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

Date: May 6, 2024
Time: 10:00 a.m. PT
Judge: Hon. Christina A. Snyder
Courtroom: 8D

**DOCUMENT FILED UNDER SEAL
PURSUANT TO ORDER OF THE
COURT DATED MARCH 19, 2024
[ECF #330]**

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on May 6, 2024, 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 1 in MM 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], and for related relief (the “Motion”).

The Motion is based on the Memorandum of Points and Authorities below and is supported by: (a) the *Settlement Agreement*, dated December 12, 2023 (the “Settlement Agreement”) (**Exhibit 1**); (b) the *Declaration of Michele Vives*, dated April 1, 2024 (“Vives Decl.”) (**Exhibit 2**); (c) the *Declaration of* [REDACTED], dated April 1, 2024 (“[REDACTED] Decl.”) (**Exhibit 3**); and (d) the *Declaration of Alexander Loftus*, dated April 1, 2024 (“Loftus Decl.”) (**Exhibit 4**).

This Motion is made following the Local Rule 7-3 conference of counsel which took place on April 1, 2024. **No party requests a hearing on the Motion.**

Dated: April 1, 2024

Respectfully submitted,

KATTEN MUCHIN ROSENMAN LLP

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

Attorneys for the Receiver
Michele Vives

TABLE OF CONTENTS

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

Table of Authoritiesiv

Factual Background 1

 A. The Ponzi Scheme 1

 B. ██████████ 1

 C. Investor Claims 1

 D. Settlement..... 2

 E. Assessment of the Settlement 3

Legal Standards..... 5

 A. Receivership settlements..... 5

 B. Good faith..... 7

 C. Partial final judgment 9

Argument 9

I. The Settlement is fair, equitable and in the best interests of the Estate. 9

 A. Probability of success..... 9

 1. ██████████ 9

 2. ██████████ 10

 3. Receiver Claims 11

 B. Collection difficulties..... 12

 C. Complexity/expense..... 12

 D. Creditors..... 13

II. The Settlement was reached in good faith..... 13

III. The Court should approve the Bar Order. 14

 A. The Court may enter the Bar Order..... 14

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

 C. The Bar Order is necessary to the Settlement..... 17

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

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

V. The Approval Order should be a final partial judgment..... 21
Notice to Creditors..... 21

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TABLE OF AUTHORITIES

Cases

1
2
3 *ABF Freight Sys., Inc. v. U.S.*, 2013 WL 842856 (N.D. Cal. Mar. 6, 2013)..... 8
4 *Baten v. Mich. Logistics, Inc.*, 2023 WL 2440244 (C.D. Cal. Mar. 8, 2023)..... 19
5 [REDACTED] 10
6 *Burton v. Ulrich (In re Schmitt)*, 215 B.R. 417 (B.A.P. 9th Cir. 1997)..... 7
7 *Casey v. Albertson’s, Inc.*, 362 F.3d 1254 (9th Cir. 2004)..... 21
8 *City of Grand Terrace v. Superior Ct.*, 192 Cal. App. 3d 1251 (1987)..... 8-9, 13
9 *CFTC v. Blueprint LLC*, 2023 WL 5109447 (S.D. Fla. Aug. 2, 2023)..... 15, 17
10 *CFTC v. Topworth Int’l, Ltd.*, 205 F.2d 1107 (9th Cir.1999)..... 5
11 *Donell v. Kowell*, 533 F.3d 762 (9th Cir. 2008)..... 11
12 *F.D.I.C. v. Sutter*, 2014 WL 3587548 (S.D. Cal. July 21, 2014) 8
13 *FTC v. Cardiff*, 2020 WL 9938072 (C.D. Cal. Mar. 10, 2020)..... 22
14 *Fisher v. Superior Ct.*, 103 Cal. App. 3d 434 (1980)..... 8
15 *Gill v. Blessing*, 2014 WL 12573667 (C.D. Cal. Oct. 6, 2014)..... 11
16 *Gordon v. Dadante*, 2008 WL 1805787 (N.D. Ohio Apr. 18, 2008), *aff’d*, 336 F.
17 App’x 540 (6th Cir. 2009)..... 17
18 *Gordon v. Dadante*, 336 F. App’x 540 (6th Cir. 2009)..... 6
19 *Grimm v. City of Portland*, 971 F.3d 1060 (9th Cir. 2020)..... 21-22
20 [REDACTED] 10
21 *In re Bondanelli*, 2020 WL 1304140 (B.A.P. 9th Cir. Mar. 18, 2020)..... 13
22 *In re Douglas J. Roger, M.D., Inc., APC*, 393 F. Supp. 3d 940 (C.D.
23 Cal. 2019)..... 7, 20
24 *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423 (E.D. Pa. 2001) 20
25 *In re Heritage Bond Litig.*, 2005 WL 1594403 (C.D. Cal. June 10, 2005)..... 20
26 *In re Isom*, 2020 WL 1950905 (B.A.P. 9th Cir. Apr. 22, 2020) 12
27 *In re Law*, 308 F. App’x 152 (9th Cir. 2009)..... 12
28 *In re MGS Mktg.*, 111 B.R. 264 (B.A.P. 9th Cir. 1990) 7

1 *In re Open Med. Inst., Inc.*, 639 B.R. 169 (B.A.P. 9th Cir. 2022)..... 7, 12

2 *In re TBH19, LLC*, 2022 WL 16782946 (B.A.P. 9th Cir. Nov. 8, 2022)..... 7, 12

3 *In re Tidwell*, 2018 WL 1162511 (Bankr. C.D. Cal. Mar. 1, 2018)..... 13

4 *In re Woodson*, 839 F.2d 610 (9th Cir. 1988)..... 6

5 *Jenson v. First Tr. Corp.*, 2008 WL 11338161 (C.D. Cal. June 9, 2008)..... 20

6 *Kingsburg Apple Packers, Inc. v. Ballantine Produce Co., Inc.*, 2010 WL 5059635
(E.D. Cal. Dec. 6, 2010) 7

7 [REDACTED] 10

8 *Liberte Cap. Grp., LLC v. Capwill*, 462 F.3d 543 (6th Cir. 2006) 6, 22

9 *Martin v. Kane (In re A&C Props.)*, 784 F.2d 1377 (9th Cir. 1986) 6

10 *Mason & Dixon Intermodal, Inc. v. Lapmaster Int’l LLC*, 632 F.3d 1056 (9th Cir.
2011) 8

11 *Matter of Munford, Inc.*, 97 F.3d 449 (11th Cir. 1996) 14

12 *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306 (1950) 21

13 *Muñoz v. United States Dep’t of State*, 50 F.4th 906 (9th Cir. 2022) 22

14 *Perez v. Safety-Kleen Sys., Inc.*, 253 F.R.D. 508 (N.D. Cal. 2008) 21

15 *Rodriguez v. Seabreeze Jetlev LLC*, 2022 WL 3327925 (N.D. Cal.
16 Aug. 11, 2022) 18

17 *SEC v. Aequitas Mgmt., LLC*, 2020 WL 7318305 (D. Or. Nov. 10, 2020)..... 14

18 *SEC v. Adams*, 2021 WL 8016843 (S.D. Miss. Feb. 25, 2021) 15-16, 22

19 *SEC v. Alleca*, 2016 WL 2858847 (N.D. Ga. May 16, 2016)..... 9, 21

20 *SEC v. Alleca*, 2021 WL 4843987 (N.D. Ga. Sept. 9, 2021), *vacated on other*
21 *grounds*, 2022 WL 16631325 (11th Cir. Nov. 2, 2022) 15, 17

22 *SEC v. Arthur Lamar Adams & Madison Timber Props., LLC*, 2023
WL 8483660 (S.D. Miss. Nov. 14, 2023) 17

23 *SEC v. Cap. Consultants, LLC*, 397 F.3d 733 (9th Cir. 2005)..... 6

24 *SEC v. Cap. Cove Bancorp LLC*, 2016 WL 11752897 (C.D. Cal. Dec.
25 15, 2016) 11, 18

26 *SEC v. Champion-Cain*, 2022 WL 126114 (S.D. Cal. Jan. 13, 2022)..... 6

27 *SEC v. DeYoung*, 850 F.3d 1172 (10th Cir. 2017)..... 14-17

28 *SEC v. Hardy*, 803 F.2d 1034 (9th Cir. 1986) 5, 14

1 *SEC v. Hickey*, 322 F.3d 1123 (9th Cir. 2003)..... 14

2 *SEC v. Kaleta*, 530 F. App’x 360 (5th Cir. 2013) 6, 15-17

3 *SEC v. Nadel*, 2012 WL 12910648 (M.D. Fla. Feb. 10, 2012).....14-16, 22

4 *SEC v. Pritzker Levine LLP*, 2022 WL 671020 (9th Cir. Mar. 7, 2022)..... 19-20

5 *SEC v. Stanford Int’l Bank, Ltd.*, 2017 WL 9989250 (N.D. Tex. Aug. 23, 2017), *aff’d sub nom. Zacarias v. Stanford Int’l Bank, Ltd.*, 945 F.3d 883 (5th Cir. 2019)14-15, 17

