or unmatured, insured or uninsured, joint or several, determined or undetermined, determinable or otherwise, whether in law, in admiralty, in bankruptcy, or in equity, and whether based on any federal law, state law, common law right of action or otherwise, from the beginning of time to the Effective Date of this Agreement arising out of or relating to the Disputes (collectively, the “Receiver Released Claims”), including but not limited to any action arising under California Civil Code § 3439, *et seq.* or based on statute(s) or common law, but specifically excluding any claims (a) arising out of or related to the enforcement of this Agreement and (b) against the entities identified in, and as specified in paragraph 14. The Receiver Releasing Parties hereby covenant not to sue any of the JJM Released Parties on account of any Receiver Released Claim. The Receiver is aware that she may later discover claims presently unknown or unsuspected, or facts in addition to or different from those which she now knows or believes to be true. Nevertheless, it is the Receiver’s intention to fully, finally and forever settle and release all such claims and related matters.

7. **Release of the Receivership Estate by the JJM Parties; Covenant Not to Sue.** The JJM Parties, on behalf of themselves and their respective successors and assigns, present and former agents, employees, officers, directors, partners, managers, members, parents, subsidiaries, affiliates, assigns, insurers, beneficiaries, principals, fiduciaries, heirs, executors, administrators, attorneys and legal representatives, and anyone claiming through or under any of the foregoing, and each of them (collectively, the “JJM Releasing Parties”), hereby forever release, remise and discharge the Receiver (in both her representative and individual capacities), the Receivership Estate as well as their agents, employees, officers, shareholders, managers, parents, subsidiaries, affiliates, insurers and attorneys (collectively, the “Receiver Released Parties”), from any and all manner of actions, actual or potential claims, counterclaims, actions, causes of action, lawsuits, proceedings, adjustments, offsets, contracts, obligations, liabilities, indemnities, controversies, rights, judgments, debts, damages, demands, penalties, costs, expenses, attorney’s fees and losses whatsoever, whether past, present, suspected or unsuspected, known or unknown, disclosed or concealed, asserted or unasserted, liquidated or unliquidated, contingent or absolute, accrued or unaccrued, matured or unmatured, insured or uninsured, joint or several, determined or undetermined, determinable or otherwise, whether in law, in admiralty, in bankruptcy, or in equity, and whether based on any federal law, state law, common law right of action or otherwise, from the beginning of time to the Effective Date of this Agreement arising out of or relating to the Disputes (collectively, the “JJM Released Claims”), but specifically excluding any claims arising out of or related to the enforcement of this Agreement. The JJM Releasing Parties hereby covenant not to sue any of the Receiver Released Parties on account of any JJM Released Claim. The JJM Parties are aware that they may later discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to

be true. Nevertheless, it is the JJM Parties' intention to fully, finally and forever settle and release all such claims and related matters.

8. **Release of JJM Released Parties by Investor Plaintiffs; Covenant Not to Sue.** The Investor Plaintiffs, on behalf of themselves and their respective successors and assigns, present and former agents, employees, officers, directors, partners, managers, members, parents, subsidiaries, affiliates, assigns, insurers, beneficiaries, principals, fiduciaries, heirs, executors, administrators, attorneys and legal representatives, and anyone claiming through or under any of the foregoing, and each of them (collectively, the "Investor Plaintiffs Releasing Parties"), hereby forever release, remise and discharge the JJM Released Parties from any and all manner of actions, actual or potential claims, counterclaims, actions, causes of action, lawsuits, proceedings, adjustments, offsets, contracts, obligations, liabilities, indemnities, controversies, rights, judgments, debts, damages, demands, penalties, costs, expenses, attorney's fees and losses whatsoever, whether past, present, suspected or unsuspected, known or unknown, disclosed or concealed, asserted or unasserted, liquidated or unliquidated, contingent or absolute, accrued or unaccrued, matured or unmatured, insured or uninsured, joint or several, determined or undetermined, determinable or otherwise, whether in law, in admiralty, in bankruptcy, or in equity, and whether based on any federal law, state law, common law right of action or otherwise, from the beginning of time to the Effective Date of this Agreement arising out of or relating to the Disputes (collectively, the "Investor Plaintiffs Released Claims"), but specifically excluding any claims arising out of or related to (a) the enforcement of this Agreement and (b) any Investor Plaintiff's employment by or investment in Acrisure, LLC and its subsidiaries and affiliates including but not limited to Acrisure Holdings, Inc. The Investor Plaintiffs Releasing Parties hereby covenant not to sue any of the JJM Released Parties on account of any Investor Plaintiffs Released Claims. The Investor Plaintiffs are aware that they may later discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true. Nevertheless, it is the Investor Plaintiffs' intention to fully, finally and forever settle and release all such claims and related matters.

9. **Trusts as Third-Party Beneficiaries.** The following trusts and persons are collectively referred to as the "JJM Trusts":

- (a) The JTHD Trust U/A/D 7/1/2016 and its settlors, trustees and beneficiaries;
- (b) The Wunderlin 2019 Trust U/A/D 9/5/2019 and its settlors, trustees and beneficiaries; and
- (c) The MCS Trust I U/A/D 7/12/2016 and its settlors, trustees and beneficiaries.

The Parties agree that the JJM Trusts are intended beneficiaries of all rights and benefits of the JJM Parties under this Agreement, including, but not limited to, the provisions of paragraphs 6, 8 and 11 of this Agreement and the provisions of Schedule 4 to this Agreement.

10. **Release of Investor Plaintiffs by JJM; Covenant Not to Sue.** The JJM Releasing Parties hereby forever release, remise and discharge the Investor Plaintiffs as well as their respective successors and assigns, present and former agents, employees, officers, directors, partners, managers, members, parents, subsidiaries, affiliates, assigns, insurers, beneficiaries, principals, fiduciaries, heirs, executors, administrators, attorneys and legal representatives, and anyone claiming through or under any of the foregoing, and each of them (collectively, the "Investor Plaintiffs Released Parties") from the JJM Released Claims, but specifically excluding any claims arising out of or related to this Agreement. The JJM Releasing Parties hereby covenant not to sue any of the Investor Plaintiffs Released Parties on account of any JJM Released Claim. The JJM Releasing Parties are aware that they may later discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true. Nevertheless, it is the JJM Releasing Parties' intention to fully, finally and forever settle and release all such claims and related matters.

11. **Section 1542 Waiver.** The Parties understand that the release of claims set forth in this Agreement covers claims within the areas specified which the Parties have knowledge of and those which they may not know about. The Parties acknowledge that they have read and understand Section 1542 of the California Civil Code (Cal. Civ. Code § 1542), which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The parties hereby expressly waive and relinquish all rights and benefits under California Civil Code Section 1542, including but not limited to with respect to the JJM Released Claims, the Receiver Released Claims and the Investor Plaintiffs Released Claims. Nothing contained in the releases herein shall negate or impair the Parties' right to enforce this Agreement or the Parties' claims against third parties that are not Parties to or covered by this Agreement.

12. **Effectiveness of Releases.** The releases exchanged in paragraphs 6 through 10 of this Agreement shall become effective only upon the Receiver's receipt of the full amount of the Settlement Payment from JJM as required by paragraph 2 of this Agreement.

13. **Section 1341 Claim.** The Parties agree as provided on Schedule 4 to the Agreement, the terms of which are hereby incorporated into and made part of this Agreement.

14. **Claims Excluded from the Receiver Released Claims.** The Receiver Released Claims exclude any claim or cause of action under the UVTA (or, to the extent applicable, the equivalent statute enacted by a different State) to avoid any transfer from any 1inMM Defendant or from JJMT to any of the following entities: Tosico, LLC; WFCO, LLC; BeverageCo, LLC; Farmco, LLC; Fishco, LLC; Priveinvest, LLC; Bakeco, LLC; Heartco, LLC; Heartco II, LLC; Mineralco Ventures, LLC; Miku Investment Holdings, LLC; RanchCo Investments, LLC; Launch Capital Group, LLC; and Breakout Interiors Funding, LLC. Other than as set forth in this paragraph, all actual or potential claims or causes of action are included in the Receiver Released Claims and are released and waived by the Receiver.

15. **Waiver of Claim and Distribution.** JJM hereby waive any right to file, and covenant not to file, a claim against the receivership estate in the Action (a "Proof of Claim"). If, notwithstanding the immediately previous sentence, JJM file a Proof of Claim in the Action, then the Receiver may apply to or move the Court to enter an order disallowing that Proof of Claim, and JJM hereby waive any notice or opportunity to be heard on any such application or motion. JJM acknowledge and agree that they are not entitled to any distributions from the Receivership Estate. However, nothing contained in this paragraph or this Agreement shall be deemed to waive (a) any or all claims that JJM have or may have against third parties that are not Parties to or covered by this Agreement or (b) the right of JJM to enforce the terms of this Agreement or to obtain any attorney's fees, costs or damages incurred in order to enforce the terms of this Agreement.

16. **Approval Order.**

(a) The validity of this Agreement, and the Parties' obligations hereunder, are subject to the condition precedent that the Court enter a final order approving this Agreement, including a Bar Order in the form of words appearing on, or substantially similar to, Schedule 3 hereto, and the time to file an appeal has passed (the "Approval Order").

