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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 [REDACTED]
[REDACTED] AND FOR RELATED
RELIEF; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: November 13, 2023
Time: 10:00 a.m. PT
Judge: Hon. Christina A. Snyder
Courtroom: 8D

**DOCUMENT FILED UNDER SEAL
PURSUANT TO ORDER OF THE
COURT DATED SEPTEMBER 28,
2023 [ECF #274]**

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on November 13, 2023, at 10:00 a.m., or as soon thereafter as the matter may be heard in Courtroom 8D, located at the United States Courthouse, 350 West First Street, Los Angeles, California 90012, Michele Vives, not individually, but solely as the federal equity receiver (the “Receiver”) of defendant of 1inMM Capital, LLC and its subsidiaries, affiliates and over the assets more particularly described in the *Order on Appointment of Permanent Receiver*, dated January 14, 2022 [ECF #70] (the “Receiver Order”), will and hereby does move the Court for entry of an order approving the settlement with [REDACTED] [REDACTED] as a good-faith settlement in accord with California Code of Civil Procedure (“CCP”) §877.6, and for related relief (the “Motion”).

The Motion is based on the Memorandum of Points and Authorities below and is supported by: (a) the *Confidential Settlement Agreement and Release*, dated April 12, 2023 (the “Settlement Agreement”) (**Exhibit 1**); (b) the *Declaration of Michele Vives*, dated October 4, 2023 (“Vives Decl.”) (**Exhibit 2**); (c) the *Declaration of [REDACTED]*, dated October 4, 2023 (“[REDACTED] Decl.”) (**Exhibit 3**); and (d) the *Declaration of Alexander Loftus*, dated October 4, 2023 (“Loftus Decl.”) (**Exhibit 4**).

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

Dated: October 4, 2023

Respectfully submitted,

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

Attorneys for the Receiver
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MEMORANDUM OF POINTS AND AUTHORITIES

Factual Background

A. The Receiver; investigation of transfers

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

B.

[REDACTED]

[REDACTED] Horwitz’s fraud then became public on April 6, 2021, when the Court unsealed the SEC’s complaint.

C. Investor Claims

One hundred nine investors (“Investors”) represented by Loftus & Eisenberg, Ltd. (“L&E”) privately asserted claims against [REDACTED] based on [REDACTED]

1 [REDACTED]. (Vives Decl. ¶6.)
2 The Investors alleged that they loaned money to 1inMM in reliance on Horwitz’s
3 representations that the funds would be used to finance the acquisition and licensing
4 of distribution rights for movies to HBO or Netflix and that, in return, the Investors
5 would receive returns on their principal plus accrued interest. [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]. [REDACTED] asserted several defenses that could have ultimately resulted
11 in the Investors taking nothing. (*Id.* ¶¶6-7; [REDACTED] Decl. ¶¶15-20.)

12 The Receiver theoretically could have pursued claims against [REDACTED] standing
13 in the shoes of 1inMM, [REDACTED] (“Receiver Claims”), but deferred to the
14 Investors for the time being. (Vives Decl. ¶8.) As the Investor Claims are derivative
15 of the Receiver Claims (collectively, “Claims”), the Receiver closely monitored the
16 parties’ settlement negotiations. (*Id.*) [REDACTED] eventually contacted the Receiver and
17 expressed interest in settling globally, but only if she could secure a bar order from
18 this Court. The Receiver also conferred regularly with L&E about a potential global
19 settlement, and secured their agreement that any settlement payment must be paid to
20 the Estate for the benefit of all creditors. (*Id.* ¶¶8-9.)

21 [REDACTED] worked cooperatively with the Receiver and provided [REDACTED]
22 [REDACTED]. (*Id.* ¶10; [REDACTED] Decl. ¶12.) From her review of the available evidence, the
23 Receiver determined that Horwitz deceived [REDACTED] regarding 1inMM’s business
24 through several false representations, including fabricated emails and agreements
25 with HBO, and [REDACTED] lacked any knowledge that Horwitz was operating a Ponzi
26 scheme until March 2021, [REDACTED]. (Vives
27 Decl. ¶10.) L&E later informed [REDACTED] that Horwitz [REDACTED]

1 [REDACTED]. ([REDACTED] Decl. ¶13.) The
2 parties eventually agreed to a mediation. (Vives Decl. ¶11.)

3 **D. Settlement**

4 Through a mediation on March 15, 2023 before [REDACTED],
5 the parties reached a confidential settlement whereby [REDACTED] will pay [REDACTED] to
6 the Estate (“Settlement Payment”) to settle all asserted and threatened claims against
7 it arising out of or relating to the Ponzi Scheme [REDACTED]
8 [REDACTED] in exchange for mutual general releases and entry of an order (“Bar
9 Order”) permanently enjoining all persons and non-governmental units from suing
10 [REDACTED] on any claim arising out of or relating to the Ponzi Scheme (“Settlement”).
11 The Settlement is documented in the Settlement Agreement. (Vives Decl. ¶12.)

12 The validity of the Settlement Agreement is subject to the condition precedent
13 that the Court approves it, including the Bar Order. Additionally, because the
14 Investors agreed that the entire Settlement Payment should be paid into the Estate
15 for the benefit of all creditors, the Receiver has concluded that L&E created a
16 common fund from which a negotiated amount of their fees—[REDACTED]—should be
17 paid. (*Id.* ¶13.)

18 The parties agreed that [REDACTED] identity must remain strictly confidential to
19 prevent potential irreparable injury to [REDACTED] resulting from any public disclosure of
20 the Claims. Because confidentiality is an essential term of the Settlement
21 Agreement, the Receiver filed an application requesting that this Motion, the Bar
22 Order and all supporting documents be sealed, which the Court granted. [ECF #274]
23 (*Id.* ¶14.)

24 **E. Assessment of the Settlement**

25 The Receiver believes the Settlement is in the best interest of the Estate. The
26 Settlement Payment constitutes a substantial recovery without the expense and risk
27 of litigation, and the Settlement represents an equitable, good-faith resolution of all
28

1 Claims. While the Investors and the Receiver were confident in their Claims, the risk
2 of an adverse result was significant. [REDACTED] asserted meaningful defenses that, if
3 successful, may have resulted in the Investors recovering nothing. Those defenses
4 include the following: [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] The Settlement
14 thus avoids protracted and expensive litigation, thereby avoiding litigation risk and
15 conserving Estate resources. And the Receiver did not have to pay any upfront
16 mediation expenses, further saving money for the Estate. (*Id.* ¶¶15-17.)

17 The Settlement Payment also far exceeds what [REDACTED] would have paid to
18 resolve the Investor Claims alone without a bar order. (*Id.* ¶18; [REDACTED] Decl. ¶22.) The
19 Bar Order is a critical component of the settlement consideration and common
20 among these sorts of settlements. So L&E’s work undoubtedly enhanced the final
21 settlement value, all of which is flowing to the Estate. (Vives Decl. ¶18.) And
22 because the Investors agreed that [REDACTED] should remit the entire Settlement Payment
23 to the Estate, L&E helped create a common fund from which a portion of their
24 attorney’s fees may be paid. (*Id.*)

25 Moreover, the Settlement resolves a particularly complex multiparty dispute.
26 (*Id.* ¶19; [REDACTED] Decl. ¶23.) The Investor Claims and the Receiver Claims arise from
27 a common nucleus of operative facts—the Ponzi Scheme—but their objectives were
28

1 not necessarily the same; the Investors pursued ██████ to remedy their own personal
2 damages, while the Receiver focused on benefitting the Estate as a whole. (Vives
3 Decl. ¶19.) Those goals often conflicted, resulting in disagreements about settlement
4 terms and how to proceed. (*Id.*)

5 The Investor Claims are, nonetheless, derivative of the Receiver Claims and
6 compete with the Receiver for ██████ assets. The Investors are pursuing the same
7 party that the Receiver could have pursued on account of the same conduct arising
8 out of the same transactions and occurrences by the same actors. As such, the
9 Investor Actions affected the Estate’s assets and ultimate recoveries; every dollar
10 the Investors managed to recover from ██████ was arguably a dollar the Receiver
11 could not recover from it. (*Id.* ¶20.)

12 ██████ wanted to achieve finality with a settlement, which it really could only
13 accomplish through a deal with the Receiver. (*Id.* ¶21; ██████ Decl. ¶23.) At the same
14 time, the Receiver did not think it advisable or practical to exclude the Investors
15 from those discussions. (Vives Decl. ¶21.) Because the Investors constitute a
16 significant percentage of the known population of net losing investors, the Receiver
17 considered them to function effectively as an ad hoc creditors committee. ██████,
18 moreover, made clear that any settlement with the Receiver must include a bar order
19 enjoining any further creditor suits against it arising from the Ponzi Scheme, so the
20 Receiver continually focused on achieving a settlement that met the legal
21 requirements for a bar order. These factors, among others, made the litigation
22 complex and particularly difficult to settle on a global basis. (*Id.* ¶¶21-22.)

23 Legal Standards

24 **A. Receivership settlements**

25 District courts have “extremely broad” power and “wide discretion” in
26 overseeing the administration of a receivership. *SEC v. Hardy*, 803 F.2d 1034, 1037
27 (9th Cir.1986). The Ninth Circuit “affords ‘broad deference’ to the [district] court’s
28

1 supervisory role” in receivership cases, and “generally uphold[s] reasonable
2 procedures instituted by the district court that serve th[e] purpose of orderly and
3 efficient administration of the receivership for the benefit of creditors.” *Commodity*
4 *Futures Trading Comm’n v. Topworth Int’l, Ltd.*, 205 F.2d 1107, 1115 (9th
5 Cir.1999) (cleaned up).

6 That broad authority to oversee the administration of a receivership extends
7 to approving settlements. “[N]o federal rules prescribe a particular standard for
8 approving settlements in the context of an equity receivership; instead, a district
9 court has wide discretion to determine what relief is appropriate.” *Gordon v.*
10 *Dadante*, 336 F.App’x 540, 549 (6th Cir.2009) (citing *Liberte Cap. Grp., LLC v.*
11 *Capwill*, 462 F.3d 543, 551 (6th Cir.2006)); *see also SEC v. Kaleta*, 530 F.App’x
12 360, 362 (5th Cir.2013) (“because this is a case in *equity*, it is neither surprising nor
13 dispositive that there is no case law directly controlling” the district court’s order
14 approving receiver’s settlement).

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

26 Courts in this circuit typically apply bankruptcy principles to evaluate
27 approval of settlements in receivership cases. *SEC v. Champion-Cain*, 2022 WL
28

1 126114, at *1 (S.D.Cal. Jan. 13, 2022) (applying bankruptcy principles regarding
2 approval of settlements in receivership case); *SEC v. Total Wealth Mgmt., Inc.*, 2019
3 WL 13179068, at *2 (S.D.Cal. Sept. 18, 2019) (same). Bankruptcy courts evaluate
4 whether a compromise is “fair and equitable,” considering “[a] the probability of
5 success in litigation, [b] any difficulties that may be encountered in collection, [c]
6 the complexity of the litigation, the expense, inconvenience, and delay necessarily
7 attending, and [d] the interest of the receivership entities’ creditors and their
8 reasonable views.” *Champion-Cain*, 2022 WL 126114, at *1 (quoting *In re*
9 *Woodson*, 839 F.2d 610, 620 (9th Cir.1988)); *see also Martin v. Kane (In re A&C*
10 *Props.)*, 784 F.2d 1377, 1381 (9th Cir.1986). “[W]hen engaging in this analysis,
11 bankruptcy courts need not conduct a mini trial on the merits, but need only canvass
12 the issues.” *In re TBH19, LLC*, 2022 WL 16782946, at *6 (B.A.P.9th Cir. Nov. 8,
13 2022).