6 *SEC v. Stanford Int’l Bank, Ltd.*, 927 F.3d 830 (5th Cir. 2019)..... 6

7 *SEC v. Total Wealth Mgmt., Inc.*, 2019 WL 13179068 (S.D. Cal. Sept. 18, 2019)..... 6-7, 9

8 *SEC v. Wencke*, 622 F.2d 1363 (9th Cir. 1980) 14

9 *Spitzer v. Aljoe*, 2015 WL 6828133 (N.D. Cal. Nov. 6, 2015) 8, 13

10 *Tech-Bilt, Inc. v. Woodward-Clyde & Assocs.*, 38 Cal. 3d 488 (1985) 8-9

11 [REDACTED] 10

12 [REDACTED] 10

13 *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759 (9th Cir. 1977)..... 18-19

14 *Winkler v. McCloskey*, 83 F.4th 720 (9th Cir. 2023) 11

15 *Zacarias v. Stanford Int’l Bank, Ltd.*, 945 F.3d 883 (5th Cir. 2019).... 11, 14, 16-17

16 Statutes, Rules and Other

17 740 ILCS 100/2(d).....14, 22-23

18 CCP § 877.6.....7-9, 13-14, 22

19 Fed. R. Civ. P. 54(b)3, 9, 21, 23

20 Fed. R. Civ. P. 58.....3, 9, 21, 23

21 Fed. R. Civ. P. 79(a).....3, 9, 21, 23

22 L.R. 66-8.....6

23 L.R. 58-6..... 3, 9, 21

24 N.Y. Gen. Oblig. L. § 15-108(b)8, 14, 23

25

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MEMORANDUM OF POINTS AND AUTHORITIES

Factual Background

A. The Ponzi Scheme

On April 5, 2021, the SEC commenced this action against Zachary Horwitz (“Horwitz”) and 1inMM Capital, LLC (“1inMM”; together, “Defendants”), alleging they committed an offering fraud and Ponzi scheme in violation of the federal securities laws (“Ponzi Scheme”). On January 14, 2022, the Court appointed 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 to prosecute claims.

B. [REDACTED]

[REDACTED]

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

C. Investor Claims

Over 100 investors (“Investors”) represented by Loftus & Eisenberg, Ltd. (“L&E”) privately threatened to sue [REDACTED] based on [REDACTED]. (Vives Decl. ¶6.) The Investors—who believed that they had financed the

1 acquisition/licensing of film distribution rights to HBO/Netflix—asserted that [REDACTED]
2 was liable for their losses based on theories of [REDACTED]
3 [REDACTED] (“Investor Claims”), [REDACTED]
4 [REDACTED]
5 [REDACTED]. [REDACTED] asserted defenses that could have defeated the
6 Investor Claims. (*Id.* ¶¶6-7; [REDACTED] Decl. ¶¶10-12.)

7 The Receiver could have pursued claims against [REDACTED] on behalf of 1inMM,
8 [REDACTED] (“Receiver Claims”), but deferred to the Investors. (Vives Decl. ¶8.)
9 Because the Investor Claims are derivative of the Receiver Claims (collectively,
10 “Claims”), the Receiver monitored the parties’ negotiations. (*Id.*) [REDACTED] expressed
11 interest to the Receiver in settling globally, but only if this Court entered a bar order.
12 The Receiver also conferred with L&E about a potential settlement, and secured the
13 Investors’ agreement that any settlement payment would be paid to the Estate for the
14 benefit of all creditors. (*Id.* ¶9.)

15 [REDACTED] worked cooperatively with the Receiver and [REDACTED]
16 [REDACTED]
17 [REDACTED]. (*Id.* ¶10; [REDACTED] Decl. ¶4.) From her review of the available evidence,
18 the Receiver determined that Horwitz had deceived [REDACTED] regarding 1inMM’s
19 business, [REDACTED] [REDACTED] [REDACTED]
20 [REDACTED] and that [REDACTED] lacked any knowledge that Horwitz was perpetrating a
21 fraud until [REDACTED]
22 [REDACTED]. (Vives Decl. ¶10.)

23 **D. Settlement**

24 Through a mediation on May 3, 2023 before [REDACTED],
25 the parties reached a confidential settlement whereby [REDACTED] will pay \$ [REDACTED] to
26 the Estate (“Settlement Payment”) to settle all asserted and threatened claims against
27 it arising out of or relating to the Ponzi Scheme [REDACTED]
28

1 in exchange for mutual general releases and entry of an order (“Bar Order”)
2 permanently enjoining all persons and non-governmental units from suing █████ on
3 any claim arising out of or relating to the Ponzi Scheme (“Settlement”). The
4 Settlement is documented in the Settlement Agreement. (Vives Decl. ¶11.)

5 █████ obligation to pay the Settlement Amount does not arise unless and
6 until the Court enters—without material modification—the proposed order attached
7 as Exhibit B to the Settlement Agreement, which both approves the Settlement
8 Agreement and enters the Bar Order (“Approval Order”), and the Approval Order
9 then becomes final and non-appealable. The parties intend that the Approval Order,
10 once entered, be an immediately appealable partial final judgment. Accordingly, the
11 proposed Approval Order expressly finds and determines that it is a partial final
12 judgment under Rule 54(b), and directs the Clerk, pursuant to Local Rule 58-6, to
13 treat the Approval Order, and its entry on the docket, as an entry of judgment for
14 purposes of Rules 58 and 79(a). Satisfying these conditions will ensure the Approval
15 Order has the same finality and appealability as a judgment entered at the end of a
16 civil action. (*Id.* ¶12.)

17 Finally, the parties agreed that █████ identity must remain strictly
18 confidential to prevent potential irreparable injury resulting from any public
19 disclosure of the Claims. Because confidentiality is an essential term of the
20 Settlement, the Receiver filed an application requesting that this Motion, the Bar
21 Order and all supporting documents be sealed, which the Court granted. [ECF #330]
22 (*Id.* ¶13.)

23 **E. Assessment of the Settlement**

24 The Receiver believes the Settlement is in the best interest of the Estate. The
25 Settlement Payment constitutes a substantial recovery without the expense and risk
26 of litigation, and the Settlement represents an equitable, good-faith resolution of all
27 Claims. (*Id.* ¶14.)
28

1 While the Investors and the Receiver were confident in their Claims, there
2 was a significant risk of an adverse result. ██████ asserted meaningful responses and
3 defenses that may have resulted in no recovery, including: ██████

4 ██████
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6 ██████ ██████ ██████
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8 ██████
9 ██████. (*Id.* ¶15; ██████ Decl. ¶¶10-12.) The Settlement thus
10 avoids protracted and expensive litigation, prevents a substantial risk of no recovery
11 and conserves Estate resources. (Vives Decl. ¶15.)

12 The Settlement Payment also far exceeds what ██████ would have paid to
13 resolve the Investor Claims alone without a bar order. (Vives Decl. ¶16; ██████
14 Decl. ¶16.) The Bar Order is a critical component of the settlement consideration
15 and common among these sorts of settlements. So L&E's work undoubtedly
16 enhanced the final settlement value, all of which is flowing to the Estate. (Vives
17 Decl. ¶16.) And because the Investors agreed that ██████ should remit the entire
18 Settlement Payment to the Estate, L&E helped create a common fund from which a
19 portion of their attorney's fees may be paid. (*Id.*)

20 The Settlement resolves a particularly complex multiparty dispute. (*Id.* ¶17;
21 ██████ Decl. ¶13.) The Claims arise from a common nucleus of operative facts—
22 the Ponzi Scheme—but the objectives of the Receiver and the Investors were not
23 necessarily the same; the Investors pursued ██████ to remedy their own personal
24 damages, while the Receiver focused on benefitting the Estate as a whole. (Vives
25 Decl. ¶17.) Those goals often conflicted, resulting in disagreements about settlement
26 terms and how to proceed. (*Id.*)

1 The Investor Claims are, nonetheless, derivative of the Receiver Claims and
2 compete with the Receiver for [REDACTED] assets. The Investors are pursuing the same
3 party that the Receiver could have pursued on account of the same transactions and
4 occurrences. As such, the Investor Claims affected the Estate’s assets and ultimate
5 recoveries; every dollar the Investors managed to recover from [REDACTED] arguably would
6 have been a dollar the Receiver could not have recovered. (*Id.* ¶18.)

7 [REDACTED] wanted to achieve finality with a settlement, which it really could
8 accomplish only through a deal with the Receiver. (*Id.* ¶19; [REDACTED] Decl.
9 ¶¶14,16.) The Receiver did not think it advisable or practical to exclude the Investors
10 from those discussions, as they function effectively as an ad hoc creditors committee.
11 (Vives Decl. ¶19.) [REDACTED], moreover, made clear that any settlement of the Claims had
12 to include a bar order enjoining any suits against it arising from the Ponzi Scheme
13 and be an immediately appealable partial final judgment, so the Receiver focused on
14 meeting those requirements. ([REDACTED] Decl. ¶¶ 14,17.) These factors, among
15 others, made the Claims complex and particularly difficult to settle globally. (Vives
16 Decl. ¶¶19-20.)