(b) JJM and the Investor Plaintiffs will support the entry of the Approval Order and will, upon the Receiver's reasonable request, submit declarations in support of, and attend any hearing on,

the Approval Motion. If, however, the Court declines to approve the settlement documented by this Agreement or declines to enter a Bar Order in the form of words appearing on, or substantially similar to, Schedule 3 hereto, then this Agreement (including but not limited to the releases contained herein) will be void and of no further force or effect, and the Parties will retain all of their respective rights, claims and defenses as if this Agreement never existed.

(c) On or after the date that the Court enters the Approval Order (the “Approval Date”), and after the conditions set forth in paragraphs 16(a) and (b) have been met, the Receiver may provide to the other Parties to this Agreement any documents previously produced to the Receiver by the JJM Parties (collectively, “JJM Documents”) so long as the Approval Order (or a different order entered by the Court): (i) deems the term “Receiver Action” in Section III.N. of the *Protective Order as to Receiver Investigations and Related Civil Actions*, dated November 23, 2022 [ECF #151] (the “Protective Order”), to include the Parties to this Agreement to the extent they obtain any JJM Documents from the Receiver (“Receiving Parties”); (ii) deems any Receiving Parties to be “Parties” within the meaning of Section III.J. of the Protective Order; and (iii) requires any Receiving Parties to comply with the terms of the Protective Order. The Receiver and the Receiving Parties may use the JJM Documents only insofar as such use benefits the Receivership Estate in litigation and settlement discussions while maintaining compliance with the Protective Order, including requiring any other “Receiving Party” within the meaning of Section III.O. of the Protective Order to sign Exhibit A to the Protective Order. Such documents shall otherwise remain confidential pursuant to the Protective Order.

17. **Dismissal of the Investor Litigation.** No later than ten (10) calendar days after entry of the Approval Order, the Investor Plaintiffs shall cause the Investor Litigation (i.e., the civil actions listed on Schedule 2) to be dismissed with prejudice as to JJM, JJMT, the JTHD Trust U/A/D 7/1/2016 and its trustee, and the MCS Trust I U/A/D 7/12/2016 and its trustee with each party thereto to pay his, her or its own attorney’s fees, costs and expenses associated therewith.

18. **Non-Disparagement.** The Parties agree that neither the Parties nor anyone acting on their behalf will directly or indirectly make, issue, disseminate, post, publish or otherwise distribute – whether orally or in writing – any press release, social media post or public comment, statement, or remark that disparages, slanders, defames and/or denigrates any other Party or their reputation with respect to the 1inMM Ponzi Scheme, the 1inMM Defendants, JJMT, the Transfers, the Receiver Claims or the Investor Claims.

19. **Representations and Warranties.** The Parties warrant and represent to each other that: (a) each Party shall act in good faith seeking to accomplish the purpose of this Agreement; (b) each Party has not transferred, conveyed, released, pledged, assigned or made any other disposition of the claimed rights, interests, demands, claims, actions or causes of action, obligations, or any other matter covered by this Agreement; (c) each Party has not relied upon any promises, agreements, representations, statements or warranties in entering into this Agreement, except those that are expressly set forth herein; (d) each signatory to this Agreement warrants that he, she or it has the authority to execute this Agreement and to bind the persons or entities on behalf of which he, she or it signs, including, without limitation, each of the JJM Releasing Parties, the Receiver Releasing Parties and the Investor Plaintiffs Releasing Parties; and EACH PARTY ACKNOWLEDGES THAT HE, SHE OR IT HAS READ THIS AGREEMENT IN ITS ENTIRETY AND THAT HE, SHE OR IT UNDERSTANDS AND APPRECIATES ITS CONTENTS AND SIGNIFICANCE AND HEREBY EXECUTES THE SAME AND MAKES THE RELEASE PROVIDED FOR IN THIS AGREEMENT VOLUNTARILY AND OF HIS, HER OR ITS OWN FREE WILL, HAVING FIRST HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL.

20. **Approval by L&E Investors.** Loftus & Eisenberg, Ltd., as counsel for the L&E Investors, represents and warrants that all L&E Investors have approved the terms and conditions of this Agreement and have authorized a lawyer with Loftus & Eisenberg, Ltd. to execute and deliver this Agreement on their behalf. As evidence of this representation and warranty, Loftus & Eisenberg, Ltd. has provided a declaration, attached hereto as Schedule 5.

21. **Enforcement of this Agreement.** If any Party files an application or motion against another Party to enforce the terms of this Agreement, in addition to any other relief to which the successful or prevailing party or parties (the “Prevailing Party”) is entitled, the Prevailing Party is entitled to recover, and the non-Prevailing Party shall pay, all reasonable attorney’s fees of the Prevailing Party, court costs, and expenses (even if not recoverable by law as court costs) incurred in that action, and all appellate proceedings related thereto. The Parties also agree that any dispute arising out of or related to this Agreement shall be decided only by the Court by application or motion filed in the Action. In connection with any action or proceeding to enforce, interpret or construe any provision of this Agreement, the Parties hereby irrevocably and unconditionally (a) consent to the exercise of personal jurisdiction over her, him or it by the Court, and (b) waive any defense of improper venue or forum non conveniens. Furthermore, the Parties agree that the Court shall retain exclusive jurisdiction over all matters relating to this Agreement.

22. **Binding on Successors and Assigns.** This Agreement is and shall be binding upon: (a) the officers, directors, managers, members, partners, successors, heirs and assigns of each Party; (b) each past, present, direct or indirect parent, subsidiary, division or affiliated entity of each Party; and (c) each past or present agent, representative, member, manager, partner or shareholder of each Party.

23. **Fair Construction.** The Parties acknowledge that this Agreement is the manifestation of direct negotiation and represents the mutual and voluntary consent and understanding of each Party. As such, this Agreement shall be deemed to be the joint work product of the Parties without regard to the identity of the draftsman, and any rule of construction that a document shall be interpreted or construed against the drafting Party shall not be applicable.

24. **No Third-Party Beneficiaries.** Other than as specifically set forth in this Agreement, including but not limited to in the releases and Civil Code § 1542 waiver in Paragraphs 6, 8 and 11, as additionally identified in Paragraph 9, and as identified in the Bar Order, nothing in this Agreement benefits, or is intended to benefit, any third party or to confer on any third party the power to enforce, or claim direct benefits under, this Agreement.

25. **Fees and Costs.** Each of the Parties will bear her, his or its own costs and attorney’s fees incurred in connection with the Disputes, the mediation of the Disputes and with this Agreement.

26. **Entire Agreement.** This is an integrated Agreement. The terms of this Agreement are contractual and are not merely recitals. This Agreement constitutes the entire agreement and understanding between the Parties with regard to all matters addressed herein. This Agreement supersedes and replaces all prior commitments, negotiations, and all agreements proposed or otherwise, if any, whether written or oral, concerning the subject matters contained in this Agreement. The Parties expressly acknowledge that they have not relied on any prior or contemporaneous oral or written representations or statements by another Party in connection with the subject matter of this Agreement, except as expressly set forth herein.

27. **No Collateral Representations.** The consideration provided herein consists of the entire consideration to which the Parties will be entitled. The Parties acknowledge that none of the Parties, their agents, attorneys, insurers, representatives, successors, assigns, heirs, beneficiaries, executors, administrators, parents, subsidiaries, affiliates, current and former directors, officers, managers, members, employees and representatives (as appropriate for each Party) has made any promise, representation or warranty, expressed or implied, not expressly set forth in this Agreement, which has induced any Party to execute this Agreement.

28. **Exculpation.** The Receiver is executing this Agreement solely in her representative capacity as the Receiver appointed by the Court, and the Receiver’s liability hereunder shall be limited to the assets of the Receivership Estate. Neither JJM, JJMT nor any of the Investor Plaintiffs shall have or assert any claims against the Receiver personally.

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29. **Further Assurances.** The Parties will cooperate fully and execute all supplementary documents and take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

30. **Modification.** This Agreement may only be modified by a writing signed by all Parties and approved by the Court.

31. **Governing Law.** This Agreement and the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflict-of-laws rules thereof.

32. **Time.** Time is of the essence as to all dates and time periods specified in this Agreement. All time periods in this Agreement shall be computed pursuant to Federal Rule of Civil Procedure 6(a).

33. **Tax Implications.** Each Party shall be responsible for seeking their own individual tax advice and shall bear whatever tax liability she, he or it incurs in connection with the transactions contemplated by this Agreement. The Parties make no representations to each other about what tax consequences, if any, result from the transactions contemplated by this Agreement.

34. **Waiver.** No waiver of any right, obligation, or duty imposed by or under this Agreement shall be effective unless such waiver is reflected in a writing duly executed by all parties hereto. No waiver shall be effective based on conduct or oral statements. Waiver by any Party of any breach of this Agreement shall not be a waiver by such Party of any other breach of this Agreement.

35. **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one in the same instrument. Facsimile or PDF signatures shall be deemed to have the same effect as original signatures.