14 “The analysis under these factors is holistic; the Court must canvass the issues
15 and see whether the settlement falls below the lowest point in the range of
16 reasonableness...[I]t is not necessary to satisfy each of these factors provided that
17 the factors as a whole favor approving the settlement.” *Total Wealth Mgmt., Inc.*,
18 2019 WL 13179068, at *3 (internal citations and quotations omitted); *accord In re*
19 *Open Med. Inst., Inc.*, 639 B.R. 169, 185 (B.A.P. 9th Cir. 2022) (“a settlement can
20 satisfy the *A&C Properties* test even if the evidence supporting one or more of the
21 four factors is relatively weak”). The Court should consider these factors “as a
22 whole, and not individually in a vacuum, to ascertain whether the settlement is a
23 good deal compared to litigation.” *Open Med. Inst.*, 639 B.R. at 185. Further, when
24 assessing a settlement, the Court need not decide issues of disputed fact or questions
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1 of law raised in the controversies sought to be settled. *Burton v. Ulrich (In re*
2 *Schmitt)*, 215 B.R. 417, 423 (B.A.P.9th Cir.1997).

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

10 **B. Good faith**

11 “A motion for good faith settlement arises under [CCP §877.6], which applies
12 to federal court actions and authorizes the Court to determine whether a settlement
13 agreement was entered into good faith.” *Kingsburg Apple Packers, Inc. v. Ballantine*
14 *Produce Co., Inc.*, 2010 WL 5059635, at *2 (E.D.Cal. Dec. 6, 2010). Under
15 §877.6(a), “[a]ny party to an action wherein it is alleged that two or more parties are
16 joint tortfeasors shall be entitled to a hearing on the issue of the good faith of a
17 settlement entered into by the plaintiff or other claimant and one or more alleged
18 tortfeasors.”¹ A court’s determination that a “settlement was made in good faith shall
19 bar any other joint tortfeasor...from any further claims against the settling
20 tortfeasor...for equitable comparative contribution, or partial or comparative
21 indemnity, based on comparative negligence or comparative fault.” *Id.* §877.6(c).²

22 _____
23
24 ¹ An alleged joint tortfeasor may seek a good-faith determination even if the allegations are not
25 made in the same action. *See, e.g., Bob Parrett Constr., Inc. v. Superior Ct.*, 140 Cal.App.4th 1180,
1187-88 (2006).

26 ² Section 877.6 motions typically involve one of multiple defendants that settles with a plaintiff
27 and seeks court approval to avoid further obligations to nonsettling tortfeasors for contribution or
28 indemnity. *Spitzer v. Aljoe*, 2015 WL 6828133, at *3 (N.D.Cal. Nov. 6, 2015); *Fisher v. Superior*
Ct., 103 Cal.App.3d 434, 441 (1980). [REDACTED] seeks to settle all Ponzi Scheme-related claims.

1 To determine whether a settlement of state law claims was made in good faith,
2 courts consider: “(1) a rough approximation of plaintiffs’ total recovery and the
3 settlor’s proportionate liability; (2) the amount paid in settlement; (3) the allocation
4 of settlement proceeds among plaintiffs; and (4) a recognition that a settlor should
5 pay less in settlement than he would if he were found liable after a trial.” *Mason &*
6 *Dixon Intermodal, Inc. v. Lapmaster Int’l LLC*, 632 F.3d 1056, 1064 (9th Cir.2011)
7 (cleaned up) (quoting *Tech-Bilt, Inc. v. Woodward-Clyde & Assocs.*, 38 Cal.3d 488,
8 499 (1985)). Courts assess these *Tech-Bilt* factors based on “the information
9 available at the time of settlement.” 38 Cal.3d at 499. Courts may also consider “the
10 financial conditions and insurance policy limits of settling defendants” and “the
11 existence of collusion, fraud, or tortious conduct aimed to injure the interests of non-
12 settling defendants.” *Id.*; see also *ABF Freight Sys., Inc. v. U.S.*, 2013 WL 842856,
13 at *9 (N.D.Cal. Mar. 6, 2013) (assistance of neutral mediator supported finding of
14 good faith).

15 Notably, “when the good faith nature of a settlement is undisputed, it is
16 unnecessary to weigh the *Tech-Bilt* factors.” *F.D.I.C. v. Sutter*, 2014 WL 3587548,
17 at *2 (S.D.Cal. July 21, 2014); *City of Grand Terrace v. Superior Ct.*, 192
18 Cal.App.3d 1251, 1261 (1987) (“when no one objects, the barebones motion which
19 sets forth the ground of good faith, accompanied by a declaration which sets forth a
20 brief background of the case is sufficient”). Any party asserting lack of good faith,
21 however, has the burden under §877.6(d) to prove “that the settlement is so far ‘out
22 of the ballpark’ in relation to these factors as to be inconsistent with the equitable
23 objectives of the statute.” *Tech-Bilt*, 38 Cal.3d at 499-500.

24 **Argument**

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

26 The Receiver believes the Settlement satisfies the *A&C Properties* factors.
27 (Vives Decl. ¶23.)
28

1 **A. Probability of success**

2 The probability of success of 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 [REDACTED] asserted defenses to the Claims.

6 **1.** [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

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3. Receiver Claims

The Receiver stands in the shoes of 1nMM, [REDACTED]. *See, e.g., Gill v. Blessing*, 2014 WL 12573667, at *3 (C.D.Cal. Oct. 6, 2014) (a receiver “stands in the shoes of [the Ponzi scheme] entities, not other creditors” and “may sue only to redress injuries to the entity in receivership”). While the Receiver could theoretically have sued [REDACTED], such claims would have been subject to the same defenses discussed above, if not others. Plus, it is unclear whether the Receiver could assert those claims against [REDACTED] independently. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Donell v. Kowell*, 533 F.3d 762, 777 (9th Cir.2008) (receiver only has standing to assert claims to redress injuries suffered by Ponzi scheme operator). The Settlement resolved any potential infirmities with respect to the Receiver Claims while also providing cash to the Estate for the benefit of all creditors. *Cf. Zacarias v. Stanford Int’l Bank, Ltd.*, 945 F.3d 883, 896-902 (5th Cir.2019) (receivership settlement and bar order solved “collective-action problem” by gathering interests of defrauded investors, “all suffering losses from the same Ponzi scheme,” and “maximiz[ing] assets available to them”).

In light of the foregoing, the Receiver considered [REDACTED] defenses to be a significant litigation risk factor. (Vives Decl. ¶25.) The Court may have sustained [REDACTED] defenses, which would be an outcome worse than the Settlement. Rather than take that risk, the Receiver compromised. *See, e.g., Sec. & Exch. Comm’n v. Cap. Cove Bancorp LLC*, 2016 WL 11752897, at *2 (C.D.Cal. Dec. 15, 2016) (approving settlement, reasoning it provided appropriate recovery when considering risk, time,

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D. Creditors

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

In sum, the Receiver believes the Settlement is fair, equitable and adequate under the circumstances to realize the value of the Claims. (Vives Decl. ¶30.) Litigation is, certainly, an alternative course, but “while the [Receiver] might do better in litigation, she is not likely to do so.” *In re Tidwell*, 2018 WL 1162511, at *3 (Bankr.C.D.Cal. Mar. 1, 2018) (cleaned up).

II. The Settlement was reached in good faith.

If no creditor objects, the Court may make a good-faith finding as a matter of law without evaluating the *Tech-Bilt* factors. *Grand Terrace*, 192 Cal.App.3d at 1261. The *Tech-Bilt* factors—which are similar to the *A&C Properties* test—justify a good-faith finding.

As discussed above, the Settlement reflects the Receiver’s approximation of the total potential recovery from [REDACTED], [REDACTED] proportionate liability given [REDACTED] and the understanding that [REDACTED] is paying less than it would have if found liable after a trial. The Settlement was also the result of arm’s-length negotiations before a neutral mediator, thus demonstrating the absence of any collusion, fraud or tortious conduct. Plus, the proceeds will be paid into the Estate for the benefit of all creditors, not just the Investors. (Vives Decl. ¶¶31-33.)

Accordingly, the Settlement satisfies the “two major goals” of CCP §877.6: “the equitable sharing of costs among the parties at fault and the encouragement of

1 settlements.” *Spitzer*, 2015 WL 6828133, at *3. The Court should make a good-faith
2 finding.

3 **III. The Court should approve the Bar Order.**

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

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

12 “Courts use ancillary relief in the form of bar orders to secure settlements in
13 receivership proceedings and...to bar claims against third parties settling with
14 receiverships.” *SEC v. Stanford Int’l Bank Ltd.*, 2017 WL 9989250, at *2 (N.D.Tex.
15 Aug. 23, 2017), *aff’d sub nom. Zacarias*, 945 F.3d 883 (bar orders may “foreclos[e]
16 suit against third-party defendants with whom the receiver is also engaged in
17 litigation”). Bar orders enable federal receivers “to curb investors’ individual
18 advantage-seeking in order to reach settlements for the aggregate benefit of investors
19 under the court’s supervision.” *Zacarias*, 945 F.3d at 896. “The availability of such
20 [bar] orders facilitates settlement, promotes equitable recoveries by creditors, and
21 maximizes assets available to creditors in the aftermath of a Ponzi scheme.” *SEC v.*
22 *Aequitas Mgmt., LLC*, 2020 WL 7318305, at *1 (D.Or. Nov. 10, 2020).

23 Bar orders have become a common feature in settlements with receivers in
24 cases arising from violation of the federal securities laws. *See, e.g., SEC v. DeYoung*,
25 850 F.3d 1172, 1183 n.5 (10th Cir.2017) (collecting cases); *SEC v. Nadel*, 2012 WL
26 12910648, at *1 (M.D.Fla. Feb. 10, 2012) (same). Federal courts generally require
27 that bar orders be (1) fair, just, equitable and in the best interest of the estate, and (2)
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1 “necessary” to the proposed settlement. *See, e.g., DeYoung*, 850 F.3d at 1178, 1183;
2 *Kaleta*, 530 F.App’x at 362-63; *Stanford*, 2017 WL 9989250, at *3; *SEC v. Alleca*,
3 2021 WL 4843987, at *12 (N.D.Ga. Sept. 9, 2021), *vacated on other grounds*, 2022
4 WL 16631325 (11th Cir. Nov. 2, 2022). The Bar Order here satisfies both elements.³

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

7 A bar order typically meets this first element if it facilitates a higher settlement
8 value and/or avoids protracted litigation. *See, e.g., DeYoung*, 850 F.3d at 1178;
9 *Nadel*, 2012 WL 12910648, at *1-2; *Alleca*, 2021 WL 4843987, at *12-13; *SEC v.*
10 *Adams*, 2021 WL 8016843, at *2 (S.D.Miss. Feb. 25, 2021). A bar order is in the
11 best interest of the receivership estate if it resolves “complex claims” and “rights and
12 obligations of parties” that “are so inextricably intertwined that resolution of the
13 claims independently, as opposed to collectively, would be difficult and inefficient,
14 would substantially increase costs to the [r]eceivership [e]state, and would likely
15 reduce the ultimate recovery to the [investors].” *DeYoung*, 850 F.3d at 1178; *accord*
16 *Alleca*, 2021 WL 4843987, at *13 (bar order was fair and equitable in light of amount
17 defendants agreed to pay, as well as receiver’s ability to avoid “the litigation
18 risk...and the expenses associated with it”). Finally, a bar order is fair to creditors if
19 it permits enjoined claims to be channeled to the receivership’s claim process. *See,*
20 *e.g., Kaleta*, 530 F.App’x at 362-63; *Adams*, 2021 WL 8016843, at *2.