17 Legal Standards

18 **A. Receivership settlements**

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

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

7 Local Rule 66-8 directs a receiver to “administer the estate as nearly as
8 possible in accordance with the practice in the administration of estates in
9 bankruptcy.” District courts look to bankruptcy law for guidance about receivership
10 administration. *See, e.g., SEC v. Cap. Consultants, LLC*, 397 F.3d 733, 745 (9th
11 Cir.2005) (bankruptcy law “analogous” and therefore persuasive in receiverships).
12 “[T]he purpose of bankruptcy receiverships and equity receiverships is essentially
13 the same—to marshal assets, preserve value, equally distribute to creditors, and,
14 either reorganize, if possible, or orderly liquidate.” *SEC v. Stanford Int’l Bank, Ltd.*,
15 927 F.3d 830, 841 (5th Cir.2019) (internal citation/quotations omitted).

16 Courts often apply bankruptcy principles to evaluate receivership settlements.
17 *SEC v. Champion-Cain*, 2022 WL 126114, at *1 (S.D.Cal. Jan. 13, 2022) (applying
18 bankruptcy cases to approval of receivership settlement); *SEC v. Total Wealth*
19 *Mgmt., Inc.*, 2019 WL 13179068, at *2 (S.D.Cal. Sept. 18, 2019) (same). Bankruptcy
20 courts evaluate whether a compromise is “fair and equitable,” considering “the
21 probability of success in litigation, any difficulties that may be encountered in
22 collection, the complexity of the litigation, the expense, inconvenience, and delay
23 necessarily attending, and the interest of the receivership entities’ creditors and their
24 reasonable views.” *Champion-Cain*, 2022 WL 126114, at *1 (quoting *In re*
25 *Woodson*, 839 F.2d 610, 620 (9th Cir.1988)); *see also Martin v. Kane (In re A&C*
26 *Props.)*, 784 F.2d 1377, 1381 (9th Cir.1986). Applying those factors, “courts need
27
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1 not conduct a mini trial on the merits, but need only canvass the issues.” *In re*
2 *TBH19, LLC*, 2022 WL 16782946, at *6 (B.A.P.9th Cir. Nov. 8, 2022).

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

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

22 **B. Good faith**

23 “A motion for good faith settlement arises under [CCP §877.6], which applies
24 to federal court actions and authorizes the Court to determine whether a settlement
25 agreement was entered into good faith.” *Kingsburg Apple Packers, Inc. v. Ballantine*
26 *Produce Co., Inc.*, 2010 WL 5059635, at *2 (E.D.Cal. Dec. 6, 2010). Under
27 §877.6(a), “[a]ny party to an action wherein it is alleged that two or more parties are
28

1 joint tortfeasors shall be entitled to a hearing on the issue of the good faith of a
2 settlement entered into by the plaintiff or other claimant and one or more alleged
3 tortfeasors.” A court’s determination that a “settlement was made in good faith shall
4 bar any other joint tortfeasor...from any further claims against the settling
5 tortfeasor...for equitable comparative contribution, or partial or comparative
6 indemnity, based on comparative negligence or comparative fault.” *Id.* §877.6(c);¹
7 *see also* N.Y.Gen.Oblig.L. §15-108(b) (similar).

8 To determine whether a settlement of state law claims was made in good faith,
9 courts consider: “(1) a rough approximation of plaintiffs’ total recovery and the
10 settlor’s proportionate liability; (2) the amount paid in settlement; (3) the allocation
11 of settlement proceeds among plaintiffs; and (4) a recognition that a settlor should
12 pay less in settlement than he would if he were found liable after a trial.” *Mason &*
13 *Dixon Intermodal, Inc. v. Lapmaster Int’l LLC*, 632 F.3d 1056, 1064 (9th Cir.2011)
14 (cleaned up) (quoting *Tech-Bilt, Inc. v. Woodward-Clyde & Assocs.*, 38 Cal.3d 488,
15 499 (1985)). Courts assess these *Tech-Bilt* factors based on “the information
16 available at the time of settlement.” 38 Cal.3d at 499. Courts may also consider “the
17 financial conditions and insurance policy limits of settling defendants” and “the
18 existence of collusion, fraud, or tortious conduct aimed to injure the interests of non-
19 settling defendants.” *Id.*; *see also ABF Freight Sys., Inc. v. U.S.*, 2013 WL 842856,
20 at *9 (N.D.Cal. Mar. 6, 2013) (mediator assistance supported good-faith finding).

21 Notably, “when the good faith nature of a settlement is undisputed, it is
22 unnecessary to weigh the *Tech-Bilt* factors.” *F.D.I.C. v. Sutter*, 2014 WL 3587548,
23 at *2 (S.D.Cal. July 21, 2014); *City of Grand Terrace v. Superior Ct.*, 192

24 _____
25
26 ¹ 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). ██████ seeks to settle all Ponzi Scheme-related claims.

1 Cal.App.3d 1251, 1261 (1987) (“when no one objects, the barebones motion which
2 sets forth the ground of good faith, accompanied by a declaration which sets forth a
3 brief background of the case is sufficient”). Any party asserting lack of good faith,
4 however, has the burden under §877.6(d) to prove “that the settlement is so far ‘out
5 of the ballpark’ in relation to these factors as to be inconsistent with the equitable
6 objectives of the statute.” *Tech-Bilt*, 38 Cal.3d at 499-500.

7 **C. Partial final judgment**

8 When an action involves multiple claims or parties, “the court may direct
9 entry of a partial final judgment as to one or more, but fewer than all, claims or
10 parties only if the court expressly determines that there is no just reason for delay.”
11 Fed. R. Civ. P. 54(b). “Federal courts often include Rule 54(b) language in orders
12 approving [receivership settlement] agreements.” *SEC v. Alleca*, 2016 WL 2858847,
13 at *2 (N.D.Ga. May 16, 2016). Local Rule 58-6 authorizes this Court to direct the
14 Clerk that a particular order constitutes an entry of judgment for purposes of Rules
15 58 and 79(a).

16 **Argument**

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

18 The Receiver believes the Settlement satisfies the *A&C Properties* factors.
19 (Vives Decl. ¶21.)

20 **A. Probability of success**

21 The probability of success of litigating the Claims is mixed. *See, e.g., Total*
22 *Wealth Mgmt.*, 2019 WL 13179068, at *3 (court must determine whether settlement
23 amount is commensurate to litigation risk). Assessing risk here is largely a function
24 of evaluating ██████ asserted defenses to the Claims.

25 **1. ██████**

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1 [REDACTED]
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[REDACTED]

3. Receiver Claims

The Receiver stands in the shoes of 1inMM, [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”). Any [REDACTED] [REDACTED] claims asserted by the Receiver would have been subject to the same defenses discussed above, plus potentially additional defense such as *in pari delicto*. Plus, it is unclear whether the Receiver could have asserted those claims against [REDACTED] independently because the Receiver stands in the shoes of 1inMM, not its creditors. *See, e.g., Winkler v. McCloskey*, 83 F.4th 720, 727 (9th Cir.2023); *Donell v. Kowell*, 533 F.3d 762, 777 (9th Cir.2008).

The Settlement resolves any potential infirmities with the Receiver Claims while providing cash to the Estate. *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”).

The Receiver considered [REDACTED] defenses to be a significant litigation risk. (Vives Decl. ¶22.) The Court may have sustained [REDACTED] defenses, which would have been an outcome worse than the Settlement. Rather than take that risk, the Receiver compromised. *See, e.g., SEC 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, and expense of

1 litigation); *Open Med. Inst.*, 639 B.R. at 183-84 (same, where trustee averred odds
2 of success as a “coin flip” and “thought it was safer to settle”). The Settlement
3 appropriately accounts for the mixed probability of success of the Claims. (Vives
4 Decl. ¶23.)

5 **B. Collection difficulties**

6 When collectability is “not of particular concern to either side,” this factor is
7 “neutral.” *TBH19*, 2022 WL 16782946, at *7; *In re Isom*, 2020 WL 1950905, at *7
8 (B.A.P.9th Cir. Apr. 22, 2020). It is unclear whether ██████ would have had sufficient
9 assets to satisfy an adverse judgment entered in the Investors’ favor. (Vives Decl.
10 ¶24.) So, this factor is neutral.

11 **C. Complexity/expense**

12 It would be complex, expensive and time-consuming for the parties to litigate
13 the Claims. (*Id.* ¶25.) This factor is particularly important in liquidations like this
14 one, where the goal is “obtaining the best possible realization upon the available
15 assets and without undue waste by needless or fruitless litigation.” *In re Law*, 308
16 F.App’x 152, 153 (9th Cir.2009). ██████ defenses present questions of fact
17 necessarily requiring discovery and trial to resolve.