36. **Compromise.** The Parties agree and acknowledge that this Agreement is the result of an arms-length, good-faith compromise between or among the Parties and a decision to settle all claims and all disputes between or among some or all of them relating to the Disputes. The Parties expressly agree that this Agreement is a compromise of disputed claims for the purposes of avoiding the expense, delay, uncertainty and burden of litigation. The Settlement Payment is not a voluntary payment by any of the JJM Parties but is instead a required covenant and condition of this Agreement. Other than in an audit or proceedings involving any of the JJM Parties and the Internal Revenue Service (IRS), or any other federal, state or local agency, this Agreement is inadmissible in any proceeding for any purpose other than to obtain Court approval of the Agreement or to enforce or prove the terms of the Agreement. The Parties further agree that executing this Agreement and making the Settlement Payment is not, and shall never be construed as, an admission by JJM or JJMT of any fact, liability, wrongdoing or violation of any statute.

37. **Notices.** Any and all notices under this Agreement shall be in writing, and shall be transmitted to the Parties by both electronic mail and express overnight delivery service as follows:

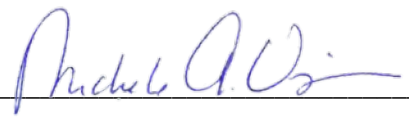
EXECUTION COPY

<p>If to the Receiver:</p> <p>KATTEN MUCHIN ROSENMAN LLP Terence G. Banich 525 W. Monroe St. Chicago, IL 60661 terence.banich@katten.com</p> <p>with a copy to:</p> <p>Michele Vives, Receiver 1620 Fifth Ave., Ste. 400 San Diego, CA 92101 mvives@douglaswilson.com</p>	<p>If to JJM:</p> <p>BG LAW LLP Corey R. Weber 21650 Oxnard St. Suite 500 Woodland Hills, CA 91367 cweber@bg.law</p> <p>COTSIRILOS, TIGHE, STREICKER, POULOS & CAMPBELL, LTD. Matthew S. Ryan 33 N. Dearborn, Suite 600 Chicago, IL 60602 mryan@cotsiriloslaw.com</p>
<p>If to the L&E Investors:</p> <p>LOFTUS & EISENBERG, LTD. Alexander N. Loftus David A. Eisenberg 161 N. Clark St., Ste. 1600 Chicago, IL 60601 alex@loftusandeisenberg.com david@loftusandeisenberg.com</p>	<p>If to JJMT:</p> <p>KOPECKY SCHUMACHER ROSENBERG LLC James L. Kopecky 120 N. LaSalle St., Ste. 2000 Chicago, IL 60602 jkopecky@ksrlaw.com</p>
<p>If to the Nalpak Investors:</p> <p>ARMSTRONG TEASDALE LLP Monte Mann Andrew D. Campbell 100 North Riverside Plaza Chicago, IL 60606 mmann@atllp.com acampbell@atllp.com</p>	<p>If to the Aronson Investors:</p> <p>HOWARD & HOWARD Scott C. Frost Daniel S. Rubin 200 S. Michigan Ave., Ste. 1100 Chicago, IL 60604 sfrost@howardandhoward.com drubin@howardandhoward.com</p>

[Signature block follows on next page]


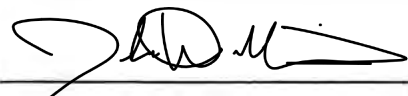

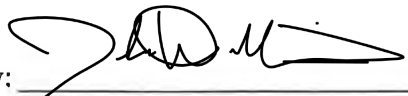
EXECUTION COPY

IN WITNESS WHEREOF, the Parties hereby execute this Agreement as of the Effective Date.

<p>MICHELE VIVES, Receiver, on behalf of herself and the Receiver Releasing Parties</p> 	<p>JOSEPH DEALTERIS, on behalf of himself and his respective JJM Releasing Parties</p>
<p>JACOB WUNDERLIN, on behalf of himself and his respective JJM Releasing Parties</p>	<p>MATTHEW SCHWEINZGER, on behalf of himself and his respective JJM Releasing Parties</p>
<p>JJMT CAPITAL, LLC</p> <p>By: _____</p> <p>Its: _____</p>	<p>THE L&E INVESTORS, on behalf of themselves and their respective Investor Plaintiffs Releasing Parties</p> <p>By: _____</p> <p>Its: _____</p>
<p>STEVEN ARONSON, on behalf of himself and his respective Investor Plaintiffs Releasing Parties</p>	<p>MATTHEW ARONSON, on behalf of himself and his respective Investor Plaintiffs Releasing Parties</p>
<p>NALPAK I LP, on behalf of itself and its respective Investor Plaintiffs Releasing Parties</p> <p>By: _____</p> <p>Its: _____</p>	<p>NALPAK II LP, on behalf of itself and its respective Investor Plaintiffs Releasing Parties</p> <p>By: _____</p> <p>Its: _____</p>
<p>NALPAK ENTERPRISES LLC, on behalf of itself and its respective Investor Plaintiffs Releasing Parties</p> <p>By: _____</p> <p>Its: _____</p>	<p>PETER XILAS, on behalf of himself and his respective Investor Plaintiffs Releasing Parties</p>


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<p>JJMT CAPITAL, LLC</p> <p>By:  _____</p> <p>Its: <u>Manager</u> _____</p>	<p>THE L&E INVESTORS, on behalf of themselves and their respective Investor Plaintiffs Releasing Parties</p> <p>By: _____</p> <p>Its: _____</p>
<p>STEVEN ARONSON, on behalf of himself and his respective Investor Plaintiffs Releasing Parties</p> <p>_____</p>	<p>MATTHEW ARONSON, on behalf of himself and his respective Investor Plaintiffs Releasing Parties</p> <p>_____</p>
<p>NALPAK I LP, on behalf of itself and its respective Investor Plaintiffs Releasing Parties</p> <p>By: _____</p> <p>Its: _____</p>	<p>NALPAK II LP, on behalf of itself and its respective Investor Plaintiffs Releasing Parties</p> <p>By: _____</p> <p>Its: _____</p>
<p>NALPAK ENTERPRISES LLC, on behalf of itself and its respective Investor Plaintiffs Releasing Parties</p> <p>By: _____</p> <p>Its: _____</p>	<p>PETER XILAS, on behalf of himself and his respective Investor Plaintiffs Releasing Parties</p> <p>_____</p>

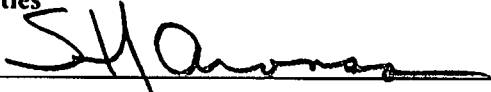
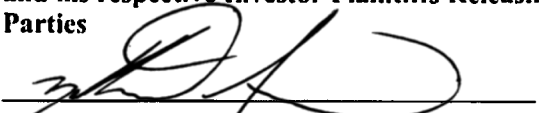
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<p>JJMT CAPITAL, LLC</p> <p>By: _____</p> <p>Its: _____</p>	<p>THE L&E INVESTORS, on behalf of themselves and their respective Investor Plaintiffs Releasing Parties</p> <p>By:  _____</p> <p>Its: Attorney _____</p>
<p>STEVEN ARONSON, on behalf of himself and his respective Investor Plaintiffs Releasing Parties</p> <p>_____</p>	<p>MATTHEW ARONSON, on behalf of himself and his respective Investor Plaintiffs Releasing Parties</p> <p>_____</p>
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<p>NALPAK ENTERPRISES LLC, on behalf of itself and its respective Investor Plaintiffs Releasing Parties</p> <p>By: _____</p> <p>Its: _____</p>	<p>PETER XILAS, on behalf of himself and his respective Investor Plaintiffs Releasing Parties</p> <p>_____</p>

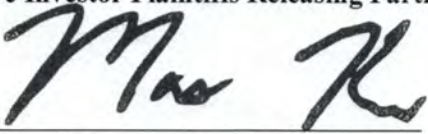
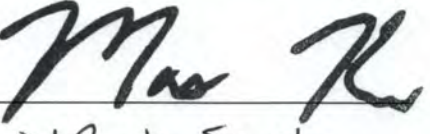
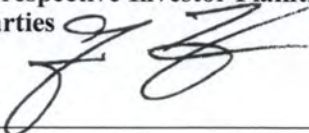

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<p>JJMT CAPITAL, LLC</p> <p>By: _____</p> <p>Its: _____</p>	<p>THE L&E INVESTORS, on behalf of themselves and their respective Investor Plaintiffs Releasing Parties</p> <p>By: _____</p> <p>Its: _____</p>
<p>STEVEN ARONSON, on behalf of himself and his respective Investor Plaintiffs Releasing Parties</p> <p>_____</p>	<p>MATTHEW ARONSON, on behalf of himself and his respective Investor Plaintiffs Releasing Parties</p> <p>_____</p>
<p>NALPAK I LP, on behalf of itself and its respective Investor Plaintiffs Releasing Parties</p> <p>By: <u></u></p> <p>Its: <u>VP + Secretary</u></p>	<p>NALPAK II LP, on behalf of itself and its respective Investor Plaintiffs Releasing Parties</p> <p>By: <u></u></p> <p>Its: <u>VP + Secretary</u></p>
<p>NALPAK ENTERPRISES LLC, on behalf of itself and its respective Investor Plaintiffs Releasing Parties</p> <p>By: <u></u></p> <p>Its: <u>MANAGER</u></p>	<p>PETER XILAS, on behalf of himself and his respective Investor Plaintiffs Releasing Parties</p> <p><u></u></p> <p>_____</p>

Schedule 1

List of L&E Investors

The L&E Investors consist of the following persons and entities:

1. AFA Marketing
2. Altgeld Groupo SPE I LLC
3. Arenson, Paul
4. Aronson, Mike
5. AVR Group, LLC
6. Balliet, Lori
7. Barry Rosenthal Revocable Trust
8. BCP, LLC
9. Benjamin Altman Trust
10. Bottini, Domenick
11. C421-Uyen Huynh
12. Carter, Jocelyn
13. Castanada, Robert
14. CD LLC
15. Codegard EV LLC
16. Cohen, Helane
17. Cowley, Shelby
18. Crandall, Bonnie
19. Cummings, Robert
20. DASH 401k Trust
21. Debra Durham
22. DiMattia, Mario
23. Dolan, Michael
24. Duffy, Joe
25. Dziurgot, Mike
26. Eggener, Brian
27. Ellustionist.com
28. Elwell, Andrew
29. Empirius
30. Fackelmayer, Harry
31. Fatemeh Pazouki
32. Fehling, Brian
33. Ferrari, Adam
34. Fiene, Christian
35. Forge Trust FBO Carl Hirsch IRA #552677
36. Forge Trust FBO Ilan Awerbuch IRA #491275
37. Frankin River, LLC
38. Friedman, Ari
39. Futoransky, Stas
40. Gardosik, Mary
41. Global Hospitality Concept
42. Gould, Michael
43. Greendot, LLC
44. Hawley, Scott
45. Heinecke, Eric
46. Hemenway, Linda
47. Henny, Robert
48. Hirsch Trust DTD 2/9/90
49. Holloway, Scott
50. Hutchinson, Gail
51. Huynh, Uyen
52. Awerbuch, Ilan
53. IRA Services Trust Company FBO Sadia Lone IRA 299509
54. IRVRU Company
55. Jahangirzadeh, Parviz
56. James D Lepak Management
57. JCE Solutions Inc.
58. Jerome Steven Franz
59. Jonker, Nicholas
60. Kalin, Carson
61. Karlander, Dan
62. Karmin, Jonathan
63. Keith, Jeff
64. Kiser, Erik
65. Kittle, Cody
66. Knoska, James
67. Lawrence Hopkins
68. Lawson, Brett
69. Lazarus, Jason
70. Leish, Nicholas
71. Lone Revocable Trust
72. Martin, Daniel
73. Mauri, Cody
74. McGrarvey, Patrick
75. MEK Investments
76. Miller, Kyle
77. Moller-Tank, Annake
78. Mouton, Brent
79. Nahid Tabai
80. Nanya Family Trust
81. Nanya, Joseph
82. NDTCO as Custodian FBO Sadia Lone HAS
83. Next Generation Investment Group
84. Pacht, Doug
85. Pak, Gene
86. Palace Court Capital, LLC
87. Peltz, Michael
88. Phillips, Chris
89. Phoenix Affordable Housing Authority, LLC

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- | | |
|--------------------------------------|-------------------------------------|
| 90. Prag, Stephen | 100. Stoutt, Windell and Karen |
| 91. Romanowski, Steve | 101. Sutter, Jacqueline |
| 92. Romanzi, Alexander | 102. The DASH Revocable Trust |
| 93. Ryan, Mathew | 103. Toner, John |
| 94. Ryley, James | 104. Treven Lingren |
| 95. Schaps, Jason | 105. Trident Asset Management, Inc. |
| 96. Schweet, Ryan | 106. Wahls, Aaron |
| 97. SerotLaz LLC | 107. Wong, Hong Ling |
| 98. Southwest Investments Funds, LLC | 108. Yong, Da (Robert) |
| 99. Steingraber, Jonathan | 109. Zaleski, Steven |

Schedule 2

List of Investor Litigation

The Investor Litigation consist of the following civil actions:

Case Name	Number	Court
<i>Beepa Cheek Paulo, LLC, et al. v. DeAlteris, et al.</i>	2021 L 4262	Circuit Court of Cook County (J. Esrig)
<i>Nalpak I LP, et al. v. Breakout SPE, LLC, et al.</i>	2020 L 4620	Circuit Court of Cook County (J. Roberts)
<i>Zaleski, et al. v. JJMT Capital, LLC</i>	2021 CH 1939	Circuit Court of Cook County (J. Meyerson)
<i>Aronson, et al. v. JJMT Capital, LLC</i>	21 C 1867	U.S. District Court for the Northern District of Illinois (J. Valderrama)
<i>Ferrari v. JJMT Capital, LLC</i>	2021 L 2462	Circuit Court of Cook County (J. Esrig)
<i>MEK Investments, LLC v. JJMT Capital, LLC</i>	2021 L 2954	Circuit Court of Cook County (J. Michael Otto)
<i>Fiene & Kiser v. Schweinzger</i>	21 C 5740	U.S. District Court for the Northern District of Illinois (J. Norgle)

Schedule 3

Form of Bar Order

The Receiver shall insert the following decretal language in the proposed Approval Order (which shall state that all capitalized terms not defined therein shall have the meanings ascribed to them in the Agreement and Approval Motion):

“The Court hereby PERMANENTLY BARS, RESTRAINS and ENJOINS all persons and entities (except any governmental unit, as that term is defined by 11 U.S.C. § 101(27)), as well as their respective heirs, successors, assigns, subsidiaries, parents, affiliates, officers, directors, shareholders, members, managers, partners, representatives, agents, employees and attorneys, from commencing or continuing any civil action, administrative proceeding, arbitration or other adversarial proceeding against Joseph deAlteris, Jacob Wunderlin or Matthew Schweinzger, as well as their wives, children and respective current and former employers, JJMT Capital, LLC, JJMT Management Co., LLC, J.T.H.D. Investments, LLC, JJMT Group, LLC, Chi Town Capital, LLC, the Windy City Entities, GMCS Investments, LLC, the JTHD Trust U/A/D 7/1/2016 and its settlors, trustees and beneficiaries, the deAlteris Family Legacy Trust U/A/D 4/1/2021 and its settlors, trustees and beneficiaries, the Wunderlin Family Legacy Trust U/A/D 4/20/2021 and its settlors, trustees and beneficiaries, the Wunderlin 2019 Trust U/A/D 9/5/2019 and its settlors, trustees and beneficiaries, the MCS Trust I U/A/D 7/12/2016 and its settlors, trustees and beneficiaries, the Matthew Schweinzger Legacy Trust U/A/D 3/19/2021 and its settlors, trustees and beneficiaries, GLD Trust No. 1 and its settlors, trustees and beneficiaries, Mohawk RE Trust No. 1 and its settlors, trustees and beneficiaries, and DJW Consulting, LLC, asserting any claim, cause of action, counter-claim, cross-claim or adversarial proceeding arising out of, in connection with or relating in any way to: (1) the 1inMM Ponzi Scheme; (2) acts or omissions relating to JJMT Capital, LLC, JJMT Group, LLC, J.T.H.D. Investments, LLC or Chi-Town Capital, LLC; (3) acts or omissions relating to the 1inMM Ponzi Scheme or the 1inMM Defendants; (4) acts or omissions relating to any investment, loan or transfer of money to JJMT Capital, LLC, JJMT Group, LLC, J.T.H.D. Investments, LLC, Chi-Town Capital, LLC or 1inMM Capital, LLC and/or repayment or lack of repayment by JJMT Capital, LLC, JJMT Group, LLC, J.T.H.D. Investments, LLC, Chi-Town Capital, LLC or the 1inMM Defendants (in whatever form and however denominated, a “1inMM Claim”). All 1inMM Claims are hereby channeled into the Receivership Estate’s claims distribution process that the Court will establish by separate order. *Provided, however*, this order does not bar, restrain or enjoin: (a) the Receiver from asserting a claim to avoid and recover transfers to any of the persons and entities listed in paragraph 14 of the Agreement (other than JJMT Capital, LLC); or (b) any Investor Plaintiff from asserting a claim arising out of his or her employment by or investment in Acrisure, LLC and its subsidiaries and affiliates including but not limited to Acrisure Holdings, Inc.”

Schedule 4

Section 1341 Claim

The Parties agree as follows:

(a) Nothing in this Agreement is to be construed as inconsistent with the right of any of the JJM Parties to take a deduction for any portion of the Settlement Payment or to benefit from the provisions of Section 1341 of the Internal Revenue Code with respect to any portion of the Settlement Payment;

(b) All other parties will reasonably cooperate with each and all of the JJM Parties with respect to such JJM Parties' deduction of all or part of the Settlement Payment or their claim(s) on their tax returns of the benefits of Section 1341 of the Internal Revenue Code with respect to all or part of the Settlement Payment;

(c) They are aware of no fact that indicates that the JJM Parties are not entitled to a deduction of the Settlement Payment or to the tax benefits provided by Section 1341 with respect to the Settlement Payment;

(d) They will take no position on a tax return or otherwise that is inconsistent with the JJM Parties' deduction of all or part of the Settlement Payment or to the tax benefits provided by Section 1341 with respect to all or part of the Settlement Payment. If any inconsistent position is taken, they agree that the provisions of this Schedule 4 of this Agreement will supersede and control such matters in resolving the potential conflict;

(e) Each time any of the JJM Parties received any amount related to the 1inMM Ponzi Scheme, it appeared that such party was entitled to such amount and had an unrestricted right to such amount;

(f) Amounts received in relation to the 1inMM Ponzi Scheme include, but are not limited to, any amounts received directly or indirectly from or through 1inMM Capital LLC, J.T.H.D. Investments LLC, Chi Town Capital LLC, JJMT Group LLC, JJMT Capital LLC, JJMT Capital LLC Profit Sharing 401 (k) Plan, or JJMT Management Co. LLC;