21 The Settlement meets these requirements. It avoids protracted litigation of the
22 Claims, the outcome of which was uncertain due to the strength of [REDACTED] defenses.
23 The Estate avoided significant expenses and time associated with litigating. And the
24 Receiver did not have to pay any mediation expenses, thereby preserving Estate
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27
28 ³ The Court has already approved a bar order in this case for similar reasons. [ECF #230 ¶4]

1 resources. The Bar Order also drove a higher settlement value, as [REDACTED] paid far more
2 than it would have paid to settle the Investor Claims alone. *See, e.g., Nadel*, 2012
3 WL 12910648, at *1 (bar order warranted in part because it “facilitate[d] a higher
4 settlement value and, therefore, a larger recovery for claimants tha[n] would
5 otherwise be available without the bar order”). Moreover, the Bar Order helped
6 resolve complex claims that would have been difficult—if not impossible—to
7 resolve independently. (Vives Decl. ¶¶34-36; [REDACTED] Decl ¶23.) Absent a settlement,
8 the Receiver and Investors would be left to compete for [REDACTED] assets, a result that
9 would have “frustrat[ed] the receiver’s pro rata distribution to investors—a core
10 element of its draw upon equity.” *Zacarias*, 945 F.3d at 900. (Vives Decl. ¶36.)

11 The Bar Order is also fair to those investors who would be enjoined from
12 asserting claims against [REDACTED]. The order is appropriately tailored because it does not
13 enjoin “independent and non-derivative [claims] that do not involve assets claimed
14 by the receivership.” *Zacarias*, 945 F.3d at 897. Instead, it enjoins ***only those claims***
15 ***that arise out of or relate to the Ponzi Scheme***. Such claims are derivative of and
16 dependent upon the Receiver’s potential claims. *See, e.g., id.* (scope of bar order
17 appropriate where enjoined claims were “derivative of and dependent on the
18 receiver’s claims, and their suits directly affect[ed] the receiver’s assets”); *DeYoung*,
19 850 F.3d at 1178 (affirming bar order that limited scope of enjoined conduct to “any
20 claims against [the settling defendants] arising out of, or in connection with, or
21 relating to any [customer account associated with the securities fraud]”); *Kaleta*, 530
22 F.App’x at 362-63 (scope of bar order appropriate where “investors continue[d] to
23 retain all other putative claims against the [settling parties] that d[id] not arise from
24 the allegedly fraudulent notes [underlying] this action”); *Stanford*, 2017 WL
25 9989250, at *2 (entering bar order permanently enjoining any other pending or
26 future claims against settling defendants “arising from their relationship with [the
27 Ponzi-scheme operator]”).
28

1 The Bar Order is fair because it channels any claims against [REDACTED] to the
2 Estate’s claims process, which safeguards creditors’ right to be heard. *See, e.g.,*
3 *Zacarias*, 945 F.3d at 897 (bar order affirmed that channeled investors’ claims to
4 estate’s claim process); *Kaleta*, 530 F.App’x at 362 (same).

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

6 A bar order is necessary if it is “essential,” meaning the parties otherwise
7 would not have resolved their dispute without it. *See, e.g., DeYoung*, 850 F.3d at
8 1183; *Alleca*, 2021 WL 4843987, at *12; *Kaleta*, 530 F.App’x at 362-63. Here, the
9 Bar Order is necessary because [REDACTED] would not have settled without a bar order
10 enjoining all future claims against it arising out of or relating to the Ponzi Scheme.
11 (Vives Decl. ¶37; [REDACTED] Decl. ¶24.) Indeed, entry of the Bar Order is a condition
12 precedent under the Settlement Agreement. (Ex. 1 ¶2.) The Bar Order is, therefore,
13 necessary. *See, e.g., Alleca*, 2021 WL 4843987, at *13 (bar order necessary where
14 settling defendant “would not have agreed to settle [the dispute] without the bar
15 order,” and settlement agreement was contingent on entry of bar order); *Gordon v.*
16 *Dadante*, 2008 WL 1805787, at *14 (N.D.Ohio Apr. 18, 2008) (similar), *aff’d*, 336
17 F.App’x 540 (6th Cir.2009).

18 **IV. The Court should approve the Administrative Claim.**

19 The Settlement is almost entirely the result of L&E’s pursuit of the Investor
20 Claims. As the Receiver was not actively pursuing any claims against [REDACTED], the
21 Settlement is effectively “found money” for the Estate, resulting in more cash for
22 administration and creditor claims. In recognition of that, the Receiver agreed that
23 L&E should hold an allowed [REDACTED] administrative claim in exchange for its
24 contributions to the Estate (“Administrative Claim”). (Vives Decl. ¶¶38-39.) After
25 all, the Receiver and L&E—who functions like counsel to a creditors’ committee in
26 a bankruptcy case—are attempting to achieve the same goal of bringing as much
27 money in the Estate as possible for the benefit of net losing investors. *Cf. Rodriguez*
28

1 *v. Seabreeze Jetlev LLC*, 2022 WL 3327925, at *7 (N.D.Cal. Aug. 11, 2022) (“in
2 bankruptcy cases, the debtor in possession and the committee of creditors share a
3 duty to maximize the debtor’s estate”) (cleaned up).

4 The Settlement reflects these principles. In deciding whether to approve a
5 settlement in a receivership, the Court is not constrained by a particular standard or
6 set of rules but instead “has wide discretion to determine what relief is appropriate.”
7 *Cap. Cove Bancorp*, 2017 WL 11643414, at *2. So the Court could approve the
8 Administrative Claim and associated disbursement using its discretion alone. The
9 Court may also do so because L&E helped create a common fund in the Estate.

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

19 The Ninth Circuit recently held that where a lawyer for a creditor of an entity
20 in receivership “undeniably caused the creation, discovery, increase, or preservation
21 of a common fund that benefited investors,” the receivership court must award the
22 lawyer a reasonable fee under the common fund doctrine. *SEC v. Pritzker Levine*
23 *LLP*, 2022 WL 671020, at *1 (9th Cir. Mar. 7, 2022). In *Pritzker*, the law firm
24 Pritzker Levine LLP pursued certain litigation claims on behalf of a creditor that
25 resulted in the identification of millions in assets that became part of a state court
26 receivership. *Id.* Later, the SEC commenced a securities fraud action against the
27 same defendants and the court appointed a federal receiver, who obtained the assets
28

1 of the state receivership, including the funds realized from Pritzker’s litigation
2 efforts. *Id.* The Ninth Circuit held that because Pritzker helped create a fund that
3 became part of the receivership estate, it should receive a reasonable fee award from
4 the estate under the common fund doctrine, which “should be treated as an allowed
5 administrative claim” paid “from the fund itself, as a prior charge before the
6 beneficiaries receive it.” *Id.* at *1-2.

7 Likewise, L&E played an essential role in increasing the amount that [REDACTED]
8 agreed to pay in settlement, all of which is coming into the Estate for eventual
9 distribution to creditors. The three-way nature of the settlement negotiations
10 necessitated this. On the one hand, [REDACTED] sought finality with a settlement, which it
11 really could only accomplish through a deal with the Receiver that would include a
12 bar order. (Vives Decl. ¶¶40-41; [REDACTED] Decl. ¶23.) On the other hand, as the Receiver
13 was unwilling to settle with [REDACTED] over the objections of the Investors—over 100 of
14 the Estate’s creditors—any settlement had to resolve their claims too. (Vives Decl.
15 ¶41.)

16 The Investors’ agreement that [REDACTED] should make the Settlement Payment to
17 the Estate for the benefit of all creditors was the lynchpin. It “undeniably caused
18 the...increase” of the Estate’s cash assets available for distribution to creditors
19 beyond what the Receiver alone otherwise could have recovered. (*Id.*) *Pritzker*, 2022
20 WL 671020, at *1. L&E, moreover, devoted a significant amount of work to this
21 dispute (Loftus Decl. ¶¶15-22), which was a cause-in-fact benefitting the common
22 fund in the Estate. *Pritzker*, 2022 WL 671020, at *1 (“the common fund doctrine
23 requires that the work of the attorney seeking an extra fee be a cause-in-fact of any
24 claimed benefit to the fund, but not the *only* cause-in-fact”). This is so even if one
25 might speculate that the Receiver might have recovered the same amount on her
26 own. *Id.* (“The district court’s speculation that the funds...might still have been
27 recovered by the federal receiver in the absence of [Pritzker’s efforts]...does not
28

1 demonstrate that Pritzker’s efforts were not a ‘cause-in-fact’ of the creation,
2 increase, or preservation of a common fund.”). Having created a common fund in
3 the Estate, the Receiver’s agreement to pay L&E 33% of the Settlement Payment is
4 reasonable and appropriate. *See, e.g., Jenson v. First Tr. Corp.*, 2008 WL 11338161,
5 at *10-11 (C.D.Cal. June 9, 2008) (approving 33% fee award from common fund);
6 *In re Heritage Bond Litig.*, 2005 WL 1594403, at *19 (C.D.Cal. June 10, 2005)
7 (same); *In re Gen. Instrument Sec. Litig.*, 209 F.Supp.2d 423,431,434 (E.D.Pa. 2001)
8 (same).

9 “When all is said and done, the court can slice the pieces of this pie only so
10 large. [Defendants] are to blame for the fact that the slices are so small. Had the
11 professionals not persisted in their efforts, however, the pie would have been even
12 smaller.” *Gaskill v. Gordon*, 942 F.Supp.382, 388 (N.D.Ill. 1996) (approving 38%
13 fee award from common fund), *aff’d*, 160 F.3d 361 (7th Cir.1998). The same is true
14 here. Finding a way to compensate L&E for their efforts in augmenting the Estate
15 was a hard-fought material term of the overall Settlement. The Receiver agreed to
16 the Administrative Claim amount in the exercise of her business judgment, which
17 she felt was necessary to achieve a global settlement. (Vives Decl. ¶42.) That
18 decision is entitled to deference. *See, e.g., Roger*, 393 F.Supp.3d at 961. For these
19 reasons, the Receiver asks the Court to approve the Administrative Claim and
20 associated disbursement. (Vives Decl. ¶43.)

21 Notice to Creditors

22 “Creditors are entitled to ‘notice reasonably calculated, under all the
23 circumstances, to apprise interested parties of the pendency of the action and afford
24 them an opportunity to present their objections.’” *Perez v. Safety-Kleen Sys., Inc.*,
25 253 F.R.D. 508, 518 (N.D.Cal. 2008) (quoting *Mullane v. Central Hanover Trust*
26 *Co.*, 339 U.S. 306, 314 (1950)). “[D]ue process...is not a technical conception with
27 a fixed content unrelated to time, place and circumstances[.]” *Grimm v. City of*
28

1 *Portland*, 971 F.3d 1060, 1065 (9th Cir.2020). Instead, “due process is flexible and
2 calls for such procedural protections as the particular situation demands.” *Muñoz v.*
3 *United States Dep’t of State*, 50 F.4th 906, 922 (9th Cir.2022). The Court may
4 “exercise[] significant control over the time and manner” of any proceeding to hear
5 a creditor’s objections. *Liberte Cap. Grp.*, 462 F.3d at 552.

6 The Receiver will give notice of the Motion by: CM/ECF to parties/interested
7 parties; email to all known creditors of the Estate (or, if represented, their counsel)
8 with a link to this Motion and supporting exhibits; posting it on the receivership
9 website; and publishing a notice once in the *Wall Street Journal* and once in the *Los*
10 *Angeles Times* in the form annexed hereto as **Exhibit 5** (“Published Notice”). These
11 communications will include instructions on how to advise the Receiver of any
12 objections to the Motion by no later than seven days before the hearing. The Receiver
13 will thereafter file a status report. (Vives Decl. ¶¶44-46.)

14 The Court should deem this notice sufficient under the circumstances. *See*,
15 *e.g.*, *Fed. Trade Comm’n v. Cardiff*, 2020 WL 9938072, at *4 (C.D.Cal. Mar. 10,
16 2020) (due process satisfied where receiver posted motion to its website and served
17 all parties, known creditors and interested parties); *Adams*, 2021 WL 8016843, at *2
18 (same; receiver gave instructions how to submit comment or objection to
19 settlement); *Nadel*, 2012 WL 12910648, at *1 (same; receiver published notice once
20 in two newspapers).