18 Given her review of the available evidence, the Receiver believes litigation
19 against ██████ would be expensive and time-consuming. It would likely require
20 extensive discovery, retention of multiple experts and the testimony of numerous
21 witnesses. (Vives Decl. ¶26.) Discovery, trial and an appeal would likely take at least
22 two years to complete and cost the estate at least several hundred thousand dollars
23 in fees and expenses. (*Id.*) This factor, therefore, weighs heavily in favor of
24 approving the Settlement. *See, e.g., TBH19*, 2022 WL 16782946, at *3 (complexity
25 element weighed in favor of settlement under similar circumstances).
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1 **D. Creditors**

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

8 In sum, the Receiver believes the Settlement is fair, equitable and adequate
9 under the circumstances to realize the value of the Claims. (Vives Decl. ¶27.)
10 Litigation is, certainly, an alternative course, but “while the [Receiver] might do
11 better in litigation, she is not likely to do so.” *In re Tidwell*, 2018 WL 1162511, at
12 *3 (Bankr.C.D.Cal. Mar. 1, 2018) (cleaned up).

13 **II. The Settlement was reached in good faith.**

14 If no creditor objects, the Court may make a good-faith finding as a matter of
15 law without evaluating the *Tech-Bilt* factors. *Grand Terrace*, 192 Cal.App.3d at
16 1261. The *Tech-Bilt* factors justify a good-faith finding.

17 As discussed above, the Settlement reflects the Receiver’s approximation of
18 the total potential recovery from █████, █████ proportionate responsibility given █████
19 █████ and the understanding that █████ is paying less than
20 it would have if found liable after a trial. The Settlement was also the result of arm’s-
21 length negotiations before a neutral mediator, thus demonstrating the absence of any
22 collusion, fraud or tortious conduct. Plus, the proceeds will be paid into the Estate
23 for the benefit of all creditors, not just the Investors. (Vives Decl. ¶¶28-30.)

24 Accordingly, the Settlement satisfies the “two major goals” of CCP §877.6:
25 “the equitable sharing of costs among the parties at fault and the encouragement of
26 settlements.” *Spitzer*, 2015 WL 6828133, at *3. The Court should make a good-faith
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1 finding within the meaning of CCP §877.6, 740 ILCS 100/2(d), N.Y. Gen. Oblig. L.
2 § 15-108(b), and similar laws in other states.

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

4 **A. The Court may 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 receivers “to curb investors’ individual advantage-
18 seeking in order to reach settlements for the aggregate benefit of investors under the
19 court’s supervision.” *Zacarias*, 945 F.3d at 896. “The availability of such orders
20 facilitates settlement, promotes equitable recoveries by creditors, and maximizes
21 assets available to creditors in the aftermath of a Ponzi scheme.” *SEC v. Aequitas*
22 *Mgmt., LLC*, 2020 WL 7318305, at *1 (D.Or. Nov. 10, 2020); *see also Matter of*
23 *Munford, Inc.*, 97 F.3d 449, 455 (11th Cir.1996).

24 Bar orders are a common feature in settlements with receivers in cases arising
25 from violation of the federal securities laws. *See, e.g., SEC v. DeYoung*, 850 F.3d
26 1172, 1183 n.5 (10th Cir.2017) (collecting cases); *SEC v. Nadel*, 2012 WL
27 12910648, at *1 (M.D.Fla. Feb. 10, 2012) (same). Federal courts generally require
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1 that bar orders be (1) fair, just, equitable and in the best interest of the estate, and (2)
2 “necessary” to the proposed settlement. *See, e.g., DeYoung*, 850 F.3d at 1178, 1183;
3 *Kaleta*, 530 F.App’x at 362-63; *Stanford*, 2017 WL 9989250, at *3; *SEC v. Alleca*,
4 2021 WL 4843987, at *12 (N.D.Ga. Sept. 9, 2021), *vacated on other grounds*, 2022
5 WL 16631325 (11th Cir. Nov. 2, 2022); *CFTC v. Blueprint LLC*, 2023 WL 5109447,
6 at *3 (S.D.Fla. Aug. 2, 2023). The Bar Order here satisfies both elements.²

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

9 A bar order typically meets this first element if it facilitates a higher settlement
10 value and/or avoids protracted litigation. *See, e.g., DeYoung*, 850 F.3d at 1178;
11 *Nadel*, 2012 WL 12910648, at *1-2; *Alleca*, 2021 WL 4843987, at *12-13; *SEC v.*
12 *Adams*, 2021 WL 8016843, at *2 (S.D.Miss. Feb. 25, 2021). A bar order is in the
13 best interest of the receivership estate if it resolves “complex claims” and “rights and
14 obligations of parties” that “are so inextricably intertwined that resolution of the
15 claims independently, as opposed to collectively, would be difficult and inefficient,
16 would substantially increase costs to the [r]eceivership [e]state, and would likely
17 reduce the ultimate recovery to the [investors].” *DeYoung*, 850 F.3d at 1178; *accord*
18 *Alleca*, 2021 WL 4843987, at *13 (bar order was fair and equitable given amount
19 defendants agreed to pay and receiver’s ability to avoid “the litigation risk...and the
20 expenses associated with it”); *Blueprint*, 2023 WL 5109447, at *4-5 (bar order was
21 fair and equitable where case was “extremely complex,” involving “speculative” and
22 “tenuous” claims interrelated with other claims, and it was “extremely likely” that
23 litigation of claims would require substantial, lengthy discovery and greatly deplete
24 estate resources). Finally, a bar order is fair to creditors if it permits enjoined claims

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27 ² The Court has already approved other bar orders in this case for similar reasons. [ECF #230 ¶4;
28 ECF #273 ¶5; ECF #306 ¶4]

1 to be channeled to the receivership’s claim process. *See, e.g., Kaleta*, 530 F.App’x
2 at 362-63; *Adams*, 2021 WL 8016843, at *2.

3 The Settlement meets these requirements. It avoids protracted litigation of the
4 Claims, the outcome of which was uncertain due to the strength of ██████ defenses.
5 The Estate avoided significant expenses and time associated with litigating. The Bar
6 Order also drove a higher settlement value, as ██████ agreed to pay far more for a
7 global settlement with the Bar Order than it would have paid to settle the Investor
8 Claims alone. *See, e.g., Nadel*, 2012 WL 12910648, at *1 (bar order warranted in
9 part because it “facilitate[d] a higher settlement value and, therefore, a larger
10 recovery for claimants tha[n] would otherwise be available without the bar order”).
11 Moreover, the Bar Order helped resolve complex claims that would have been
12 difficult—if not impossible—to resolve independently. (Vives Decl. ¶¶32-33;
13 ██████ Decl. ¶16.) Absent a settlement, the Receiver and Investors would be left
14 to compete for ██████ assets, a result that would have “frustrat[ed] the receiver’s pro
15 rata distribution to investors—a core element of its draw upon equity.” *Zacarias*,
16 945 F.3d at 900. (Vives Decl. ¶33.)

17 The Bar Order is also fair to those investors who will be enjoined from
18 asserting claims against ██████. The order is appropriately tailored because it does not
19 enjoin “independent and non-derivative [claims] that do not involve assets claimed
20 by the receivership.” *Zacarias*, 945 F.3d at 897. Instead, it enjoins ***only those claims***
21 ***that arise out of or relate to the Ponzi Scheme***. Such claims are derivative of and
22 dependent upon the Receiver’s potential claims. *See, e.g., id.* (scope of bar order
23 appropriate where enjoined claims were “derivative of and dependent on the
24 receiver’s claims, and their suits directly affect[ed] the receiver’s assets”); *DeYoung*,
25 850 F.3d at 1178 (affirming bar order that limited scope of enjoined conduct to “any
26 claims against [the settling defendants] arising out of, or in connection with, or
27 relating to any [customer account associated with the securities fraud]”); *Kaleta*, 530
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1 F.App’x at 362-63 (scope of bar order appropriate where “investors continue[d] to
2 retain all other putative claims against the [settling parties] that d[id] not arise from
3 the allegedly fraudulent notes [underlying] this action”); *Stanford*, 2017 WL
4 9989250, at *2 (entering bar order permanently enjoining any other pending or
5 future claims against settling defendants “arising from their relationship with [the
6 Ponzi-scheme operator]”).