(g) Subsequent to the close of the last year in which any of the JJM Parties received any amount related to the 1inMM Ponzi Scheme, it was established that none of the JJM Parties had an unrestricted right to the amounts that are being returned as the Settlement Payment;

(h) No part of the Settlement Payment constitutes a payment of, or settlement payment with respect to: (i) a fine or penalty of any type under federal, state or local law, (ii) any actual or potential liability for a fine or penalty of any type under federal, state or local law, (iii) punitive damages or other similar form of assessment for any alleged offenses; (iv) any claim or action related to any alleged criminal violation by any of the JJM Parties of any federal or state antitrust law or any other federal, state or local law; or (v) any breach of public policy, any breach of contract, any tort, or any wrongdoing on the part of any of the JJM Parties;

(i) Immediately following the receipt of each payment from, or on behalf of, one of the JJM Parties (or one of the JJM Trusts) that is designated as a part of the Settlement Payment, the Receiver will provide a Letter of Acknowledgement to the payor (or to such person as the payor designates in writing) in the Form of Exhibit A attached to this Schedule;

(j) The JJM Parties are innocent victims of the 1inMM Ponzi Scheme, and not accomplices of, perpetrators of, or participants in the 1inMM Ponzi Scheme; and

EXECUTION COPY

(k) The JJM Parties' obligation to make the Settlement Payment arose out of the same circumstances, terms and conditions as their receipt of taxable income from, or related to, the 1inMM Ponzi Scheme.

Exhibit A to Schedule 4

LETTER OF ACKNOWLEDGEMENT

Date:

From: Michele Vives, as Federal Equity Receiver (the "Receiver") of 1inMM Capital LLC and Its Subsidiaries and Affiliates

To: _____, (the "Payor")

BACKGROUND

WHEREAS, on _____, 2023 the Receiver and the JJM Parties (as defined in the Settlement Agreement) entered into a Settlement Agreement and Mutual Release (a copy of which is attached to this letter) relating to the "1inMM Ponzi Scheme" (the "Settlement Agreement");

WHEREAS, the Settlement Agreement requires the JJM Parties to make certain payments that together constitute the "Settlement Payment."

WHEREAS, the Receiver is required to provide a certain letter of acknowledgement with respect to each such payment.

NOW, THEREFORE, the Receiver states the following:

A. On _____, 202_ I, Michele Vives, in my capacity as Receiver, received payment from _____ in the amount of \$_____, which payment constitutes part of the Settlement Payment required under the Settlement Agreement.

B. All statements in the Settlement Agreement relating to the Settlement Payment, including, but not limited to, the statements set forth on Schedule 4 of the Settlement Agreement, are to the best of my knowledge true and accurate with respect to the payment I am acknowledging with this letter.

Respectfully,

Michele Vives, Receiver

Schedule 5

Declaration of Alexander N. Loftus

I, Alexander N. Loftus, declare as follows:

1. I am over the age of eighteen years, am under no disability and am competent to testify to the matters set forth herein. Except as otherwise stated, all facts set forth in this declaration are based upon my personal knowledge and/or my review of documents. If called as a witness in this case, I could and would testify competently to the facts set forth in this declaration.

2. I submit this declaration pursuant to paragraph 16 of the *Settlement Agreement and Mutual Release*, dated June 29, 2023 (the "Agreement"), to which this declaration is attached as Schedule 5. Any capitalized terms not defined herein have the meanings ascribed to them in the Agreement.

3. I am an attorney at law licensed to practice in the State of Illinois and am the managing partner of Loftus & Eisenberg, Ltd. ("L&E").

4. I represent the L&E Investors listed on Schedule 1 to the Agreement in certain of the Investor Litigation matters listed on Schedule 2 to the Agreement.

5. All L&E Investors have approved the terms and conditions of this Agreement, including the payments of attorney's fees described in paragraph 3, and have authorized L&E to execute and deliver this Agreement on their behalf.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 29, 2023
in Chicago, Illinois


Alexander N. Loftus

1 Terence G. Banich (SBN 212173)
terence.banich@katten.com
2 Allison E. Yager (*pro hac vice*)
allison.yager@katten.com
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Facsimile: (312) 902-1061

5
6 *Attorneys for the Receiver*
Michele Vives

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

11 **SECURITIES AND EXCHANGE**
12 **COMMISSION,**

13 **Plaintiff,**

14 **v.**

15 **ZACHARY J. HORWITZ; and 1inMM**
16 **CAPITAL, LLC,**

17 **Defendants.**

Case No. 2:21-cv-02927-CAS-PD

DECLARATION OF MICHELE VIVES

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

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1 I, Michele Vives, declare as follows:

2 1. I am over the age of eighteen years, am under no disability and am
3 competent to testify to the matters set forth herein. Except as otherwise stated, all
4 facts set forth in this declaration are based upon my personal knowledge and/or my
5 review of documents. If called as a witness in this case, I could and would testify
6 competently to the facts set forth in this declaration.

7 2. I submit this declaration in support of the *Motion of Receiver Michele*
8 *Vives for Order Approving Settlement with Joseph deAlteris, Jacob Wunderlin,*
9 *Matthew Schweinzger and JJMT Capital, LLC, and for Related Relief*, dated July
10 28, 2023 (the “Motion”). Any capitalized terms not defined herein have the
11 meanings ascribed to them in the Motion.

12 3. I am the President of the Douglas Wilson Companies (“DWC”), an
13 advisory firm that assists companies and entities of all kinds, from financial
14 institutions to operating companies, law firms, state and federal courts,
15 corporations, partnerships, pension funds, REITs and more. DWC has been
16 appointed as receiver or otherwise involved in hundreds of receiver cases over the
17 last 30 years, and has served in other fiduciary roles, such as chapter 11 trustee,
18 chapter 11 examiner, special master, liquidating trustee, assignee for the benefit of
19 creditors and chief restructuring officer.

20 **A. The Receiver; investigation of transfers**

21 4. On January 14, 2022, this Court entered the *Order on Appointment of*
22 *a Permanent Receiver* [ECF #70] (the “Receiver Order”), which appointed me to
23 be the federal equity receiver of defendant 1inMM Capital, LLC (“1inMM”) as
24 well as assets that are attributable to investor or client funds or that were
25 fraudulently transferred by 1inMM or Zachary J. Horwitz (“Horwitz,” and together
26 with 1inMM, “Defendants”) (collectively, the “Estate”).

27 5. The Receiver Order confers on me “full powers of an equity receiver,”
28 and specifically authorizes and directs me to, among other things: take custody and

1 control over all assets of 1inMM and its subsidiaries and affiliates; conduct an
2 investigation and discovery as may be necessary to locate and account for the
3 assets of or managed by 1inMM and its subsidiaries and affiliates; and investigate
4 and, where appropriate, prosecute claims and causes of action that the Receiver
5 may possess.

6 **B. The Investor Actions; the Mediation**

7 6. Pursuant to the authority conferred on me by the Receiver Order, and
8 as I have discussed in my previous quarterly reports, my staff and I have devoted a
9 great deal of time and effort to conducting a forensic accounting analysis of the
10 financial transactions involving 1inMM, Horwitz and their respective insiders and
11 affiliates. This project is critical to determine who may be liable to the Estate for
12 receiving fraudulent transfers, to identify previously unknown assets and to obtain
13 information about 1inMM's investors.

14 7. I have determined that 1inMM did not just transfer funds to investors
15 and their feeder funds; 1inMM also transferred very large sums to various persons
16 and entities who do not appear to have been investors and/or lenders in the Ponzi
17 Scheme. I am investigating both types of transfers. In doing so, I will be able to
18 identify potential fraudulent transfers to both investors and non-investors alike,
19 thereby increasing the pool of potential recovery to the Estate. Settlements that I
20 reach with such transferees are likely to be very significant Estate assets.

21 8. My professional staff and I have, therefore, devoted considerable time
22 and attention to reviewing and analyzing tens of thousands of banking transactions
23 and associated records associated with 1inMM and Horwitz to identify those
24 persons and entities who may have received transfers that are subject to avoidance
25 and recovery.

26 9. I determined, among other things, that 1inMM, through Horwitz,
27 raised investor funds mostly using certain entities that pooled large amounts of
28 money from many individual investors or lenders (collectively referred to herein as

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1 “investors”) for upstream loans to, or investments in, 1inMM (collectively referred
2 to herein as “investments”). The largest of these entities was JJMT Capital, LLC
3 (“JJMT”), of which Joseph deAlteris, Jacob Wunderlin and Matthew Schweinzger
4 (collectively, “JJM,” and with JJMT, “JJM Parties”) are members.

5 10. Several investors commenced lawsuits alleging claims associated with
6 Defendants’ scheme, including against the JJM Parties (the “Investor Actions”).

7 11. The plaintiffs in the Investor Actions (collectively, the “Investor
8 Plaintiffs”) claimed millions of dollars generally asserting that the JJM Parties and
9 other defendants are liable to them in connection with the Ponzi Scheme, loans
10 from the Investor Plaintiffs to JJMT and loans from JJMT to 1inMM (collectively,
11 the “Investor Claims”). The JJM Parties asserted defenses that could have resulted
12 in the Investor Plaintiffs taking nothing.