21 **WHEREFORE**, the Receiver respectfully requests that the Court enter an
22 order: (a) granting the Motion; (b) finding notice of the Motion, including the
23 Published Notice, is sufficient under the circumstances and satisfies due process, and
24 waiving any further notice otherwise required by LR 66-7; (c) approving the terms
25 of the Settlement memorialized in the Settlement Agreement as fair and equitable—
26 including, without limitation, the Bar Order and the Administrative Claim—and as
27 made in good faith pursuant to CCP §877.6; (d) authorizing the Receiver to take
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1 such further actions as may be necessary to consummate the transactions in the
2 Settlement Agreement; and (e) granting such further relief as the Court deems
3 necessary and appropriate.

4 Dated: October 4, 2023

Respectfully submitted,

KATTEN MUCHIN ROSENMAN LLP

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

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Michele Vives

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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 6,976 words, which complies with the word limit of L.R. 11-6.1.

Dated: October 4, 2023

Respectfully submitted,

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

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1 **PROOF OF SERVICE**

2 **STATE OF ILLINOIS, COUNTY OF COOK**

3 At the time of service, I was over 18 years of age and not a party to this action.
4 I am employed in the County of Cook, State of Illinois. My business address is 525
5 W. Monroe St., Chicago, Illinois 60661. On October 4, 2023, I served the following
6 document(s) described as:

7 **MOTION OF RECEIVER MICHELE VIVES FOR ORDER
8 APPROVING SETTLEMENT WITH [REDACTED]
9 AND FOR RELATED RELIEF (redacted)**

10 as follows:

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

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

23 Kathryn Wanner (wannerk@sec.gov)
24 Michael Quinn (mquinn@vedderprice.com)

25 **BY OVERNIGHT MAIL (FedEx):** I enclosed said document(s) in an
26 envelope or package provided by FEDEX and addressed to the persons at the
27 addresses listed above. I placed the envelope or package for collection and overnight
28 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.

BY PERSONAL SERVICE: I caused said document to be personally
delivered the document(s) to the person at the addresses listed above by leaving the
documents in an envelope or package clearly labeled to identify the attorney being
served with a receptionist or an individual in charge of the office.

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 October 4, 2023, at Chicago, Illinois.

/s/Terence G. Banich
Terence G. Banich

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CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Confidential Settlement Agreement and Release (the "Agreement") is made and entered into by and between (1) all persons or entities listed on Exhibit A or otherwise represented by the law firm Loftus & Eisenberg, Ltd. (together, the "L & E Clients"), and Michele Vives, the duly appointed permanent receiver (the "Receiver") of 1inMM Capital, LLC and its affiliates as more particularly described in her order of appointment (together, the "Receiver Parties") on the one hand, and (2) [REDACTED], on the other hand. The L & E Clients and the Receiver Parties are collectively referred to hereinbelow as the "1inMM Parties." The 1inMM Parties and [REDACTED] are referred to together herein as the "Parties," with reference to the following facts:

A. Pursuant to the Order entered on January 14, 2022, by the District Court in *SEC v. Horwitz, et al.*, C.D. Cal. Case No 2:21-cv-02927-CAS-GJS (the "SEC Action"), Vives is the duly appointed permanent equity receiver for the Receiver Parties. All references to the Court in this Agreement refer to the Court presiding over the SEC Action and the receivership estate created therein (the "Receivership Estate").

B. On March 15, 2023, the Parties participated in a confidential mediation before mediator [REDACTED] governed by California Evidence Code sections 1119 et seq. On that date, and subject to Court Approval as set forth below, the Parties agreed to settle all claims made or which could have been made arising out of or relating to the Receivership, Horwitz's Ponzi scheme, or [REDACTED], including any and all threatened claims against [REDACTED] or otherwise, subject to and on the terms set forth herein in order to avoid the burdens, inconveniences, and expense of litigation between the Parties and without admitting fault, liability or wrongdoing.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements set forth below, the Parties hereby agree as follows:

1. Settlement Payment

[REDACTED] agrees to [REDACTED] pay the Receiver [REDACTED] (the "Settlement Payment"). The obligation to cause the Settlement Payment to be made is contingent upon obtaining Court Approval, as set forth in Section 2 below, and [REDACTED] as set forth in Section 3, below. The Settlement Payment shall be made no later than twenty-one (21) days following Court Approval (including the passage of any time period in which the relevant order by the Court remains subject to challenge by petition for writ of mandamus, appeal, or otherwise), receipt of a W-9 for the payee, and receipt of wire instructions, whichever is later. The Settlement Payment will be made by wire transfer to Michele Vives, Receiver for 1inMM Capital. [REDACTED] shall have no obligation to pay any sum other than the Settlement Payment.

2. **Court Approval.**

The effectiveness of this Agreement is expressly conditioned upon Court Approval of this Agreement as a good faith settlement and bar of any and all other claims against [REDACTED] related to the Horwitz Ponzi scheme (the "Bar Order," in the form of words appearing on, or substantially similar to, Exhibit B hereto), in an order not subject to challenge or further proceedings in any court, in accord with California Code of Civil Procedure Section 877.6 ("Court Approval"). [REDACTED] shall prepare and the Receiver shall file a motion for such Court Approval in the Court within thirty (30) days following the date of execution of this Agreement by all Parties. The hearing on the motion for Court Approval shall be scheduled for the earliest available date. The Receiver and her counsel shall execute and file such documents with the Court, including declarations, as [REDACTED] reasonably requests supporting the motion for Court Approval of this Agreement, subject to review and reasonable approval by the Receiver and the Receiver's counsel, which approval shall not be unreasonably withheld. If for any reason the settlement does not receive Court Approval as a good faith settlement and bar to any other claims against [REDACTED] in an order not subject to challenge or further proceedings in any court, [REDACTED] shall have the exclusive unilateral right to terminate this Agreement and if [REDACTED] exercise this right, this Agreement shall be of no force or effect, except as to its confidentiality obligations, which shall remain in full force and effect, and if the Settlement Payment has already been paid, it shall be returned forthwith.

3. [REDACTED]

This Agreement is expressly conditioned upon [REDACTED]. The Parties acknowledge and agree that [REDACTED].

4. **Settlement Disbursements.**

(a) The L & E Clients agree that the amounts identified in (b) of this paragraph, to be funded from the Settlement Payment, provide good and valuable consideration for the releases granted in paragraph 5 and consent to the entry of the Bar Order.

(b) Because the Settlement Payment will be made to the Receivership Estate for the benefit of all creditors, the Receiver agrees that L & E Clients' counsel, Loftus & Eisenberg, Ltd. ("L&E"), has provided a material benefit and substantial contribution to the Receivership Estate and created a common fund in connection therewith. Accordingly, and at the L & E Clients' instruction, the Receiver agrees to move the Court, as part of the relief requested to obtain Court Approval, to order that L&E holds an allowed administrative expense claim against the Receivership Estate for a certain amount of the L & E Clients' reasonable attorney's fees incurred in connection with this dispute, which amount is 33 percent of the Settlement Payment, and to authorize the Receiver to pay that sum to L&E from the Settlement Payment.

5. **General Release of [REDACTED].**

In consideration of the mutual agreements and covenants contained herein, and with the exception of the rights and obligations as set forth in this Agreement:

(a) The 1inMM Parties hereby forever release and discharge [REDACTED] of and from all claims, debts, liens, liabilities, demands, obligations, promises, acts, agreements, costs, fees, expenses, damages, actions, and causes of action, of whatever kind or nature, whether known or unknown, suspected or unsuspected, now existing, contingent or arising in the future, based on, arising out of, related to or in connection with any acts, omissions, facts, claims or occurrences from the beginning of time through the effective date of this Agreement, including but not limited to all claims made or which could have been made arising out of or relating to the Receivership, Horwitz's Ponzi scheme, [REDACTED], and any and all threatened claims against [REDACTED] or otherwise ("1inMM Parties' Released Claims").

(b) The 1inMM Parties expressly waive any right or benefit available under California Civil Code Section 1542, which provides:

"A general release does not extend to claims which 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."

Notwithstanding the provisions of California Civil Code Section 1542 and any similar provisions, rights, and benefits conferred by any law, rule, regulation, or common-law doctrine in any federal, state, or foreign jurisdiction, the 1inMM Parties and their counsel fully understand, and acknowledge and agree, that neither the Receiver nor any of the 1inMM Parties or other creditors of the Receivership estate, individually or collectively, can hereafter make any claims against or seek any further recovery from [REDACTED] by reason of any claim of any nature whatsoever based upon, arising out of, related to or in connection with any acts, omissions, facts, claims or occurrences, prior to the effective date of this Agreement, except for a claim arising out of the obligations set forth in this Agreement. The 1inMM Parties and their respective counsel acknowledge that they or their respective attorneys may hereafter discover facts different from or in addition to those which they are their respective attorneys now know or believe to be true with respect to the 1inMM Parties' Released Claims, and the 1inMM Parties and their respective counsel agree that this Agreement shall be and remain in effect as a full and complete release except as expressly provided herein, notwithstanding any such different or additional facts.

6. **Construction.**

The Parties acknowledge that this Agreement is the result of a confidential mediation and significant negotiation among and input by all Parties and the mediator, and hereby expressly waive any statute, regulation, case law, or other rule of construction providing that ambiguities are to be interpreted against the drafting party. Instead, this Agreement shall be construed and interpreted in accordance with the expressed intentions of the Parties to this Agreement without regard to the draftsman.

7. Confidentiality.

(a) Each Party and its or their respective attorneys of record, and each Party on behalf of its respective attorneys of record, agrees, represents and warrants that all mediation-related discussions, communications, and documents leading up to this Agreement, including but not limited to, all communications between the L&E Parties or Loftus and [REDACTED], as well as the substance, content, and terms and conditions of this Agreement, are strictly confidential and subject to strict mediation confidentiality as set forth in California Evidence Code §§ 1119 et seq. Except as set forth in sections 6(b) through 6(e) below, the Parties and their attorneys of record and the Parties on behalf of their respective attorneys of record, shall not disclose, permit to be disclosed, or cause to be disclosed to any entity or person the terms of this Agreement or the mediation-related discussions, communications or documents.

(b) Notwithstanding Section 6(a) above, each Party and their attorneys of record in this mediation may disclose information concerning this Agreement to the extent reasonably necessary: (1) to each Party's respective attorneys of record, accountants or insurers who have a need to know such information and who agree to keep all such information and the terms of this settlement confidential; (2) to the Court under seal or as required by an order of the Court subject to section 6(c); (3) as may be reasonably necessary to enforce or interpret the terms of this settlement or any provision of this Agreement pursuant to a sealing order; (4) as may be reasonably necessary for the preparation and filing of any tax return; (5) as may be reasonably necessary to account for and report the amount of the Settlement Payment in the Receiver's reports and accounting, subject to Section 6(d); and/or (6) as required by law. [REDACTED]

(c) Because Court Approval must be obtained as a condition precedent to the obligation to make the Settlement Payment under this Agreement, and in order to maintain the confidentiality of this Agreement and all related documents as set forth below, and to prevent irreparable injury to [REDACTED] from public disclosure of these documents, the Parties agree that any application or motion seeking Court Approval and all other documents submitted to the Court in connection with this Agreement will be filed with an application for an order requesting that the Agreement, and all references to its terms, including the Settlement Payment, as well as the motion or application and accompanying memorandum of points and authorities and evidence or exhibits submitted therewith, as well as any Proposed Order (collectively, "Motion Papers"), and Bar Order, be filed under seal. The Receiver may serve redacted copies of the Motion Papers and Bar Order (redacting the names of [REDACTED]) on all parties in interest who she determines are entitled to notice and an opportunity to be heard. If any party in interest requests to know the identity of the party who has agreed to settle and is the beneficiary of the Bar Order, the Receiver may disclose that information only if the requesting party in interest signs a non-disclosure agreement in the form annexed hereto as Exhibit C. Notwithstanding Section 6(a) above, [REDACTED] and its attorneys may disclose information concerning this Agreement to third parties who are or have been subject to tort claims

who may have an interest in the motion for Court Approval. The Parties understand and agree that [REDACTED] may be required to give notice of the motion to such third parties and may be required to share the terms of this Agreement with such third parties. However, the L&E Parties agree that [REDACTED] is entitled to condition any such disclosure to a third party on the third party's written agreement to keep the settlement terms strictly confidential and to file any opposition to Court Approval under seal. If such third party does not agree to the above, or if the Court declines to enter a sealing order as requested above, [REDACTED] shall have the exclusive unilateral right to terminate this Agreement and if [REDACTED] exercises this right, this Agreement shall be of no force or effect, except as to its confidentiality obligations, which shall remain in full force and effect, and if the Settlement Payment has already been paid, it shall be returned forthwith.