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

11 C. The Bar Order is necessary to the Settlement.

12 A bar order is necessary if it is “essential,” meaning the parties otherwise
13 would not have resolved their dispute without it. *See, e.g.*, *DeYoung*, 850 F.3d at
14 1183; *Alleca*, 2021 WL 4843987, at *12; *Kaletka*, 530 F.App’x at 362-63; *Blueprint*,
15 2023 WL 5109447, at *3; *cf. SEC v. Arthur Lamar Adams & Madison Timber*
16 *Props., LLC*, 2023 WL 8483660 (S.D.Miss. Nov. 14, 2023) (“Bar orders are
17 sometimes essential to guarantee finality during the receivership process[.]”). Here,
18 the Bar Order is necessary because ██████ would not have settled without a bar order
19 enjoining all future claims against it arising out of or relating to the Ponzi Scheme.
20 (Vives Decl. ¶34; ██████ Decl. ¶16.) Indeed, entry of the Bar Order is a condition
21 precedent under the Settlement Agreement. (Ex. 1 ¶¶3(a), 19, 51.) The Bar Order is,
22 therefore, necessary. *See, e.g.*, *Alleca*, 2021 WL 4843987, at *13 (bar order
23 necessary where settling defendant “would not have agreed to settle...without the
24 bar order,” and settlement agreement was contingent on entry of bar order); *Gordon*
25 *v. Dadante*, 2008 WL 1805787, at *14 (N.D.Ohio Apr. 18, 2008) (similar), *aff’d*,
26 336 F.App’x 540 (6th Cir.2009); *Blueprint*, 2023 WL 5109447, at *3-4 (bar order
27 necessary where settlement expressly stated it was “a necessary, integral, and
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1 essential” condition to agreement and that the parties’ intent was to fully and finally
2 resolve all claims relating to fraudulent scheme).

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

4 The Settlement is largely the result of L&E’s pursuit of the Investor Claims.
5 In recognition of that, the Receiver agreed that L&E should hold an allowed
6 \$ ██████ administrative claim—or 33 percent of the total Settlement Payment—
7 in exchange for its contributions to the Estate (“Administrative Claim”).³ (Vives
8 Decl. ¶35.) After all, the Receiver and L&E—who functions like counsel to a
9 creditors’ committee in a bankruptcy case—are attempting to achieve the same goal
10 of bringing as much money into the Estate as possible for the benefit of net losing
11 investors. *Cf. Rodriguez v. Seabreeze Jetlev LLC*, 2022 WL 3327925, at *7
12 (N.D.Cal. Aug. 11, 2022) (“in bankruptcy cases, the debtor in possession and the
13 committee of creditors share a duty to maximize the debtor’s estate”) (cleaned up).

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

19 The Court may also approve the Administrative Claim because L&E helped
20 create a common fund in the Estate. Under the “common fund” doctrine, “a private
21 plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund
22 to which others also have a claim is entitled to recover from the fund the costs of his
23 litigation, including attorneys’ fees.” *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759,

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26 ³ The Court has previously allowed L&E administrative claims for similar reasons. [ECF #230 ¶3;
27 ECF #273 ¶6; ECF #306 ¶5] ██████ is not involved with and takes no position on the Administrative
28 Claim.

1 769 (9th Cir.1977); *accord Baten v. Mich. Logistics, Inc.*, 2023 WL 2440244, at *7
2 (C.D.Cal. Mar. 8, 2023). The common-fund doctrine “is designed to spread litigation
3 costs proportionately among all the beneficiaries so that the active beneficiary does
4 not bear the entire burden alone and the ‘stranger’ beneficiaries do not receive
5 benefits at no cost to themselves.” *Vincent*, 557 F.2d at 769.

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

21 Likewise, L&E played an essential role in increasing the amount of the
22 Settlement Payment, all of which is coming into the Estate for eventual distribution
23 to creditors. ██████ sought finality with a settlement, which it really could accomplish
24 only through a deal with the Receiver that would include a bar order. (Vives Decl.
25 ¶36; ██████ Decl. ¶¶14,16.) But the Receiver was unwilling to settle with ██████
26 over the objections of the Investors—over 100 of the Estate’s creditors—any
27 settlement had to resolve their claims too. (Vives Decl. ¶36.)
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1 The Investors’ agreement that ██████ should make the Settlement Payment to
2 the Estate was the lynchpin. It “undeniably caused the...increase” of the Estate’s
3 cash assets available for distribution to creditors beyond what the Receiver alone
4 otherwise could have recovered. (*Id.*) *Pritzker*, 2022 WL 671020, at *1. L&E,
5 moreover, devoted a significant amount of work to this dispute (Loftus Decl. ¶¶13-
6 18), which was a cause-in-fact benefitting the common fund in the Estate. *Pritzker*,
7 2022 WL 671020, at *1 (“the common fund doctrine requires that the work of the
8 attorney seeking an extra fee be a cause-in-fact of any claimed benefit to the fund,
9 but not the *only* cause-in-fact”). Having created a common fund in the Estate, the
10 Receiver’s agreement to pay L&E 33% of the Settlement Payment is reasonable and
11 appropriate. *See, e.g., Jenson v. First Tr. Corp.*, 2008 WL 11338161, at *10-11
12 (C.D.Cal. June 9, 2008) (approving 33% fee award from common fund); *In re*
13 *Heritage Bond Litig.*, 2005 WL 1594403, at *19 (C.D.Cal. June 10, 2005) (same);
14 *In re Gen. Instrument Sec. Litig.*, 209 F.Supp.2d 423,431,434 (E.D.Pa. 2001) (same).

15 Finding a way to compensate L&E for its efforts in augmenting the Estate was
16 a hard-fought material term of the overall Settlement. The Receiver agreed to the
17 Administrative Claim amount in the exercise of her business judgment, which she
18 felt was necessary to achieve a global settlement. (Vives Decl. ¶37.) That decision
19 is entitled to deference. *See, e.g., Roger*, 393 F.Supp.3d at 961. The Receiver asks
20 the Court to approve the Administrative Claim and associated disbursement.⁴ (Vives
21 Decl. ¶38.)

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26 ⁴ L&E has entered into an agreement with JurisPrudent Deferral Solutions, LLC, pursuant to which
27 L&E’s right to fees on account of the Administrative Claim is deferred, and has asked the Receiver
28 to pay the Administrative Claim to JurisPrudent. ██████ is not involved with and takes no position
on this arrangement.

1 **V. The Approval Order should be a final partial judgment.**

2 Because it is “not uncommon” for receiver settlements to condition payment
3 on entry of a final order, “[f]ederal courts often include Rule 54(b) language in orders
4 approving [settlements]” with receivers, as a Rule 54(b) finding “can prevent delays
5 in the receiver collecting and distributing the settlement amount.” *Alleca*, 2016 WL
6 2858847, at *2. The Court may also direct that the order granting this Motion
7 constitutes an entry of judgment pursuant to Rules 58 and 79(a). LR 58-6; *Casey v.*
8 *Albertson’s, Inc.*, 362 F.3d 1254, 1258-59 (9th Cir. 2004) (district court not required
9 to file two separate documents under Rule 58, so long as ruling clearly evidences
10 judge’s intention that it be final decision) (citations omitted).

11 Here, the parties intend the Settlement and the Approval Order to fully and
12 finally resolve the Receiver’s potential claims against ██████ and the Investor Claims.
13 No pending claims in this action seek the relief the Receiver could have sought on
14 her potential claims, and there is no factual overlap between the matters resolved via
15 the Settlement and the claims and issues left to be addressed in this action.
16 Accordingly, the Receiver requests that the Court find there is no just reason for
17 delay, such that the order approving this Motion constitutes an immediately
18 appealable partial final judgment under Rule 54(b). The Receiver further requests
19 that the Court direct the Clerk to treat the order granting this Motion as an entry of
20 judgment for purposes of Rules 58 and 79(a), without the need to set out the
21 judgment in a separate document.

22 **Notice to Creditors**

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

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. ¶39.)

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

20 **WHEREFORE**, the Receiver respectfully requests that, once the period to
21 object to the Motion has expired, the Court enter the proposed order submitted
22 herewith: (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, including within the meanings of CCP §877.6, 740 ILCS
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1 100/2(d) and N.Y.Gen.Oblig.L. §15-108(b); (d) entering the restraints and
2 injunctions against claims against [REDACTED] comprising the Bar Order; (e) finding no just
3 reason to delay entry of the order as a partial final judgment under Rule 54(b) and
4 directing the Clerk to treat the order, and its entry on the docket, as an entry of
5 judgment for purposes of Rules 58 and 79(a); (f) authorizing the Receiver to take
6 such further actions as may be necessary to consummate the transactions in the
7 Settlement Agreement; and (g) granting such further relief as the Court deems
8 necessary and appropriate.

9 Dated: April 1, 2024

Respectfully submitted,

10 **KATTEN MUCHIN ROSENMAN LLP**

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

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13 *Attorneys for the Receiver*
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 6,995 words, which complies with the word limit of L.R. 11-6.1.

Dated: April 1, 2024

Respectfully submitted,

/s/ Terence G. Banich
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KATTEN MUCHIN ROSENMAN LLP
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CHICAGO, IL 60661
(312) 902-5200

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 April 1, 2024, I served the following
6 document(s) described as:

7 **MOTION OF RECEIVER MICHELE VIVES FOR ORDER
8 APPROVING SETTLEMENT WITH [REDACTED] AND FOR
9 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 [REDACTED]
25 Alexander Loftus (alex@loftusandseisenberg.com)

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

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 April 1, 2024 at Chicago, Illinois.