13 12. Counsel for the Investor Plaintiffs worked with me because I had
14 claims against the same defendants, while the defendants expressed interest in
15 settling my potential claims against them, but only if I could concurrently resolve
16 or eliminate the Investor Actions.

17 13. After months of negotiations, those litigants and I agreed to mediate,
18 selecting retired U.S. Magistrate Judge Sidney I. Schenkier as mediator.

19 **C. The Transfers**

20 14. As part of the above events, the JJM Parties and their counsel, Corey
21 Weber of BG Law LLP, Matthew S. Ryan of Cotsirilos, Tighe, Streicker, Poulous
22 & Campbell, Ltd., and James Kopecky of Kopecky Schumacher Rosenberg LLC,
23 worked cooperatively with me. The JJM Parties produced a large volume of
24 financial documents and related information.

25 15. I determined that JJM were each net winners of the Ponzi Scheme in
26 the following amounts: \$8,309,096 (deAlteris); \$9,349,741 (Wunderlin); and
27 \$6,625,309 (Schweinzger) (collectively, the “Transfers”).
28

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1 16. I asserted that I may avoid and recover the Transfers as actual
2 fraudulent transfers pursuant to section 3439.04(a)(1) of the California Uniform
3 Voidable Transactions Act, Cal. Civ. Code § 3439 *et seq.* (“UVTA”) (the
4 “Receiver Claims”). As I contended, 1inMM and Horwitz made the Transfers with
5 the actual intent to hinder, delay, or defraud their creditors, as Horwitz pled guilty
6 and admitted that he used 1inMM to operate a Ponzi scheme, which conclusively
7 establishes intent for purposes of a UVTA actual fraudulent transfer claim.

8 17. I argued that I could recover the Transfers from JJM under UVTA §
9 3439.08(b)(1)(A) as their first transferee, because even though 1inMM made many
10 of the Transfers to them indirectly through JJMT, JJMT was a mere conduit that
11 had no dominion over the money 1inMM transferred to it.

12 **D. The Settlement**

13 18. Following the mediation on January 30-31, 2023, the parties reached a
14 settlement (“Settlement”) whereby the JJM Parties agreed to pay \$9,000,000 to the
15 Estate (“Settlement Payment”)—consisting of three payments over a two-year
16 span—to resolve the Investor Claims and the Receiver Claims (collectively,
17 “Claims”) in exchange for mutual general releases and entry of an order (“Bar
18 Order”) permanently barring and enjoining all persons and non-governmental units
19 from suing the JJM Parties on any claim arising out of or relating to the Ponzi
20 Scheme. The Settlement is documented in the *Settlement Agreement and Mutual*
21 *Release* (the “Settlement Agreement”), a true and correct copy of which is attached
22 to the Motion as Exhibit 1.

23 19. The parties to the Settlement Agreement are myself, the JJM Parties
24 and all Investor Plaintiffs who have sued or threatened to sue the JJM Parties: (a)
25 109 persons/entities represented by Loftus & Eisenberg, Ltd. who invested in
26 JJMT, listed on Schedule 1 to the Settlement Agreement (collectively, the “L&E
27 Investors”); (b) Nalpak I LP, Nalpak II LP, Nalpak Enterprises LLC and Peter
28

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1 Xilas (collectively, the “Nalpak Investors”); and (c) Steven Aronson and Matthew
2 Aronson (together, the “Aronson Investors”).

3 20. As part of the Settlement, JJMT agreed to assign to me all claims it
4 owns or has the authority to assert against anyone arising out of or relating in any
5 way to the Ponzi Scheme (the “Assigned Claims”), with certain exclusions.

6 21. Additionally, because the Investor Plaintiffs agreed that the entire
7 Settlement Payment should be paid into the Estate for the benefit of all creditors, I
8 have concluded that the Investor Plaintiffs’ counsel created a common fund from
9 which a negotiated amount of their fees—totaling \$2,560,000—should be paid.
10 Finally, the validity of the Settlement Agreement is subject to the condition
11 precedent that the Court approves it, including the Bar Order.

12 22. I believe the Settlement is in the best interest of the Estate and its
13 creditors—the net losing investors in the Ponzi Scheme. The Settlement Payment
14 constitutes a substantial recovery for the Estate without the expense and risk of
15 litigation, and the Settlement represents an equitable, good-faith resolution of all
16 Claims.

17 23. While the Investor Plaintiffs and I were confident in our respective
18 claims, the risk of an adverse result always loomed. JJM asserted multiple
19 meaningful defenses that, if successful, may have resulted in the Estate and the
20 Investor Plaintiffs recovering nothing. The Settlement thus avoids protracted and
21 expensive litigation, thereby avoiding litigation risk and conserving Estate
22 resources.

23 24. The Settlement Payment—37% of the total Transfers—exceeds what
24 the JJM Parties would have paid to resolve the Receiver Claims alone without a
25 bar order. The JJM Parties simultaneously resolved the Investor Claims, so the
26 efforts of Investor Plaintiffs’ counsel undoubtedly enhanced the final settlement
27 value, all of which is flowing to the Estate. And because the Investor Plaintiffs
28 agreed that the JJM Parties remit the entirety of the Settlement Payment to the

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1 Estate, the Investor Plaintiffs’ counsel helped create a common fund from which a
2 portion of their attorney’s fees may be paid.

3 25. Moreover, the Settlement resolves a particularly complex multiparty
4 dispute. The Investor Claims and Receiver Claims arise from a common nucleus of
5 operative facts—the Ponzi Scheme—but the litigants’ objectives were not
6 necessarily the same. Specifically, the Investor Plaintiffs pursued the JJM Parties
7 to remedy their own personal damages, while I focused on benefitting the Estate as
8 a whole. Those goals often conflicted, resulting in disagreements between the
9 Investor Plaintiffs and me about settlement terms and how to proceed.

10 26. The Investor Claims are, nonetheless, derivative of the Receiver
11 Claims and, to the extent that I was to litigate the Receiver Claims and obtain a
12 favorable judgment, compete with me for JJM’s assets. The Investor Plaintiffs and
13 I are pursuing the same people arising out of the same transactions and occurrences
14 involving the same actors. As such, the Investor Actions affected the Estate’s
15 assets and ultimate recoveries; every dollar the Investor Plaintiffs managed to
16 recover from JJM was arguably a dollar I could not recover from them.

17 27. JJM wanted to achieve finality with a settlement, which they really
18 could only accomplish through a deal with me. At the same time, I did not think it
19 advisable or practical to exclude the Investor Plaintiffs from those discussions.
20 Because the Investor Plaintiffs collectively constitute a significant percentage of
21 the known population of net losing investors, I considered them to function
22 effectively as an ad hoc creditors committee.

23 28. JJM, moreover, made clear that any settlement with me must include a
24 bar order enjoining any further creditor suits against them arising from or relating
25 to the Ponzi Scheme, so I continually focused on achieving a settlement that met
26 the legal requirements for a bar order. These factors, among others, made the
27 litigation complex and particularly difficult to settle on a global basis.
28

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E. The Settlement is fair, equitable and in the best interests of the Estate.

1. Probability of success

29. I respectfully submit that the Settlement easily satisfies all four *A&C Properties* factors.

30. In light of the conflicting arguments on the issue of the potential expiration of the UVTA limitations period and their potential impact on JJM’s exposure on the Receiver Claims, I considered their limitations period defenses to be a significant litigation risk factor.

31. The mere conduit issue also presented an important litigation risk for me, as the vast majority of the Transfers flowed from 1inMM through JJMT to JJM. Rather than risk an adverse ruling on this issue, I decided it was preferable to settle.

32. In the event of further litigation, the Court may have sustained some of JJM’s defenses, which would be an outcome worse than the Settlement. Rather than take that risk, I compromised.

33. For the reasons discussed above and in the Motion—informed by Judge Schenkier’s reactions to the arguments during the parties’ two-day mediation—I concluded that the Settlement appropriately takes into account the mixed probability of success on the merits.

2. Collection difficulties

34. I understand that JJM, collectively and/or individually, do not have assets that would be sufficient to satisfy a judgment avoiding all of the Transfers, let alone that *plus* an adverse judgment entered in favor of the Investor Plaintiffs.

3. Complexity/expense

35. It would be complex, expensive and time-consuming for the parties to litigate the Claims.

36. Given the evidence and defense arguments, I believe such litigation against JJM would be expensive and time-consuming, as it would likely require

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1 extensive discovery, retention of experts and numerous witnesses. A trial and
2 appeal would likely take at least two years to complete and cost the estate several
3 hundred thousand dollars in fees and expenses.

4 **F. The Court should approve the Bar Order**

5 37. For the reasons discussed in the Motion, I respectfully submit that the
6 Bar Order is fair, equitable and in the best interests of the Estate.

7 38. Absent a settlement, the Investor Plaintiffs and I would be left to
8 litigate claims and, to the extent we obtained favorable judgments, compete for
9 JJM’s assets, a result that would have frustrated my pro rata distribution to
10 investors.

11 39. Because JJMT agreed to assign the Assigned Claims to me, I can step
12 into JJMT’s shoes and assert certain claims that I may not otherwise have been
13 able to pursue.

14 40. The Bar Order is necessary to the Settlement because JJM would not
15 have settled with me without a bar order enjoining all future claims against them
16 arising out of or relating to the Ponzi Scheme and/or JJMT.