(d) Notwithstanding Section 6(a) above, following Court Approval, in any publicly filed reports, the Receiver shall include the Settlement Payment less attorneys' fees and costs paid therefrom (the "Net Settlement Payment") as an undifferentiated part of the Receivership Estate's cumulative revenue from settlements or other receipts by the Estate, but shall not identify the Net Settlement Payment separately from any or all other settlement amounts or other receipts by the Estate, and shall not identify [REDACTED] as the source of the Net Settlement Payment or any other payments. Because L&E as counsel for certain claimants and pursuant to agreement with the Receiver shall be entitled to certain fees and costs from the Settlement Payment upon the granting of a motion for approval of fees and costs, and because the Receiver shall include only the Net Settlement Payment in her reports, and in order to protect the confidentiality of the Agreement and the Settlement Payment, the Receiver shall not report L&E's attorneys' fees and costs paid from the Settlement Payment. Any motion for approval of L&E's fees and costs shall be filed under seal. If for any reason sealing is not permitted, any reference to [REDACTED] in any papers filed in connection with the foregoing motion shall be redacted and any such papers shall be emailed to [REDACTED] for review and revision at least three (3) business days before any public filing to insure such confidentiality.

(e) This Agreement may be disclosed to the Court and admitted into evidence in any legal proceeding brought to enforce this Agreement or as an affirmative defense to an action filed or prosecuted in violation of this Agreement; provided, however, that any Party disclosing this Agreement to the Court must do so only with an application for an order requesting that the Agreement and all references to its substance be filed under seal. If for any reason sealing is not permitted, any reference to [REDACTED] in any papers filed in connection with the foregoing proceeding shall be redacted and any such papers shall be emailed to [REDACTED] for review and revision at least three (3) business days before any public filing to insure such confidentiality.

(f) Complete confidentiality as set forth herein is a material term of this Agreement without which this Agreement would not have been made. Any threatened or actual breach of the confidentiality provisions of this Agreement is likely to cause [REDACTED] irreparable injury not fully compensable by money damages and they shall be entitled to immediate injunctive relief to prevent such injury, in addition to any other relief ordered by the Court. If any of L&E or L&E Claimants breaches

his/her/its/their respective confidentiality obligations hereunder, L&E, Alexander Loftus, and L&E Claimants shall be liable to, and indemnify, ██████████ for any resulting injury or damage, including but not limited to reputational injury or damage, to ██████████.

(g) If the Receiver or her counsel or L&E is served with a subpoena, document request, demand or other process for the production of this Agreement or any of its terms or for testimony regarding this Agreement (“Disclosure Demand”), the Party receiving the demand shall give notice to ██████████ and its counsel and shall not comply with the Disclosure Demand without first giving ██████████ an opportunity to seek to quash or limit the discovery request. ██████████ shall have twenty (20) business days to file its motion to quash or limit the discovery request and notify the party receiving the demand of the filing. Upon such filing, the party receiving the demand shall not comply with the Disclosure Demand pending the outcome of such proceeding.

(h) Notwithstanding the foregoing, if the Court refuses to accept filings under seal, the Parties may publicly file motion papers without a sealing order and shall make their best efforts to keep the terms of the settlement confidential as required by California’s mediation confidentiality statute, including by redacting confidential information. If for any reason the settlement does not receive final Court Approval as a good faith settlement as set forth above, this Settlement Agreement, the terms herein, and any other matters disclosed in the negotiation of this mediated Agreement, shall still remain confidential to the fullest extent permitted by California’s mediation confidentiality statute and this Agreement.

8. Counsel.

Each of the Parties to this Agreement has been represented by counsel of its, his or their own choosing in connection with the negotiation and preparation of this Agreement, has been fully informed by such counsel as to the meaning and legal significance of this Agreement and, based upon such representation and advice, knowingly and voluntarily agrees to be bound by the terms of this Agreement. L&E, as counsel for the L&E Clients, represents and warrants that it serves as counsel for all of the L&E Clients, the list of L&E Clients set forth on Exhibit A hereto is a complete and accurate list of all L&E Clients, all L&E Clients have approved the material terms of this Agreement and have authorized a lawyer with L&E to execute and deliver this Agreement on their behalves. As evidence of this representation and warranty, L&E has provided a declaration, attached hereto as Exhibit D. L&E and Alexander Loftus shall defend, indemnify and hold ██████████ harmless from and against any alleged breach of these representations and warranties and/or any claim asserting that L&E or Alexander Loftus were not so authorized. L&E and Alexander Loftus shall also indemnify ██████████ against damages to ██████████ from any breach of confidentiality by L&E, Alexander Loftus, or L&E Clients.

9. No Third Party Beneficiaries.

Nothing in this Agreement is intended to create rights or obligations in third parties, unless expressly set forth herein.

10. **Execution; Counterparts; Facsimile or Email.**

This Agreement may be executed in counterparts, and be sent by email or messenger, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same Agreement. Each Party represents and warrants that its respective signatory has been duly authorized to execute this Agreement.

11. **Attorneys' Fees and Costs.**

Each side shall bear its own fees and costs in connection with this Agreement.

12. **Choice of Law.**

This Agreement shall be construed and enforced in accordance with the laws of the State of California.

13. **Waiver or Modification.**

No modification, amendment or waiver of any of the provisions contained in this Agreement, or any future representation, promise or condition in connection with the subject matter of this Agreement shall be binding upon any Party hereto unless made in writing and signed by such Party or by a duly authorized representative, counsel, officer or agent of such Party.

14. **No Assignment.**

The 1inMM Parties warrant and represent that they are the sole owners of the 1inMM Parties Released Claims and that they have not assigned or transferred, and will not assign or transfer, to any other person or entity in any manner, including by way of lien, agreement, subrogation or operation of law or otherwise, any such claims. The 1inMM Parties shall defend, indemnify and hold [REDACTED] harmless from and against any alleged breach of this representation and warranty and/or any claim asserting such an assignment or transfer.

15. **Entire Agreement.**

This Agreement constitutes the sole, entire, complete and integrated understanding and agreement of the Parties with respect to the matters that are the subject of this Agreement and supersedes all prior or contemporaneous negotiations or agreements. The Parties represent and warrant that no representations, warranties, promises, or conditions have been made which are not contained herein. Any representations, warranties, promises, or conditions, whether written or oral, not specifically made or incorporated herein, shall not be binding upon any of the Parties with respect to the matters contained herein, may not be relied upon and may not be introduced in any proceeding to interpret or enforce this Agreement.

15. **Arbitration**

Any dispute between or among the Parties, arising from or relating to this Agreement, shall be submitted to binding arbitration before [REDACTED] sitting as the sole arbitrator at

[REDACTED] pursuant to the [REDACTED] Expedited Arbitration Procedures. If [REDACTED] is not available, the parties shall select an alternate [REDACTED] arbitrator.

16. Notices.

Notices under this Agreement shall be made in writing and delivered by messenger and/or email as follows:

If to [REDACTED]:
[REDACTED]

with a copy to:
[REDACTED]

If to the Receiver:
KATTEN MUCHIN ROSENMAN LLP
Terence G. Banich
525 W. Monroe St.
Chicago, IL 60661
terence.banich@katten.com

with a copy to:

Michele Vives, Receiver
1620 Fifth Ave., Ste. 400
San Diego, CA 92101
mvives@douglaswilson.com

If to L&E Clients

LOFTUS & EISENBERG, LTD.
Alexander N. Loftus
David A. Eisenberg
161 N. Clark St., Ste. 1600
Chicago, IL 60601
alex@loftusandeisenberg.com
david@loftusandeisenberg.com

IN WITNESS WHEREOF, the Parties have entered into this Agreement as set forth above.

AGREED TO AND ACCEPTED:

Date: April 12, 2023

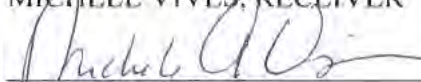


Date: April 12, 2023



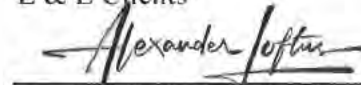
Date: April 11, 2023

MICHELE VIVES, RECEIVER



by: Michele Vives

L & E Clients



by Alexander Loftus, counsel for and authorized
representative of L&E Clients, and individually and for
his firm with respect to the enclosed confidentiality
obligations

Exhibit A

List of L&E Clients

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

AFA Marketing	Futoransky, Stas
Altgeld Groupo SPE I LLC	Gardosik, Mary
Arenson, Paul	Global Hospitality Concept
Aronson, Mike	Gould, Michael
AVR Group, LLC	Greendot, LLC
Balliet, Lori	Hawley, Scott
Barry Rosenthal Revocable Trust	Heinecke, Eric
BCP, LLC	Hemenway, Linda
Benjamin Altman Trust	Henny, Robert
Bottini, Domenick	Hirsch Trust DTD 2/9/90
C421-Uyen Huynh	Holloway, Scott
Carter, Jocelyn	Hutchinson, Gail
Castanada, Robert	Huynh, Uyen
CD LLC	Ilan Awerbuch
Codegard EV LLC	IRA Services Trust Company FBO
Cohen, Helane	Sadia Lone IRA 299509
Cowley, Shelby	IRVRU Company
Crandall, Bonnie	Jahangirzadeh, Parviz
Cummings, Robert	James D Lepak Management
DASH 401k Trust	JCE Solutions Inc.
Debra Durham	Jerome Steven Franz
DiMattia, Mario	Jonker, Nicholas
Dolan, Michael	Kalin, Carson
Duffy, Joe	Karlander, Dan
Dziurgot, Mike	Karmin, Jonathan
Eggener, Brian	Keith, Jeff
Ellusionist.com	Kiser, Erik
Elwell, Andrew	Kittle, Cody
Empirius	Knoska, James
Fackelmayer, Harry	Lawrence Hopkins
Fatemeh Pazouki	Lawson, Brett
Fehling, Brian	Lazarus, Jason
Ferrari, Adam	Leish, Nicholas
Fiene, Christian	Lone Revocable Trust
Forge Trust FBO Carl Hirsch IRA #552677	Martin, Daniel
Forge Trust FBO Ilan Awerbuch IRA #491275	Mauri, Cody
Frankin River, LLC	McGarvey, Patrick
Friedman, Ari	MEK Investments
	Miller, Kyle
	Moller-Tank, Annake

Mouton, Brent
Nahid Tabai
Nanya Family Trust
Nanya, Joseph
NDTCO as Custodian FBO Sadia Lone
HAS
Next Generation Investment Group
Pacht, Doug
Pak, Gene
Palace Court Capital, LLC
Peltz, Michael
Phillips, Chris
Phoenix Affordable Housing Authority,
LLC
Prag, Stephen
Romanowski, Steve
Romanzi, Alexander

Ryan, Mathew
Ryley, James
Schaps, Jason
Schweet, Ryan
SerotLaz LLC
Southwest Investments Funds, LLC
Steingraber, Jonathan
Stoutt, Windell and Karen
Sutter, Jacqueline
The DASH Revocable Trust
Toner, John
Treven Lingren
Trident Asset Management, Inc.
Wahls, Aaron
Wong, Hong Ling
Yong, Da (Robert)
Zaleski, Steven

Exhibit B

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, officers, directors, representatives, agents and attorneys, from commencing or continuing any civil action, administrative proceeding, arbitration or other adversarial proceeding against [REDACTED], as well as [REDACTED] heirs, successors and assigns, asserting any claim or cause of action arising out of, in connection with or relating in any way to the 1inMM Ponzi Scheme (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.”