/s/Terence G. Banich
Terence G. Banich

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

Exhibit 1

Settlement Agreement

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) is made and entered into by and between (i) Michele Vives, not individually but solely as the federal equity receiver (the “Receiver”) of 1inMM Capital, LLC and/or 1inMM Productions LLC (“1inMM”) and their subsidiaries and affiliates, as well as over the assets that are attributable to funds derived from investors or clients of 1inMM or Zachary Horwitz or that were fraudulently transferred by those entities and/or Zachary Horwitz (the “1inMM Estate”); (ii) the persons and entities listed on **Exhibit A** hereto and represented by Alexander Loftus and his firm, Loftus & Eisenberg, Ltd., in this matter (the “Investors”); and (iii) [REDACTED] (the Receiver, the Investors, and [REDACTED] are each referred to in this Agreement separately as a “Party” and together as the “Parties”);

WHEREAS, on April 5, 2021, the U.S. Securities and Exchange Commission (the “SEC”) filed *SEC v. Zachary J. Horwitz and 1inMM Capital, LLC*, Case No. 2:21-CV-02927-CAS-PD (C.D. Cal.) (the “SEC Action”), alleging that Zachary Horwitz (“Horwitz”) and 1inMM Capital, LLC had engaged in fraudulent conduct amounting to a Ponzi scheme and affecting investors in such entity;

WHEREAS, on April 5, 2021, the U.S. Department of Justice (the “DOJ”) filed a criminal complaint against Horwitz, Case No. CR 21-214-MCS (C.D. Cal.) (the “Criminal Action”), alleging Horwitz had used 1inMM to perpetrate a Ponzi scheme, and on May 4, 2021, the DOJ filed an indictment charging Horwitz with various federal crimes in relation to the claimed Ponzi scheme (the allegations in the SEC Action and the Criminal Action are referred to collectively as the “1inMM Ponzi Scheme”);

WHEREAS, on October 4, 2021, Horwitz pled guilty to one count of federal securities fraud arising from the 1inMM Ponzi Scheme and thereafter, on February 14, 2022, was sentenced to 20 years in prison;

WHEREAS, in an order dated January 14, 2022, in the SEC Action (ECF No. 70), the United States District Court for the Central District of California (the "Federal Court") entered an order appointing the Receiver as permanent receiver for the 1inMM Estate, with the powers, duties, and authority over the 1inMM Estate as set forth further in that order;

WHEREAS, Ms. Vives has served as Receiver of the 1inMM Estate continuously since her appointment on January 14, 2022, and continues to so serve;

WHEREAS, [REDACTED]
[REDACTED]
[REDACTED];

WHEREAS, the Investors and the Receiver contend that they may have certain claims against [REDACTED] arising from or relating to [REDACTED] (the "Threatened Claims"), but no lawsuit has been filed to date pleading such claims;

WHEREAS, [REDACTED] expressly denies any and all allegations of wrongdoing, fault, liability, or damages whatsoever in relation to the Threatened Claims and is entering into this Agreement solely to avoid the burden, very substantial expense, and risks of litigation;

WHEREAS, the Receiver and the Investors each have evaluated, through their respective counsel, the facts and the law relating to the Threatened Claims and, after considering the results of that investigation and the benefits of this Settlement (as defined in Paragraph 16), as well as the burden, substantial expense, and risks of litigation, have (i) concluded that a settlement with [REDACTED] under the terms set forth below is fair, reasonable, adequate, and in the best interests of the

1 in MM Estate and the Investors, respectively; and (ii) agreed to enter into the Settlement and this Agreement and to use their best efforts to effectuate the Settlement and this Agreement;

WHEREAS, the Receiver and the Investors, on the one hand, and [REDACTED], on the other hand, desire to fully, finally, and forever compromise and effect a global settlement and discharge of all claims, disputes, and issues between them;

WHEREAS, the Receiver and the Investors, on the one hand, and [REDACTED], on the other hand, have engaged in extensive, good-faith, and arm's-length negotiations, including participation in a formal mediation process in the spring of 2023 with [REDACTED], which mediation resulted in the Parties' agreement to the settlement in principle that preceded their entry into this Agreement; and

WHEREAS, absent approval of this Settlement, the Threatened Claims would take many years and substantial amounts in attorneys' fees and costs if the Parties were required to litigate them to final judgment and through appeals, and the outcome of all such litigation would be uncertain;

NOW, THEREFORE, in consideration of the agreements, covenants, and releases set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. Agreement Date.

1. This Agreement shall take effect on the "Agreement Date," which shall be the date on which the last of all Parties have signed this Agreement. The Agreement Date is a separate date from the Settlement Effective Date, as defined in Paragraph 19, and is intended to bind the Parties to the terms of this Agreement as of the Agreement Date, although certain provisions shall not become effective until the Settlement Effective Date, as set forth herein. Specifically, the Parties acknowledge that although the Receiver is bound by the terms of this Agreement on the

Agreement Date, the Federal Court must approve the Settlement and this Agreement (as set forth in Condition (a) in Paragraph 3(a) below) before the Receiver can be considered authorized to perform any of the obligations that are triggered, under this Agreement, upon the occurrence of the Settlement Effective Date.

II. Terms Used in this Agreement.

The following terms used in this Agreement have the following meanings (capitalized terms used in a defined term have the meanings ascribed to them in this Section II or elsewhere in this Agreement):

2. “Approval Motion” means the motion to approve the Settlement and enter the Settlement Approval & Bar Order that is described more fully in Paragraph 27.

3. “Conditions” means the following events:

a. Entry of the Settlement Approval & Bar Order in the SEC Action, which provides substantially the same terms, findings, and relief (including all specified releases, bars, restraints, and injunctions) as those set out in the proposed Settlement Approval & Bar Order that is attached hereto as **Exhibit B**, except, consistent with Paragraph 32, this Condition (a) is not dependent upon the inclusion or omission of the provisions in **Exhibit B** regarding the Administrative Claim;

b. The Settlement Approval & Bar Order has become Final; and

c. At the time Condition (b) is satisfied, [REDACTED]

[REDACTED]

[REDACTED].

4. “Distribution Plan” means any plan or plans hereafter approved or ordered by the Federal Court regulating the filing, reconciliation, allowance, disallowance and payment to holders of allowed claims filed against the 1inMM Estate.

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5. “Final” means after the conclusion of, or the expiration of, any right of any Person to pursue any and all possible forms and levels of appeal, reconsideration, or review, including by a court of last resort, wherever located, whether automatic or discretionary, whether by appeal or otherwise. The Settlement Approval & Bar Order (defined in Paragraph 18) shall (i) include findings, in substantially the form set out in **Exhibit B** hereto, to support entry of such order as a permanent injunction appealable under 28 U.S.C. § 1292(a)(1) and an immediately appealable partial final judgment pursuant to Federal Rule of Civil Procedure 54(b), and (ii) direct the Clerk of the Federal Court, pursuant to Local Rule 58-6, to treat the Settlement Approval & Bar Order, and its entry on the docket, as an entry of judgment under Federal Rules of Civil Procedure 58 and 79(a), such that the Settlement Approval & Bar Order becomes Final as defined by this paragraph with the same finality and appealability as a judgment entered at the end of a civil action. The continuing pendency of the SEC Action shall not be construed as preventing the Settlement Approval & Bar Order from becoming Final.

6. “Forum” means any court, adjudicative body, tribunal, or jurisdiction, whether its nature is federal, foreign, state, administrative, regulatory, arbitral, local, or otherwise.

7. “Investor Released Parties” means the Persons listed on the attached **Exhibit A**. “Investor Released Parties” also includes each of the foregoing Persons’ respective present and former partners, limited partners, general partners, officers, directors, employees, legal and equitable owners, trustees, shareholders, members, managers, principals, agents, attorneys, legal representatives, affiliated persons or entities, owners, predecessors, successors, beneficiaries, assigns, heirs, executors, administrators, lenders, indemnitors, direct and indirect parents, subsidiaries, affiliates, and beneficially owned entities conducting business for or providing services to any of them. “Investor Released Parties” shall also include the insurers and reinsurers

of any of the foregoing, solely in their capacities as insurers or reinsurers of such persons and entities with respect to the Settled Claims.

8. “JJMT Settled Claims” means any and all actions, causes of action, suits, liabilities, claims, rights of action, rights of levy or attachment, or demands whatsoever, whether or not currently asserted, known, suspected, existing, or discoverable, and whether based on federal law, state law, foreign law, common law, or otherwise, and whether based on contract, tort, statute, law, equity or otherwise, that JJMT Capital LLC ever had, directly, representatively, derivatively, or in any other capacity, and has assigned to the Receiver in that certain settlement agreement dated June 26, 2023 and filed on July 31, 2023 at Docket Number 235-1 in the SEC Action, as approved by the order dated September 22, 2023 and entered September 27, 2023 as Docket Number 273 in the SEC Action. “JJMT Settled Claims” specifically includes, without limitation, Unknown Claims (defined below in Paragraph 20), but excludes any and all claims or causes of action that the Receiver and/or 1inMM Estate may have against any Person other than [REDACTED]

[REDACTED].

9. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

10. “Notice” means a communication about the Settlement and proposed Settlement Approval & Bar Order, containing substantially the same information as found in **Exhibit D** or as ordered by the Federal Court, to be distributed as provided in Paragraph 28. The Notice shall not reference [REDACTED] by name.

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11. “Person” means any individual, entity, governmental authority, agency or quasi-governmental person or entity, worldwide and of any type, including, without limitation, any individual, partnership, corporation, limited liability company, estate, trust, committee, fiduciary, association, proprietorship, organization, or business, regardless of location, residence, or nationality.

12. “Published Notice” means a communication about the Settlement and proposed Settlement Approval & Bar Order that contains the content of and appears substantially in the form attached hereto as **Exhibit D** or as otherwise directed by the Federal Court, for publication by the Receiver once in the *Wall Street Journal* and once in the *Los Angeles Times* as provided in Paragraph 28. The Published Notice shall not reference [REDACTED] by name.

13. “Receiver Released Parties” means the Receiver, her counsel, and the 1inMM Estate. “Receiver Released Parties” also includes each of the foregoing persons’ respective present and former partners, limited partners, general partners, officers, directors, employees, legal and equitable owners, trustees, shareholders, members, managers, principals, agents, attorneys, legal representatives, affiliated persons or entities, owners, predecessors, successors, beneficiaries, assigns, heirs, executors, administrators, lenders, indemnitors, direct and indirect parents, subsidiaries, affiliates, and beneficially owned entities conducting business for or providing services to any of them. “Receiver Released Parties” shall also include the insurers and reinsurers of any of the foregoing, solely in their capacities as insurers or reinsurers of such persons or entities with respect to the Settled Claims or the JJMT Settled Claims.

14. “Releasor” means any Person who, pursuant to the terms of this Agreement, is granting a release of any Settled Claim or any JJMT Settled Claim.

15. “Settled Claim(s)” means any and all actions, causes of action, suits, liabilities, claims, rights of action, rights of levy or attachment, or demands whatsoever, whether or not currently asserted, known, suspected, existing, or discoverable, that a Releasor ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, that, in full or in part, concerns, relates to, arises out of, or is in any manner connected with (i) the 1inMM Ponzi Scheme or 1inMM; (ii) any matter or fact that was asserted or alleged in, or that could have been asserted or alleged in, the SEC Action, the Criminal Action, or any other proceeding concerning Horwitz or 1inMM that was commenced in any Forum on or after April 5, 2021; (iii) any entity currently or previously owned, controlled, or affiliated with 1inMM or Horwitz or by any entity he once owned or controlled in whole or in part, including but not limited to LayJax Ventures, LLC; (iv) any direct or indirect account with, payment or transfer of money to, loan to, or investment of any type with, directed toward (including through an intermediary), or related to 1inMM or Horwitz; (v) [REDACTED]; [REDACTED]; [REDACTED]; (vi) any conduct or omission by 1inMM, or any of its respective related or affiliated entities, subsidiary entities, principals, agents, or employees (including but not limited to Horwitz); and (vii) [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. “Settled Claims” specifically includes, without limitation, all Unknown Claims, but excludes any and all claims or causes of action that the Receiver and/or 1inMM Estate may have against any Person other than [REDACTED].

16. “Settlement” means the agreed resolution of the Settled Claims in the manner set forth in this Agreement.

17. “Settlement Amount” means \$ [REDACTED].

18. “Settlement Approval & Bar Order” shall mean an order, entered by the Federal Court in the SEC Action, that (i) overrules all objections, if any, to the Settlement, this Agreement, or the releases, bars, injunctions, and restraints requested in the Approval Motion and contemplated by this Agreement; (ii) approves the Settlement and its terms as set out in this Agreement; (iii) approves entry of the releases, bars, injunctions, and restraints requested in the Approval Motion and contemplated by this Agreement; and (iv) provides substantially the same terms, findings, and relief (including all specified releases, bars, restraints, and injunctions) as those set out in the proposed order that is attached hereto as **Exhibit B**.

19. “Settlement Effective Date” means the date on which all three of the Conditions have occurred, unless [REDACTED] has waived Condition (c) in writing, in which case the Settlement Effective Date shall be the date that both Conditions (a) and (b) have occurred.

20. “Unknown Claims” means, without limitation, all claims (or facts relating thereto) that each Releasor does not know or suspect to exist in their favor at the time of release, which, if known by that Person, might have affected their decisions with respect to this Agreement and the Settlement. Further, “Unknown Claims” includes contingent and non-contingent claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of different or additional facts, but excludes any and all claims or causes of action that the Receiver and/or 1inMM Estate may have against any Person other than [REDACTED].

21. “Taxes” means any and all taxes, whether federal, state, local, or other taxes related to the Settlement or the Settlement Amount, and costs incurred in connection with such taxation including, without limitation, the fees and expenses of tax attorneys and accountants.

IV. Payment of Settlement Amount.

22. Delivery of Settlement Payment: Within thirty (30) days of the Settlement Effective Date, [REDACTED] shall deliver (or cause to be delivered) the entire Settlement Amount to the Receiver, pursuant to wire transfer instructions provided by the Receiver for that purpose. The Receiver shall provide [REDACTED] with such wire instructions no later than the Settlement Effective Date. [REDACTED] shall have no obligation to pay any sum, other than the Settlement Amount, in connection with the Settlement or this Agreement.

23. No Obligation Unless Conditions Satisfied: [REDACTED] has no obligation to pay the Settlement Amount unless the Settlement Effective Date occurs. If Conditions (a) or (b) do not occur, then, subject to the terms of Paragraph 25 below, the Settlement Effective Date shall not have occurred, and [REDACTED] obligation to pay the Settlement Amount shall not have arisen. If Condition (c) does not occur, then [REDACTED] shall have the sole, exclusive, and unfettered discretion to waive Condition (c) in writing, in which case the Settlement Effective Date shall be the date when both Conditions (a) and (b) have occurred.

V. Termination.

24. Termination: If the Settlement Effective Date does not arise, then the Settlement and this Agreement (i) shall terminate and be deemed null and void and of no further effect whatsoever (except for the provisions of this Paragraph 24, Paragraph 55, and Paragraphs 57 through 60, which shall survive termination pursuant to this paragraph), (ii) shall not be admissible in any ongoing or future proceedings for any purpose whatsoever, and (iii) shall not be the subject of or the basis for any claims by or against any Party. If this Agreement terminates pursuant to

this paragraph, then each Party shall be returned to the position such Party occupied immediately before executing this Agreement.

25. Material Modification by the Federal Court: If the Federal Court requires or adopts a material modification or limitation to the Settlement Approval & Bar Order as a condition of entering such order, or if the Settlement Approval & Bar Order is modified or limited on appeal in a material way before such order has become Final, then the Conditions shall have failed to come to pass, and the Settlement and this Agreement shall terminate pursuant to Paragraph 24. If the Federal Court (or a court sitting in review of the Federal Court) makes such a material modification or limit as described in the previous sentence, then the Parties agree to (i) consult with each other in good faith to determine if they can maintain the Settlement and avoid the termination of this Agreement, including any modifications thereto that may be necessary and appropriate; and (ii) take steps to preserve the status quo as may be necessary during the period necessary for such consultation and discussion and any resulting dispute resolution process. If, despite such efforts, the Parties are unable to resolve the issue or reach agreement on whether the Agreement has terminated pursuant to Paragraph 24, then such dispute shall be resolved pursuant to the dispute resolution process set forth in Section XV.

26. No Other Termination Right: The Parties do not have the right to withdraw from, or otherwise terminate, the Settlement or this Agreement for any reason other than as provided in this Section V.

VI. Approval in the SEC Action; Notice.

27. Approval Motion: Unless otherwise agreed by the Parties in writing, no later than thirty (30) days from the date that the Court enters the Sealing Order (as defined in Paragraph 58(c)), the Receiver shall file the Approval Motion in the SEC Action, seeking the entry of the Settlement Approval & Bar Order (including its findings of good faith within the meaning of 740

ILCS 100/2(d), Cal. Code Civ. Proc. § 877.6(c), N.Y. Gen. Oblig. L. § 15-108(b), and similar laws in other states, and its findings under Federal Rule of Civil Procedure 54(b)). The Approval Motion may also seek entry of such orders as may be necessary to facilitate the consideration and entry of the Settlement Approval & Bar Order. In filing the Approval Motion, the Receiver shall comply with the Sealing Order. In advance of filing the Approval Motion and its accompanying papers, the Receiver shall provide [REDACTED], through its counsel, a reasonable opportunity to review and comment on such papers. The Receiver may file the Approval Motion only in compliance with the Sealing Order and only after she or her counsel has received written authorization from counsel for [REDACTED].