17 **G. The Court should approve the Administrative Claims**

18 41. The Investor Plaintiffs’ agreement that JJM pay the entire amount of
19 the Settlement Payment into the Estate for the benefit of all creditors will result in
20 the Estate having more cash for administration and creditor claims. In recognition
21 of that, I agreed that the Investor Plaintiffs’ counsel should hold allowed
22 administrative claims in certain negotiated amounts in exchange for their
23 contributions to the Estate (the “Administrative Claims”): \$1,610,000 for the L&E
24 Investors’ counsel; \$450,000 for the Aronson Investors’ counsel; and \$500,000 for
25 the Nalpak Investors’ counsel.

26 42. It is my opinion that Investor Plaintiffs’ counsel—who doggedly
27 pursued the Investor Actions—played an essential role in increasing the amount
28

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1 that JJM agreed to pay in settlement, all of which cash is coming into the Estate for
2 eventual distribution to the net losing investors.

3 43. The Investor Plaintiffs' agreement that JJM make the Settlement
4 Payment to the Estate for the benefit of all creditors was, from my perspective, the
5 lynchpin of this three-way compromise. It undeniably increased the Estate's cash
6 assets available for distribution to all creditors.

7 44. I respectfully submit that the Investor Plaintiffs' counsel helped
8 increase a common fund in the Estate.

9 45. Finding a way to compensate the Investor Plaintiffs' counsel for their
10 efforts in augmenting the Estate was a hard-fought material term between myself
11 and the Investor Plaintiffs as part of the overall Settlement. I agreed to the
12 Administrative Claim amounts in the exercise of my business judgment, which I
13 felt was necessary to achieve a global settlement.

14 **J. Notice to creditors**

15 46. I will give notice of the Motion by: (a) CM/ECF to parties/interested
16 parties; (b) email to all known creditors of the Estate (or, if represented, their
17 counsel) with a link to the Motion and supporting exhibits; (c) posting it on the
18 Website; and (d) publishing a notice once in the *Wall Street Journal* and once in
19 the *Los Angeles Times* in the form annexed to the Motion as **Exhibit 4** (the
20 "Published Notice").

21 47. These communications will include instructions on how to advise me
22 of any objections to the Motion by no later than seven days before the hearing. I
23 will thereafter file a status report.

24 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the
25 laws of the United States of America that the foregoing is true and correct.

26 Executed on July 31, 2023
27 in San Diego, California

/s/*Michele Vives*
Michele Vives

1 Terence G. Banich (SBN 212173)
terence.banich@katten.com
2 Allison E. Yager (*pro hac vice*)
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5
6 *Attorneys for the Receiver*
Michele Vives

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-PD

**DECLARATION OF ALEXANDER
LOFTUS**

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

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1 I, Alexander Loftus, declare as follows:
2 1. I am over the age of eighteen years, am under no disability and am
3 competent to testify to the matters set forth herein. Except as otherwise stated, all
4 facts set forth in this declaration are based upon my personal knowledge and/or my
5 review of documents. If called as a witness in this case, I could and would testify
6 competently to the facts set forth in this declaration.
7 2. I submit this declaration in support of the *Motion of Receiver Michele*
8 *Vives for Order Approving Settlement with Joseph Dealeris, Jacob Wunderlin,*
9 *Matthew Schweinzger and JJMT Capital, LLC*, dated July 28, 2023 (the “Motion”).
10 Any capitalized terms not defined herein have the meanings ascribed to them in the
11 Motion.
12 3. My firm Loftus & Eisenberg, Ltd. (“L & E”) represents 42 investors
13 who have promissory notes with JJMT Capital, LLC (“JJMT”) and 109 investors
14 total in the Horwitz scheme.
15 4. Our clients who invested in JJMT lost over \$30,000,000 and account
16 for the majority of net losses suffered by JJMT investors.
17 5. L & E was engaged by its 42 clients on a 20% contingent fee to pursue
18 recovery from JJMT and its members.
19 6. Our litigation pursued a multi-front approach commencing in March
20 2021 including: two Cook County breach of contract actions (Nos. 2021 L 2462 and
21 2021 L 2954), a class action filed against JJMT in the Circuit Court of Cook County
22 (No. 2021CH01939), an individual action against Matthew Schweinzger only in the
23 Northern District of Illinois (No. 21-CV-5740), and an action against each of the
24 four current and former JJMT members pending in the Circuit Court of Cook County
25 (No. 2021L004262).
26 7. The JJMT cases were staffed with four attorneys from my firm with
27 collectively 88 years of experience handling class actions and securities litigation.
28

1 8. The L & E claims sounded in breach of contract, breach of fiduciary
2 duty, negligent misrepresentation and violations of the Illinois Consumer Fraud and
3 Deceptive Business Practices Act and the Illinois Securities Law of 1953, 815 ILCS
4 5/12(g) (hereinafter, “Investor Claims”).

5 9. The strategy was designed to maximize JJMT and its current members’
6 risk on negligence-based theories and present claims on behalf of a large group in
7 various ways to preempt class-based defenses and make protracted litigation too
8 burdensome for Defendant’s to bear thus expediting resolution.

9 10. Once the risk was established with the initial filings, and successes in
10 motion practice, L & E was cognizant of the limited resources available for defense
11 and focused its efforts on exploiting the risk in ways that did not immediately
12 increase defense cost and working on a resolution.

13 11. L & E claimed that some of the Investor Claims created personal
14 liability for JJMT’s current members that is generally not dischargeable in
15 bankruptcy.

16 12. L & E argued JJMT’s current members total potential liability from the
17 Investor Claims alleging joint and several liability with the other JJMT members
18 was over \$100,000,000.

19 13. Presenting the Investor Claims that included joint and several liability,
20 potentially punitive damages and non-dischargeable liability with nine-figure risk
21 and the Receiver’s claims presenting seven-figure risk together enabled a total
22 resolution for much more than negotiating a resolution of the Receiver’s claims
23 alone.

24 14. As our litigation progressed, the Receiver was appointed, and JJMT’s
25 current members sought a resolution with the Receiver that did not account for the
26 Investor Claims but required a Bar Order.

27 15. Meanwhile, two other firms brought cases on behalf of three individual
28 investors against JJMT and its members.

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1 16. The litigation pursued by L & E and the two other investor plaintiffs
2 represented by experienced counsel could have drained nearly all of JJMT’s current
3 members’ resources if they were to litigate to judgment on multiple fronts.

4 17. While the net gains earned by the JJMT’s current members were
5 significant, this money was reinvested in other high risk and illiquid investments, so
6 the gains are likely not available for collection from them.

7 18. This situation of three law firms representing 45 investors and a
8 Receiver pursuing the same individuals with limited assets could have been a
9 disaster and spun into years of litigation and no recovery at all for investors.

10 19. Rather than spin into a morass, the Receiver thoughtfully came to
11 Chicago and met with of the counsel involved in person (ECF #93) and the
12 cooperation ensued that summer in pursuit of the common goal of maximizing
13 investor recovery.

14 20. The Receiver made a smart business decision to limit expense and
15 utilize the Investor Claims and the investor’s contingent-fee counsel as a tool to
16 maximize value rather than waste resources taking an adverse position to the vast
17 majority of net losers.

18 21. L & E agreed to pause its litigation until the Receiver had evaluated her
19 claims against JJMT and its members and coordinated with the other Plaintiffs’
20 counsel to agree to stay their cases as well.

21 22. L & E counseled its 42 sophisticated clients to agree to allowing the
22 proceeds of any settlement with all JJMT parties to be paid through the Receivership
23 and slowing the litigation to allow the newly appointed Receiver to catch up and
24 pursue the common goal of maximum recovery and agreed to pool the Recovery for
25 payment through the receivership.

26 23. L & E’s organization and management of 42 investor clients
27 significantly contributed to the relatively prompt resolution of a very messy situation
28

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1 with no adversary action or fees incurred between any investor and the Receiver or
2 between investors.

3 24. L & E attorneys spent countless hours working with its very
4 sophisticated clients and sometimes their personal counsel, spouses, and
5 beneficiaries to secure their assent to the arrangement with the Receiver to achieve
6 an efficient resolution without any discord among the 45 investor participants in this
7 complex action.

8 25. At the same time as it worked with its 42 clients, L & E coordinated
9 with the other Plaintiffs' counsel to make peace and share information.

10 26. L & E leveraged its mass of clients to gather evidence to strengthen the
11 claims with facts not otherwise available to the other parties to the litigation.

12 27. This coordination and information sharing culminated in a mediation
13 process with Hon. Sidney Schenkier, Ret. wherein the high risk, high reward,
14 Investor Claims were thoroughly presented and argued utilizing evidence marshalled
15 from extensive informal discovery and formal discovery in related matters.

16 28. Rather than allow the various Plaintiffs' counsel and the Receiver to be
17 divided by defense counsel, L & E pulled everyone together, in part by making
18 significant sacrifices on fees, in order to negotiate in unified demands based on both
19 the extraordinary risk presented by the investor claims and solid but much smaller
20 fraudulent transfer claims.

21 29. The result of bringing the claims together into one resolution yielded
22 an amount paid to the Receivership that was significantly greater than any amount
23 offered to the Receiver alone with significantly reduced litigation expense.