Exhibit C

Form of Non-Disclosure Agreement

[To be added]

CONFIDENTIAL NON-DISCLOSURE AGREEMENT

This Confidential Non-disclosure Agreement (this "Agreement"), dated _____ (the "Effective Date"), is entered into by and between Michele Vives, the duly appointed permanent receive (the "Receiver") of 1inMM Capital, LLC and its affiliates, and _____ (the "Receiving Party"). The Receiver and Receiving Party are referred together herein as the "Parties."

The Agreement sets forth the mandatory terms upon which the Receiver will disclose certain information concerning the identity of the parties who have agreed to settle and are the beneficiaries of an order barring all claims against those parties pursuant to the terms of a confidential settlement agreement and release (the "Confidential Information"). The Confidential Information to be shared with Receiving Party is secret and not publicly available, and the Receiver not only considers it to be highly confidential and proprietary, but also has agreed to take steps to maintain the confidentiality of such information. The Confidential Information is being provided solely for the limited purpose of providing the Receiving Party with the Confidential Information because the Receiving Party asserts an interest in knowing the identity of the parties (the "Settling Parties") who have agreed to settle and are the beneficiaries of the bar order (the "Legitimate Purpose"), conditioned upon the Receiving Party's written commitment not to disclose any of the information provided through this Agreement to anyone other than the Parties hereto. The Parties hereby agree as follows regarding such Confidential Information:

1. The Receiving Party agrees to protect the confidentiality of the Confidential Information and to use the Confidential Information solely for the Legitimate Purpose. The Receiving Party agrees not to disclose the Confidential Information to anyone else or use the information for any other purpose.
 - a. The Receiving Party further agrees to utilize proper internal control policies and procedures to protect the confidentiality of the Confidential Information.
 - b. To avoid any misunderstanding, it is further specifically agreed and understood that:
 - i. 10 business days after receipt of any disclosed Confidential Information, the Receiving Party must return all Confidential Information to the Receiver or destroy such material and not retain or create any copies. To be clear, Confidential Information includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Confidential Information. Whether the Confidential Information is returned or destroyed, the Receiving Party must submit a written certification to the Receiver by the 10-day deadline that (1) identifies all the Confidential Information that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Confidential Information.
 - ii. The Receiving Party shall not orally or in writing disclose, summarize or in any way characterize or cause or authorize anyone else to disclose, summarize or in any way characterize any of the Confidential Information to anyone for any purpose.

iii. The Receiving Party shall be responsible for any breach of these provisions by he, she or it or his, her or its executives, employees, representatives, agents, attorneys, or members.

2. The Receiving Party shall exercise the highest degree of care in safeguarding the Confidential Information. The Receiving Party shall not share the Confidential Information with anyone, except the Receiving Party's attorney, and only if such attorney signs this non-disclosure agreement and agrees to abide by all of its terms and conditions. The Receiving Party and his, her or its attorney shall be jointly and severally responsible for any breach of this Agreement by any such attorney.

3. The restrictions on use or disclosure described in Paragraphs 1 and 2 above do not extend to any item of information which:

- a. is publicly known at the time of its disclosure;
- b. is lawfully received from a third party as a matter of right provided that, to the Receiving Party's knowledge, such source is not precluded by law or confidentiality obligations from disclosing the same;
- c. is published or made known to the public by the Receiver in a manner not precluded by the confidential settlement agreement after receipt by the Receiving Party;
- c. is required by law or other legal authority to be disclosed, provided that the Receiving Party gives the Receiver prior notice of the alleged required disclosure sufficiently in advance of disclosure so that appropriate protective orders or other legal remedies may be sought and obtained, and the Receiving Party shall make no disclosure pending those efforts to obtain appropriate protective orders or other legal remedies. .

4. Each party agrees that money damages may not be a sufficient remedy for breach of this Agreement as such violation could cause irreparable injury to the Receiver and the Settling Parties. Accordingly, the Receiver and the Settling Parties shall be entitled to seek an injunction or other appropriate equitable or legal relief to restrain any breach or threatened breach of this Agreement.

5. The Receiver shall not provide and the Receiving Party shall not use Confidential Information in violation of any law, rule or regulation nor the proprietary, privacy or other rights of the Settling Parties or any third party. Except for this Paragraph and Paragraph 4, neither party shall bear liability for any expenses, costs, losses or actions incurred or undertaken as a result of the receipt or use of Confidential Information.

6. This Agreement shall be binding on the Parties, their subsidiaries, successors and assigns. It shall be governed by and construed in accordance with the laws of the State of California. Any dispute arising under, relating to or in any way connected with this Agreement may be resolved solely by binding arbitration before arbitrator [REDACTED] in accordance with the procedures set forth at [REDACTED], in Los Angeles, California, pursuant to the [REDACTED] Expedited Arbitration Procedures. By agreeing to arbitrate, the Parties acknowledge and agree that they are giving up a right to a jury trial and other potential rights. The parties agree that the

arbitration proceedings, testimony, discovery, and documents filed in the course of such proceedings, including all filings, evidence, and testimony connected with the arbitration proceedings, and all relevant allegations and events leading up to the arbitration proceedings, will be treated as confidential solely to the extent they contain Confidential Information and will not be disclosed to the public or any third party to such proceedings, except the arbitrator and the arbitrator's staff, the disputing parties' attorneys and their respective staff, and any experts retained by the Parties. The arbitration award will be binding upon the disputing parties and a judgment or decree upon the award may be entered in any court of competent jurisdiction in Los Angeles County, California. This provision is intended to provide the Receiving Party and the Receiver with the exclusive forum for redressing grievances that arise under, relate to or are in any way connected to this Agreement, except to the extent the Receiver shall be entitled to seek an injunction or other appropriate equitable or legal relief in a state or federal court to restrain any breach or threatened breach of this Agreement as provided for in Section 4 above. Any arbitration proceeding shall be strictly confidential, and any motion or petition to confirm an arbitration award shall be filed under seal.

7. In the event of a breach by the Receiving Party of any term of this Agreement, the Receiving Party shall indemnify, defend, and hold harmless the Receiver and the Settling Parties and any of their affiliates, agents, or representatives, and pay, compensate and reimburse each of them for, all losses that any of them may at any time suffer or incur as a proximate result of the Receiving Party's breach of his, her or its obligations under this Agreement, including without limitation any damages assessed against the Receiver or any affiliate or agent of the Receiver, as well as any related expenses, including, but not limited to, the cost of defense. In the event this provision comes into effect, the Receiver and/or the Settling Parties, and their affiliates, agents, and/or representatives shall have the right to select their own counsel.

8. In the event of an actual disclosure or use of Confidential Information in breach of this Agreement (an "Incident"), Receiving Party shall, at Receiving Party's sole expense (a) notify the Receiver of the Incident without undue delay after discovering the Incident, (b) take immediate steps to mitigate and remediate the Incident, including steps to prevent any further unauthorized use or disclosure of Confidential Information, (c) identify with particularity the Confidential Information impacted by the Incident, (d) provide the Receiver with reasonably available information regarding the cause, impact and other circumstances of the Incident, and (e) reasonably cooperate with the Receiver to investigate the Incident.

9. This Agreement shall commence as of the Effective Date.

10. No failure or delay by the Receiver or a Settling Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof. Any waiver of a provision hereof must be in writing and signed by all parties hereto.

11. Any notice or communication under this Agreement shall be in writing and shall be effective: (a) upon delivery if delivered in-person or by electronic mail, (b) three business days following deposit in the U.S. mail, certified or registered mail, return receipt request, or (c) the next business day following deposit with a nationally recognized overnight courier service, in each case sent to the party's address set forth below and addressed to the signatory to this Agreement (or to such other address or individual as designated in a notice sent in accordance with this Section).

12. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered (by facsimile, electronic mail or otherwise) to the other party, it being understood that all Parties need not sign the same counterpart. Any counterpart or other signature hereunder delivered by facsimile or electronic transmission, such as e-mail or PDF, shall be deemed for all purposes as constituting good and valid execution and delivery of this Agreement by such party.

13. The Receiving Party acknowledges that it is obligated to maintain the confidentiality of the Confidential Information beyond the completion and termination of the Legitimate Purpose and will never divulge or discuss any Confidential Information unless specifically authorized or directed to do so by the Receiver.

14. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof, and there shall be no additions to or changes in the provisions hereof, nor any representations with respect to the subject matter hereof, except as shall be in writing signed by the Parties.

THE RECEIVING PARTY

THE RECEIVER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit D

Declaration of Alexander N. Loftus

I, Alexander N. Loftus, declare as follows:

Type text here

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.

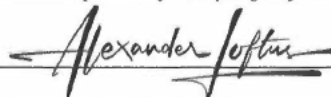
2. I submit this declaration pursuant to paragraph 8 of the *Confidential Settlement Agreement and Release*, dated April 11, 2023 (the "Agreement"), to which this declaration is attached as Exhibit D. Any capitalized terms not defined herein have the meanings ascribed to them in the Agreement.

3. I am the managing partner of Loftus & Eisenberg, Ltd. ("L&E").

4. I represent the L&E Clients listed on Exhibit A to the Agreement.

5. All L&E Clients have approved the material terms of this Agreement, including the payments of attorney's fees described in paragraph 4, and have authorized L&E to execute and deliver this Agreement on their behalves.

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



Executed on April 11, 2023 in Chicago, Illinois	Alexander N. Loftus
--	---------------------

Alexander N. Loftus

1 Terence G. Banich (SBN 212173)
terence.banich@katten.com
2 Allison E. Yager (*pro hac vice*)
allison.yager@katten.com
3 **KATTEN MUCHIN ROSENMAN LLP**
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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

DOCUMENT FILED UNDER SEAL
PURSUANT TO ORDER OF THE
COURT DATED SEPTEMBER 28,
2023 [ECF #274]

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

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 [REDACTED] and for*
9 *Related Relief*, dated October 4, 2023 (the “Motion”). Any capitalized terms not
10 defined herein have the meanings ascribed to them in the Motion.

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

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

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

26 5. The Receiver Order confers on me “full powers of an equity receiver,”
27 and specifically authorizes and directs me to, among other things: take custody and
28 control over all assets of 1inMM and its subsidiaries and affiliates; conduct an

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

4 **B. Investor Claims**

5 6. One hundred nine investors (“Investors”) represented by Loftus &
6 Eisenberg, Ltd. (“L&E”) privately asserted claims against [REDACTED] in connection with
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] (“Investor Claims”).

10 7. [REDACTED] asserted several defenses that could have ultimately resulted in
11 the Investors taking nothing.

12 8. I theoretically could have pursued claims against [REDACTED] standing in the
13 shoes of 1inMM, [REDACTED] (“Receiver Claims”), but deferred to the Investors
14 for the time being. As the Investor Claims are derivative of the Receiver Claims
15 (collectively, “Claims”), I closely monitored the parties’ settlement negotiations.

16 9. [REDACTED] eventually contacted me and expressed interest in settling
17 globally, but only if I could secure a bar order from this Court. I also conferred
18 regularly with L&E about a potential global settlement, and secured their agreement
19 that any settlement payment must be paid to the Estate for the benefit of all creditors.

20 10. [REDACTED] worked cooperatively with me and provided [REDACTED].
21 From my review of the available evidence, I determined that Horwitz deceived [REDACTED]
22 regarding 1inMM’s business through several false representations, including
23 fabricated emails and agreements with HBO, and [REDACTED] lacked any knowledge that
24 Horwitz was operating a Ponzi scheme until March 2021, [REDACTED]
25 [REDACTED].

26 11. After months of negotiations, the parties agreed to conduct a
27 confidential mediation before [REDACTED].
28

1 **C. Settlement**

2 12. Through the mediation on March 15, 2023 before [REDACTED]
3 [REDACTED], the parties reached a confidential settlement whereby [REDACTED] will pay
4 [REDACTED] to the Estate (“Settlement Payment”) to settle all asserted and threatened
5 claims against it arising out of or relating to the Ponzi Scheme [REDACTED]
6 [REDACTED] in exchange for mutual general releases and entry
7 of an order (“Bar Order”) permanently enjoining all persons and non-governmental
8 units from suing [REDACTED] on any claim arising out of or relating to the Ponzi Scheme
9 (“Settlement”). The Settlement is documented in the Settlement Agreement.

10 13. The validity of the Settlement Agreement is subject to the condition
11 precedent that the Court approves it, including the Bar Order. Additionally, because
12 the Investors agreed that the entire Settlement Payment should be paid into the Estate
13 for the benefit of all creditors, I have concluded that L&E created a common fund
14 from which a negotiated amount of their fees—[REDACTED]—should be paid.

15 14. The parties agreed that [REDACTED] identity must remain strictly confidential
16 to prevent potential irreparable injury to [REDACTED] resulting from any public disclosure
17 of the Claims against it. Because confidentiality is an essential term of the Settlement
18 Agreement, I filed an application requesting that the Motion, the Bar Order and all
19 supporting documents be sealed, which the Court granted. [ECF #274]

20 **D. Assessment of the Settlement**

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

26 16. While the Investors and I were prepared to litigate our Claims, the risk
27 of an adverse result was significant. [REDACTED] asserted meaningful defenses that, if
28 successful, may have resulted in the Investors recovering nothing. The Settlement

1 thus avoids protracted and expensive litigation, thereby avoiding litigation risk and
2 conserving Estate resources.

3 17. I did not have to pay any upfront mediation expenses, which further
4 saved money for the Estate.

5 18. The Settlement Payment far exceeds what [REDACTED] would have paid to
6 resolve the Investor Claims alone without a bar order. So L&E's work undoubtedly
7 enhanced the final settlement value, all of which is flowing to the Estate. And
8 because the Investors agreed that [REDACTED] should remit the entire Settlement Payment
9 to the Estate, L&E helped create a common fund from which a portion of their
10 attorney's fees may be paid.

11 19. Moreover, the Settlement resolves a particularly complex multiparty
12 dispute. The Investor Claims and Receiver Claims arise from a common nucleus of
13 operative facts—the Ponzi Scheme—but their objectives were not necessarily the
14 same; the Investors pursued [REDACTED] to remedy their own personal damages, while I
15 focused on benefiting the Estate as a whole. Those goals often conflicted, resulting
16 in disagreements about settlement terms and how to proceed.

17 20. The Investor Claims are, nonetheless, derivative of the Receiver Claims
18 and compete with me for [REDACTED] assets. The Investors are pursuing the same party
19 that I could have pursued on account of the same conduct arising out of the same
20 transactions and occurrences by the same actors. As such, the Investor Claims
21 affected the Estate's assets and ultimate recoveries; every dollar the Investors
22 managed to recover from [REDACTED] was arguably a dollar I could not recover from it.

23 21. [REDACTED] wanted to achieve finality with a settlement, which it really could
24 only accomplish through a deal with me. At the same time, I did not think it advisable
25 or practical to exclude the Investors from those discussions. Because the Investors
26 constitute a significant percentage of the known population of net losing investors, I
27 considered them to function effectively as an ad hoc creditors committee.
28

1 22. [REDACTED], moreover, made clear that any settlement with me must include
2 a bar order enjoining any further creditor suits against it arising from the 1inMM
3 Ponzi Scheme, so I continually focused on achieving a settlement that met the legal
4 requirements for a bar order. These factors, among others, made the litigation
5 complex and particularly difficult to settle on a global basis.

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

8 **1. Probability of success**

9 23. I believe the Settlement satisfies the *A&C Properties* factors.

10 24. [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED].

14 25. More generally, in light of the conflicting arguments and potential
15 problems with all of the Claims, I considered [REDACTED] defenses to be a significant risk
16 factor.

17 26. For the reasons discussed above and in the Motion, the Settlement
18 appropriately accounts for the mixed probability of success on the merits of the
19 Claims against [REDACTED].

20 **2. Collection difficulties**

21 27. It is unclear whether [REDACTED] would have sufficient assets to satisfy an
22 adverse judgment entered in the Investors' favor.

23 **3. Complexity/expense**

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

26 29. Given my review of the available evidence, I believe such litigation
27 against [REDACTED] would be expensive and time-consuming, as it would likely require
28 extensive discovery, retention of experts and numerous witnesses. A trial and appeal

1 would likely take at least two years to complete and cost the estate several hundred
2 thousand dollars in fees and expenses.

3 30. I believe the Settlement is fair, equitable and adequate under the
4 circumstances to realize the value of the Claims.

5 **F. The Settlement was reached in good faith.**

6 31. The Settlement reflects my approximation of the total potential
7 recovery from [REDACTED], [REDACTED] proportionate liability given [REDACTED]
8 [REDACTED] and the understanding that [REDACTED] is paying less than it would have if found
9 liable after a trial.

10 32. The Settlement was also the result of arm's-length negotiations before
11 a neutral mediator, thus demonstrating the absence of any collusion, fraud or tortious
12 conduct.

13 33. The proceeds will be paid into the Estate for the benefit of *all* creditors,
14 not just the Investors.

15 **G. The Court should approve the Bar Order**

16 34. For the reasons discussed in the Motion, I respectfully submit that the
17 Bar Order is fair, equitable and in the best interests of the Estate.

18 35. The Settlement avoids protracted litigation of the Claims, the outcome
19 of which was uncertain due to [REDACTED] defenses. By settling, the Estate avoided
20 significant expenses and time associated with litigating. And the Receiver did not
21 have to pay any mediation expenses, thereby preserving Estate resources. The Bar
22 Order also drove a higher settlement value, as [REDACTED] paid more to settle all Claims
23 with a bar order than it would have paid to settle the Investor Claims alone.

24 36. The Bar Order helped resolve complex claims that would have been
25 difficult—if not impossible—to resolve independently. Absent a settlement, the
26 Investors and I would be left to compete for [REDACTED] assets, a result that would have
27 frustrated my pro rata distribution to investors.
28

1 37. The Bar Order is necessary to the Settlement because [REDACTED] would not
2 have settled without a bar order enjoining all future claims against it arising out of
3 or relating to the Ponzi Scheme.

4 **H. The Court should approve the Administrative Claim**

5 38. The Settlement is almost entirely the result of L&E’s pursuit of the
6 Investor Claims.

7 39. As I was not actively pursuing any claims against [REDACTED], the Settlement
8 is effectively “found money” for the Estate, resulting in more cash for administration
9 and creditor claims. In recognition of that, I agreed that L&E should hold an allowed
10 [REDACTED] administrative claim in exchange for its contributions to the Estate
11 (“Administrative Claim”).

12 40. L&E—who doggedly pursued the Investor Actions—played an
13 essential role in increasing the amount that [REDACTED] agreed to pay in settlement, all of
14 which is coming into the Estate for eventual distribution to creditors.

15 41. The Investors’ agreement that [REDACTED] should make the Settlement
16 Payment to the Estate for the benefit of all creditors was, from my perspective, the
17 lynchpin of this three-way compromise. On the one hand, [REDACTED] sought finality with
18 a settlement, which it really could only accomplish through a deal with me that
19 would include a bar order. On the other hand, as I was unwilling to settle with [REDACTED]
20 over the objections of the Investors—over 100 of the Estate’s creditors—any
21 settlement had to resolve their claims too.

22 42. Finding a way to compensate L&E for their efforts in augmenting the
23 Estate was a hard-fought material term of the overall Settlement. I agreed to the
24 Administrative Claim amount in the exercise of my business judgment, which I felt
25 was necessary to achieve a global settlement.

26 43. I respectfully submit that the Court may approve the Administrative
27 Claim and associated disbursement under the common-fund doctrine.
28

1 **I. Notice to creditors**

2 44. I will give notice of the Motion by: (a) CM/ECF to parties/interested
3 parties; (b) email to all known creditors of the Estate (or, if represented, their
4 counsel) with a link to the Motion and supporting exhibits; (c) posting it on the
5 Website; and (d) publishing a notice once in the *Wall Street Journal* and once in the
6 *Los Angeles Times* in the form annexed to the Motion as **Exhibit 5** (the “Published
7 Notice”).

8 45. Given the necessity for strict confidentiality, all references to [REDACTED] in
9 the notice of the Motion will be redacted, and I will only disclose [REDACTED] identity to
10 those who sign an NDA in the form annexed to the Settlement Agreement as Exhibit
11 C.

12 46. The Notice will include instructions how to advise me of any objections
13 to the Motion by no later than seven days before the hearing. I will thereafter file a
14 status report.

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

17 Executed on October 4, 2023
18 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*)
allison.yager@katten.com
3 **KATTEN MUCHIN ROSENMAN LLP**
525 W. Monroe St.
Chicago, IL 60661
4 Telephone: (312) 902-5665
Facsimile: (312) 902-1061

5 *Attorneys for the Receiver*
6 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
CAPITAL, LLC,
16 Defendants.

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

DECLARATION OF [REDACTED]

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

DOCUMENT FILED UNDER SEAL
PURSUANT TO ORDER OF THE
COURT DATED SEPTEMBER 28,
2023 [ECF #274]

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

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I, [REDACTED], 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 in support of the *Motion of Receiver Michele Vives for Order Approving Settlement with [REDACTED] and for Related Relief*, dated October 4, 2023 (the “Motion”). Any capitalized terms not defined herein have the meanings ascribed to them in the Motion.

3. I am an attorney admitted to practice before all of the courts of this State and the Central District of California. [REDACTED]

4. I represented [REDACTED] with respect to the Investor Claims arising out of or relating to the 1inMM Ponzi Scheme, as well as the Settlement and other events described in the Motion. On March 15, 2023, I personally participated in an all-day confidential mediation before [REDACTED], along with the Receiver, represented by counsel at Katten Muchin Rosenman LLP, and a group of creditors (the “L & E Clients”) in 1inMM Capital, LLC represented by Loftus &

1 Eisenberg, Ltd. Both [REDACTED] and the L & E Clients prepared and submitted
2 confidential mediation briefs to the mediator, as well as to each other. I have
3 reviewed both briefs. After a full day of mediation, [REDACTED],
4 the parties reached a confidential settlement. The settlement was the product of
5 arms-length negotiations. There was no collusion, fraud or tortious conduct. The
6 settlement was memorialized in a long-form confidential settlement agreement
7 executed on April 12, 2023. The parties' entire agreement is reflected in the April
8 12, 2023 Settlement Agreement. There are no side agreements or other terms not
9 reflected in the Settlement Agreement.