24 30. As part of the peacemaking efforts, L & E voluntarily reduced its
25 contract fee, which was already heavily discounted from a customary 40% of 33%
26 to 20%, and volunteered additional discounts to accommodate other counsel
27 resulting in a fees of only 17.88% of the total recovery with no costs reimbursed.
28

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1 This discount on fees and expenses totaled an over \$200,000 discount off what the
2 contracts with the 42 investors allowed.

3 31. L & E advanced a large portion of the mediation expense and engaged
4 Certified Fraud Examiners at its own expense to explore the available assets of
5 Defendants. L & E paid experts, mediators, and court filing fees over \$35,000 in
6 pursuit of the claims against Crookston.

7 32. L & E’s thorough investigation of JJMT and its members’ investments
8 was key to achieving resolution. Our clients were invested in some of the same start-
9 ups that JJMT members invested in, and we were able to carefully evaluate the
10 likelihood of the JJMT members’ investment paying off and when.

11 33. L & E’s sophisticated clients with direct knowledge of the investments,
12 aggressive investigation, retained experts, and business valuation experienced made
13 is possible to evaluate and then recommend this settlement to the vast majority of
14 the claimants in the Receivership.

15 34. While the Investor Claims presented tremendous upside, very little of
16 the nine-figure upside could have been collected if the cases were litigated to
17 judgment. L & E thoughtfully evaluated the current JJMT members’ ability to pay
18 and secured the assent of its 42 clients, the vast majority of the possible claimants,
19 in order to secure a resolution.

20 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
21 foregoing is true and correct.

22 Executed on July 31, 2023
23 in Chicago, Illinois

/s/ Alexander Loftus
Alexander Loftus

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Published Notice

To be published once in the *Wall Street Journal* and once in the *Los Angeles Times*:

PLEASE TAKE NOTICE THAT Michele Vives, the Court-appointed Receiver (“Receiver”) for 1inMM Capital, LLC (“1inMM”) as well as assets that are attributable to investor or client funds or that were fraudulently transferred by 1inMM or Zachary J. Horwitz (“Horwitz”), and certain plaintiffs who invested in 1inMM, have reached an agreement to settle and release all claims asserted or that could have been asserted against JJMT Capital, LLC, JJMT Group, LLC, J.T.H.D. Investments, LLC or Chi-Town Capital, LLC (collectively, “JJMT”), Joseph deAlteris, Jacob Wunderlin and Matthew Schweinzger (collectively, “JJM Parties”), as well as their wives, children, respective current and former employers and certain other entities and trusts identified in the Settlement Agreement (collectively, “Related Parties”), as to any acts or omissions arising out of, in connection with or relating in any way to: (1) the 1inMM Ponzi Scheme; (2) the 1inMM Defendants; (3) JJMT; (4) any investment, loan or transfer of money to JJMT and/or repayment or lack of repayment by JJMT or the 1inMM Defendants (“Settlement”). As part of the Settlement, the Receiver has asked the Court to permanently bar and enjoin any person or entity from commencing or continuing any legal proceeding against any of the JJM Parties and/or any of the Related Parties asserting any legal or equitable claim arising out of, in connection with or relating in any way to, 1inMM, the 1inMM Ponzi Scheme, JJMT or Horwitz, as more particularly described in the proposed Bar Order (a “1inMM Claim”). All 1inMM Claims will be channeled into a receivership claims process the United States District Court for the Central District of California will establish by separate order.

Complete copies of the Settlement Agreement, the proposed Bar Order and other documents pertaining to the Settlement are available on the Receiver’s website, www.1inMMreceivership.com.

Interested parties may submit written questions or objections to the Settlement to the Receiver by sending an email to 1inMM@douglaswilson.com by no later than 4:00 pm PDT on September 4, 2023. (All capitalized terms not defined in this notice are defined in the Settlement Agreement or the Motion.)

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

Defendants.

Case No. 2:21-cv-02927-CAS-PD

**[PROPOSED] ORDER
APPROVING SETTLEMENT
WITH JOSEPH DEALTERIS,
JACOB WUNDERLIN, MATTHEW
SCHWEINZGER AND JJMT
CAPITAL, LLC, AND FOR
RELATED RELIEF**

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1 Upon consideration of the *Motion of Receiver Michele Vives for Order*
2 *Approving Settlement with Joseph deAlteris, Jacob Wunderlin, Matthew*
3 *Schweinzger and JJMT Capital, LLC, and for Related Relief*, dated July 28, 2023
4 (the “Motion”), the Court, having jurisdiction to hear and determine the Motion,
5 has reviewed the Motion and accompanying memorandum of points and
6 authorities and declarations in support thereof, considered the exhibits to the
7 Motion, and concluded that all parties in interest have due and sufficient notice of
8 the Motion; after due deliberation and consideration of the Motion, and there being
9 good cause to grant the relief provided herein; it is, pursuant to the Court’s power
10 to supervise equity receiverships and all other powers in that behalf so enabling,
11 hereby ORDERED:

12 1. The Motion is GRANTED. Capitalized terms not defined herein have
13 the meanings ascribed to them in the Motion or the Settlement Agreement.

14 2. Notice of the Motion, including the Published Notice, is sufficient
15 under the circumstances and satisfies due process, and any further notice otherwise
16 required by Local Rule 66-7 is waived.

17 3. The terms of the Settlement with Joseph deAlteris, Jacob Wunderlin,
18 Matthew Schweinzger and JJMT Capital, LLC memorialized in the Settlement
19 Agreement are fair and equitable, including without limitation, the Bar Order and
20 the Administrative Claims, and the Settlement Agreement and its terms are
21 therefore APPROVED.

22 4. The Court hereby PERMANENTLY BARS, RESTRAINS and
23 ENJOINS all persons and entities (except any governmental unit, as that term is
24 defined by 11 U.S.C. § 101(27)), as well as their respective heirs, successors,
25 assigns, subsidiaries, parents, affiliates, officers, directors, shareholders, members,
26 managers, partners, representatives, agents, employees and attorneys, from
27 commencing or continuing any civil action, administrative proceeding, arbitration
28 or other adversarial proceeding against Joseph deAlteris, Jacob Wunderlin or

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1 Matthew Schweinzger, as well as their wives, children and respective current and
2 former employers, JJMT Capital, LLC, JJMT Management Co., LLC, J.T.H.D.
3 Investments, LLC, JJMT Group, LLC, Chi Town Capital, LLC, the Windy City
4 Entities, GMCS Investments, LLC, the JTHD Trust U/A/D 7/1/2016 and its
5 settlors, trustees and beneficiaries, the deAlteris Family Legacy Trust U/A/D
6 4/1/2021 and its settlors, trustees and beneficiaries, the Wunderlin Family Legacy
7 Trust U/A/D 4/20/2021 and its settlors, trustees and beneficiaries, the Wunderlin
8 2019 Trust U/A/D 9/5/2019 and its settlors, trustees and beneficiaries, the MCS
9 Trust I U/A/D 7/12/2016 and its settlors, trustees and beneficiaries, the Matthew
10 Schweinzger Legacy Trust U/A/D 3/19/2021 and its settlors, trustees and
11 beneficiaries, GLD Trust No. 1 and its settlors, trustees and beneficiaries, Mohawk
12 RE Trust No. 1 and its settlors, trustees and beneficiaries, and DJW Consulting,
13 LLC, asserting any claim, cause of action, counter-claim, cross-claim or
14 adversarial proceeding arising out of, in connection with or relating in any way to:

- 15 (a) The 1inMM Ponzi Scheme;
- 16 (b) Acts or omissions relating to JJMT Capital, LLC, JJMT Group,
17 LLC, J.T.H.D. Investments, LLC or Chi-Town Capital, LLC;
- 18 (c) Acts or omissions relating to the 1inMM Ponzi Scheme or the
19 1inMM Defendants;
- 20 (d) Acts or omissions relating to any investment, loan or transfer of
21 money to JJMT Capital, LLC, JJMT Group, LLC, J.T.H.D.
22 Investments, LLC, Chi-Town Capital, LLC or 1inMM Capital,
23 LLC and/or repayment or lack of repayment by JJMT Capital,
24 LLC, JJMT Group, LLC, J.T.H.D. Investments, LLC, Chi-
25 Town Capital, LLC or the 1inMM Defendants (in whatever
26 form and however denominated, a “1inMM Claim”).

27 All 1inMM Claims are hereby channeled into the Receivership Estate’s claims
28 distribution process that the Court will establish by separate order. *Provided,*

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1 *however*, this order does not bar, restrain or enjoin: (x) the Receiver from asserting
2 a claim to avoid and recover transfers to any of the persons and entities listed in
3 paragraph 14 of the Agreement (other than JJMT Capital, LLC); or (y) any
4 Investor Plaintiff from asserting a claim arising out of his or her employment by or
5 investment in Acrisure, LLC and its subsidiaries and affiliates including but not
6 limited to Acrisure Holdings, Inc.

7 5. The Receiver is AUTHORIZED to take such further actions as may
8 be necessary to consummate the transactions in the Settlement Agreement,
9 including without limitation, paying the Administrative Claims to the respective
10 holders thereof in the amounts specified in the Settlement Agreement.

11 6. The Court retains exclusive jurisdiction to hear and determine any
12 disputes arising out of or relating to the settlement approved by this order.

13 Dated:

14 United States District Judge

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