10 5. While I was not involved in [REDACTED]
11 [REDACTED], I have reviewed all documents associated with [REDACTED] and
12 thoroughly analyzed all claims threatened against [REDACTED] by L&E's clients. I am
13 personally familiar with the strengths and weaknesses of any claims that the
14 Receiver could raise against [REDACTED], including those of L&E's clients, and [REDACTED]
15 defenses thereto. Before I provide my analysis of the facts supporting the Motion, I
16 respectfully submit the following summary description of my background and
17 experience which informs my judgment in this matter. [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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[REDACTED]

6. [REDACTED]

[REDACTED]

7. A precondition to the legal effectiveness of the parties' Settlement Agreement is this Court's approval of the settlement as a good faith settlement pursuant to California Code of Civil Procedure § 877.6 and an order barring, restraining and enjoining all persons and entities (except any governmental unit) from commencing or continuing any civil action, administrative proceeding, arbitration or other adversarial proceeding against [REDACTED] [REDACTED] in connection with the 1inMM Ponzi Scheme. There are no pending legal proceedings against [REDACTED] related to 1inMM and to my knowledge there never have been. The Settlement Agreement also contains strict confidentiality requirements and a requirement that the motion for good faith settlement and bar order and all related documents will be filed under seal and accompanied by an application for a sealing order. The Receiver has requested permission to lodge a

1 true copy of the Settlement Agreement with the Court *in camera* for the Court's
2 review in connection with this motion in order to avoid a filing which might later
3 jeopardize confidentiality. [REDACTED] supports that request as essential to the
4 confidentiality requirements of the Settlement Agreement. In accord with the
5 Settlement Agreement terms, I respectfully request that the Settlement Agreement
6 be returned to the Receiver following the Court's decision on the motion for sealing
7 order and the Motion.

8 8. [REDACTED]

11 9. [REDACTED]

18 10. [REDACTED]

21 11. [REDACTED]

24 12. [REDACTED]

26 13. [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 14. The confidential settlement was reached with the assistance of the
4 mediator after full consideration of the various facts and legal arguments that would
5 ultimately be part of any threatened litigation. [REDACTED]
6 [REDACTED]

7 [REDACTED]. Both [REDACTED] and counsel for the L & E Clients provided their
8 mediation briefs to each other, the Receiver and the mediator. Based upon my review
9 of the materials provided, I concluded that any claims against [REDACTED] arising from [REDACTED]
10 [REDACTED] faced significant risks of dismissal, including as a result of
11 the following issues:

12 15. There was a significant risk that any 1inMM creditor would be unable
13 to demonstrate that [REDACTED]
14 [REDACTED] for the reasons set forth in the Motion. As a matter of law, in my
15 judgment, [REDACTED]

16 [REDACTED]. As set forth in the Motion, [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED].

23 16. There was also a significant risk that neither the Receiver nor any
24 1inMM creditor could prove [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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[REDACTED]

17. There was also a significant risk that neither the Receiver nor any 1inMM creditor could prove that [REDACTED].

18. There was also a significant risk that neither the Receiver nor any 1inMM creditor could prove [REDACTED]. All of the evidence I have reviewed was to the contrary. Indeed, there was evidence that

[REDACTED]

19. There was also a significant risk that [REDACTED] based on the facts and law set forth in the Motion. [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 20. The settlement terms reflect all sides' and the mediator's careful
5 assessment of the facts and legal issues discussed in the Motion. The Receiver and
6 the L & E Clients would likely have incurred substantial attorneys' fees, expert
7 witness fees and other costs, if they proceeded to commence litigation of any of the
8 threatened claims without any substantial likelihood that they would recover more
9 than the settlement payment and with the significant risk that they would recover
10 nothing. The settlement payment set forth in the Settlement Agreement is by all
11 measures a substantial sum and particularly so in light of the facts and law discussed
12 in the Motion which made the likelihood of a judgment in excess of the settlement
13 payment at best questionable if not remote.

14 21. Additionally, and perhaps most important to [REDACTED], despite the strength
15 of [REDACTED] defenses, [REDACTED] agreed to settle because it would have incurred fees and
16 costs in the millions in defending itself if the L & E Clients sued [REDACTED]
17 [REDACTED], as their counsel indicated they would if settlement was not achieved.
18 In addition to exhausting [REDACTED] financial resources, any publicly filed lawsuit
19 making the kinds of accusations set forth by the L & E Clients carried the substantial
20 risk that [REDACTED] unblemished, longstanding professional reputation would be
21 irreparably damaged. In light of all the above circumstances, I consider the terms of
22 settlement to be fair, reasonable, and beneficial to the receivership estate, far in
23 excess of [REDACTED] potential liability and necessary to protect [REDACTED] reputation.

24 22. The Settlement Payment far exceeds what [REDACTED] would have paid to
25 resolve the Investor Claims alone without a bar order.

26 23. [REDACTED] wanted to achieve finality with a settlement, which it really could
27 only accomplish through a deal with the Receiver. Accordingly, the Settlement
28

1 resolves complex claims that would have been difficult—if not impossible—to
2 resolve independently.

3 24. The Bar Order is necessary because [REDACTED] would not have settled
4 without a bar order enjoining all future claims against it arising out of or relating to
5 the Ponzi Scheme.

6 25. A precondition to the legal effectiveness of the Settlement is this
7 Court’s approval of the settlement as a good faith settlement pursuant to California
8 Code of Civil Procedure § 877.6.

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

11 Executed on October 4, 2023
12 in [REDACTED]

/s/ [REDACTED]

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

1 Terence G. Banich (SBN 212173)
terence.banich@katten.com
2 Allison E. Yager (*pro hac vice*)
allison.yager@katten.com
3 **KATTEN MUCHIN ROSENMAN LLP**
525 W. Monroe St.
Chicago, IL 60661
4 Telephone: (312) 902-5665
Facsimile: (312) 902-1061

5
6 *Attorneys for the Receiver*
Michele Vives

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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 ALEXANDER
LOFTUS

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

DOCUMENT FILED UNDER SEAL
PURSUANT TO ORDER OF THE
COURT DATED SEPTEMBER 28,
2023 [ECF #274]

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

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I, Alexander 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 in support of the *Motion of Receiver Michele Vives for Order Approving Settlement with [REDACTED] and for Related Relief*, dated October 4, 2023 (the “Motion”). Any capitalized terms not defined herein have the meanings ascribed to them in the Motion.

3. I am the managing partner of Loftus & Eisenberg, Ltd. (“L&E”) and represented 109 investors total on a contingent-fee basis with respect to the Investor Claims arising out of or relating to the 1inMM Ponzi Scheme.

4. The instant action against [REDACTED] was staffed with two attorneys from my firm with collectively 30 years of experience handling class actions, [REDACTED], and securities litigation.

5. The Investor Claims asserted that [REDACTED] was liable for losses [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

6. This was a very challenging claim because [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

7. The challenges were compounded by the fact that [REDACTED]
[REDACTED]

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[REDACTED]

[REDACTED].

8. What's more, [REDACTED]

[REDACTED]

[REDACTED].

9. Making matters more challenging for the Investors was the fact that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

10. The value for [REDACTED] was achieving a global peace quickly [REDACTED]

[REDACTED]. This was only possible by working with the

Receiver on this form of settlement.

11. Thanks to the cooperation of the Receiver, we were able to achieve a

class-wide resolution [REDACTED]

[REDACTED].

12. The claims against [REDACTED] were challenging to say the least and very well

could have resulted in nothing for investors.

13. Not long after the Receiver was appointed, three sophisticated class

action firms [REDACTED] had the opportunity to take

on the case against [REDACTED] and all determined it was not worth their effort and

investment.

14. [REDACTED]

[REDACTED]

15. L&E was able to take on the challenge the other firms would not

because it [REDACTED]

[REDACTED], was already deeply involved in 1inMM litigation, and was familiar with

the facts and legal theories.

1 16. L&E pursued the claims on a contingency basis and advanced the
2 expenses of the mediation and travel with total expenses incurred in excess of
3 \$20,000.

4 17. L&E counseled its sophisticated clients to agree that the proceeds of
5 any settlement with ██████ would be paid through the Receivership by explaining the
6 diminished value of any other form of resolution and the administrative expense of
7 a class action.

8 18. L&E's organization and management of 109 investor clients
9 significantly contributed to the relatively prompt resolution of a very messy situation
10 with no adversary action or fees incurred between any investor and ██████ or the
11 Receiver, or between individual investors.

12 19. L&E devoted a significant amount of work to this dispute and spent
13 countless hours working on the complex theories of recovery through a contentious
14 process with highly sophisticated opposing counsel. The mediation submission
15 alone was 12,500 words and attached draft complaints.

16 20. L&E leveraged its mass of clients and involvement in a myriad of
17 related matters to gather evidence to strengthen the Investor Claims with facts not
18 otherwise available to the Receiver.

19 21. This coordination and information-sharing culminated in a mediation
20 process with ████████████████████, wherein the high-risk, high-reward Investor
21 Claims were thoroughly presented and argued utilizing evidence marshalled from
22 extensive informal discovery and formal discovery in related matters.

23 22. While the Investor Claims presented tremendous upside, the Investors
24 could have recovered nothing if ██████ defenses were successful, and even if not,
25 very little of that upside could have been collected if the cases were litigated to
26 judgment ████████████████████. L&E thoughtfully evaluated ██████
27 defenses and secured the assent of its 109 clients in order to secure a resolution.

28 //

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

3 Executed on October 4, 2023
4 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 a professional services firm whose identity the Receiver has agreed to keep confidential (“Settling Party”) as to any acts or omissions arising out of, in connection with or relating in any way to the 1inMM Ponzi Scheme, the services provided by the Settling Party and all threatened claims against the Settling Party in exchange for a payment to the Estate (“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 the Settling Party asserting any legal or equitable claim arising out of, in connection with or relating in any way to, the 1inMM Ponzi Scheme, 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.

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 November 6, 2023, though disclosure of certain information will require entry into non-disclosure agreement. (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 [REDACTED]
[REDACTED] AND FOR RELATED
RELIEF**

**DOCUMENT FILED UNDER SEAL
PURSUANT TO ORDER OF THE
COURT DATED SEPTEMBER 28,
2023 [ECF #274]**

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

10 1. The Motion is GRANTED. Capitalized terms not defined herein have
11 the meanings ascribed to them in the Motion.

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

15 3. Having reviewed *in camera* the confidential Settlement Agreement, the
16 Court FINDS that the terms of the Settlement with [REDACTED]
17 [REDACTED] memorialized in the Settlement Agreement are fair and equitable,
18 including without limitation, the Bar Order, the Administrative Claim and
19 disbursement in connection therewith, and are therefore APPROVED.

20 4. For the reasons set forth in the Motion, the Court finds that the
21 Settlement Agreement was made in good faith within the meaning and effect of
22 California Code of Civil Procedure § 877.6 and applicable case law. In accordance
23 with California Code of Procedure § 877.6, any and all claims against [REDACTED]
24 [REDACTED] for contribution, or implied
25 or equitable indemnity that are based upon, assert or relate in any way to any
26 damages caused to any person or entity arising out of, in connection with or relating
27 in any way to the 1inMM Ponzi Scheme are forever barred.

28 5. The Court also hereby PERMANENTLY BARS, RESTRAINS and

1 ENJOINS all persons and entities (except any governmental unit, as that term is
2 defined by 11 U.S.C. § 101(27)), as well as their respective heirs, successors,
3 assigns, officers, directors, representatives, agents and attorneys, from commencing
4 or continuing any civil action, administrative proceeding, arbitration or other
5 adversarial proceeding against [REDACTED]
6 [REDACTED] as well as its or their heirs, successors and assigns, asserting any claim or
7 cause of action arising out of, in connection with or relating in any way to the 1inMM
8 Ponzi Scheme (in whatever form and however denominated, a “1inMM Claim”).
9 All 1inMM Claims are hereby channeled into the Receivership Estate’s claims
10 distribution process that the Court will establish by separate order.

11 6. The Receiver is AUTHORIZED to take such further actions as may be
12 necessary to consummate the transactions in the Settlement Agreement.

13 7. The Court retains exclusive jurisdiction to hear and determine any
14 disputes arising out of or relating to the settlement approved by this order.

15 Dated:

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United States District Judge

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