28. Notice & Published Notice: Within seven (7) days of the Receiver filing the Approval Motion under seal consistent with the Sealing Order (or as otherwise agreed by the Parties if the Federal Court denies leave to file under seal), the Receiver shall cause the Published Notice to be published once in the *Wall Street Journal* and once in the *Los Angeles Times*, and shall distribute the Notice by (i) electronic mail to all those the Receiver has identified as creditors of the 1inMM Estate; (ii) electronic service to all counsel of record for any Person who is, at the time of Notice, a party in the SEC Action; and (iii) posting the Notice on the Receiver's website.

29. Notice Preparation and Dissemination: The Receiver shall be solely responsible for preparing and disseminating the Notice and Published Notice pursuant to this Agreement and in accordance with the directions of the Federal Court. If the Receiver fails to do so, [REDACTED] may seek specific performance from the Federal Court in the SEC Action without having to formally intervene in such action. To the extent the Receiver becomes aware that she has been unable to deliver Notice to any creditor of the 1inMM Estate despite her best efforts to effectuate such Notice, the Receiver shall notify [REDACTED] of the identity of such creditor and the Parties

shall work together in good faith to determine if further efforts to effectuate Notice should or can be undertaken; *provided, however*, that such a failure to provide effective Notice despite the Receiver having performed her obligations under Paragraph 28 is not a basis for [REDACTED] to terminate this Agreement. The Receiver shall maintain documentation of her efforts to disseminate Notice as required by this Agreement and the Federal Court. The Parties do not intend, by this Agreement, to give any Person, other than [REDACTED], any right or recourse against the Receiver in connection with the Notice process.

30. No Recourse Against [REDACTED]: No Person shall have any recourse against any of [REDACTED] with respect to any claims that may arise from or relate to the Notice process. None of [REDACTED] have any responsibility, obligation, or liability whatsoever with respect to any aspect of the Notice or the Notice process.

VII. Administrative Claims Against Receivership.

31. Allowed Administrative Claim: The Receiver agrees to move the Court, as part of the relief requested in the Approval Motion, to order that counsel for the Investors, Loftus & Eisenberg, Ltd., holds an allowed administrative expense claim against the 1inMM Estate in the amount of \$ [REDACTED] (the "Administrative Claim"), and to authorize the Receiver to distribute funds to pay that claim from the Settlement Amount (once the Settlement Amount is paid by [REDACTED] [REDACTED] to the Receiver under this Agreement) or other monies held by the 1inMM Estate.

32. Settlement Not Dependent on Allowance of Administrative Claim: This Agreement is not conditioned on the approval by the Federal Court of the Administrative Claim (*i.e.*, such approval is not a Condition as that term is used herein). Any failure, in whole or in part, by the Federal Court to approve the Administrative Claim or any other fee, cost, or expense award request made by the Receiver's counsel or the Investors' counsel shall not prevent the Settlement

Effective Date from occurring and shall not be grounds for rescission or termination of the Settlement or this Agreement.

VIII. Cooperation in Seeking Settlement Approval.

33. Parties to Advocate: The Receiver and her counsel shall take all reasonable steps to advocate for the Federal Court to grant the Application (as defined in Paragraph 58(b)), to approve the Settlement and this Agreement, and enter the Settlement Approval & Bar Order. The Investors, [REDACTED], and their respective counsel shall assist in same upon the Receiver's request or if they choose to appear in the SEC Action. [REDACTED] shall have no obligation, however, to take any position with respect to the Administrative Claim.

34. No Challenge: The Parties and their counsel shall not challenge (or encourage or assist any Person in challenging) any request to file Settlement materials under seal or the approval of the Settlement, this Agreement, or the Settlement Approval & Bar Order.

IX. Responsibilities After Payment of the Settlement Amount; Distribution Plan.

35. Estate Property: If and when the Settlement Amount is delivered to the Receiver pursuant to the terms of this Agreement, the Settlement Amount shall become property of the 1inMM Estate and need not be segregated from any other funds deposited in the 1inMM Estate's bank account.

36. Distribution of Settlement Amount: Once the Settlement Amount is paid to the Receiver pursuant to the terms of this Agreement, the Receiver shall have the sole responsibility for distributing the Settlement Amount pursuant to a Distribution Plan, paying the Administrative Claim, and complying with any orders of the Federal Court otherwise regulating the disposition of the Settlement Amount. [REDACTED] shall have no responsibility, obligation, or liability whatsoever with respect to (i) the creation, terms, interpretation, or implementation of the Distribution Plan or the Administrative Claim; (ii) the

investment, management, use, administration, or distribution of the Settlement Amount once received by the 1inMM Estate; or (ii) any losses, attorneys' fees, expenses, vendor payments, expert payments, Taxes, or other costs incurred by the 1inMM Estate or any recipient of any portion of the Settlement Amount in connection with any of the foregoing. Upon the payment of the Settlement Amount pursuant to this Agreement, the Receiver, the Receiver Released Parties, the Investors, the Investor Released Parties, and any and all other Persons for whom the Receiver or the Investors have authority to act, fully, finally, and forever release, relinquish, and discharge [REDACTED] from any and all such responsibility, obligation, and liability.

37. Affirmation of Release of Claims: As an additional confirmation of certain of the releases that [REDACTED] are receiving under this Agreement and/or will receive in the Settlement Approval & Bar Order, and not intended to alter those releases, the Receiver shall ensure that each recipient of a distribution from the 1inMM Estate pursuant to a Distribution Plan affirms that, by accepting the distribution, the recipient understands, acknowledges, and agrees that they have previously released or are providing a release of all claims that they may hold arising from or related to the 1inMM Ponzi Scheme against the Persons that were the subject of settlement approval orders (including the Settlement Approval & Bar Order) previously entered by the Federal Court in the SEC Action, whether or not such orders were docketed publicly.

X. Effect of Challenges After the Settlement Effective Date.

38. Parties to Defend Settlement: In the event of a challenge to the Settlement, this Agreement, or the Settlement Approval & Bar Order that occurs after the Settlement Effective Date has arisen, the Parties shall meet and confer regarding same, and all Parties shall be obligated to take steps to defend against the challenge (with each Party bearing its own costs, fees, and

expenses). If only a specific portion of the Settlement Approval & Bar Order is at issue in such challenge (such as where a single Person challenges enforceability as to such Person), then the Parties shall advocate for maintaining the enforceability of as much of the full scope of the Settlement Approval & Bar Order as possible.

39. Severability of Bar Order: The Parties intend that, after the Settlement Effective Date has arisen, the Settlement Approval & Bar Order shall be fully enforceable to the maximum extent of its terms. The Parties further intend that, after any successful challenge to a portion of the Settlement Approval & Bar Order, such order shall be construed so as to excise the challenged portion as narrowly as possible and to maintain and maximize the full enforceability of the remainder of the order.

XI. Releases, Covenants Not to Sue, and Other Covenants.

40. Release by the Receiver: As of the Settlement Effective Date, the Receiver (including on behalf of the 1inMM Estate, as well as any and all other Persons for whom the Receiver has authority to act) fully, finally, and forever releases, relinquishes, and discharges, with prejudice, all Settled Claims and all JJMT Settled Claims against [REDACTED].

41. Release by the Investors: As of the Settlement Effective Date, the Investors (including on behalf any and all Persons for whom the Investors have authority to act) fully, finally, and forever release, relinquish, and discharge, with prejudice, all Settled Claims against [REDACTED].

42. Release by [REDACTED]: As of the Settlement Effective Date, [REDACTED] fully, finally, and forever releases, relinquishes, and discharges, with prejudice, all Settled Claims against the Receiver Released Parties and the Investor Released Parties.

43. Unknown Claims: With respect to the Settled Claims and, as to the Receiver, both the Settled Claims and the JJMT Settled Claims, each Releasor expressly waives, releases, and

relinquishes any and all provisions, rights, and benefits conferred by any law or principle, in the United States or elsewhere, which govern or limit the release of or time for asserting unknown, unsuspected, unaccrued, or allegedly concealed claims, including, without limitation, California Civil Code § 1542 and any similar statute. California Civil Code § 1542 provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Each Releasor acknowledges that such Releasor may hereafter discover facts different from, or in addition to, those which such Releasor now knows or believes to be true with respect to the Settled Claims (and as to the Receiver, both the Settled Claims and the JJMT Settled Claims), but nonetheless agrees that this Agreement, including the releases granted herein, will remain binding and effective in all respects notwithstanding such discovery. The provisions in this Agreement concerning unknown and unsuspected claims and the inclusion of Unknown Claims in the definitions of Settled Claims and JJMT Settled Claims were separately bargained for and are an essential element of this Agreement and the Settlement. Each Releasor understands and acknowledges the significance and the consequences of this waiver and confirms that such Releasor either has discussed or has been given an opportunity to discuss such matters with counsel of such Releasor's choice before entering into this Agreement.

44. Covenant Not to Sue by the Receiver: As of the Agreement Date, and except as may be necessary to seek the approvals and orders in the SEC Action that are contemplated by this Agreement, the Receiver covenants not to, directly or indirectly, or through a third party, institute, reinstitute, initiate, commence, maintain, continue, file, encourage, solicit, support, participate in, collaborate in, or otherwise prosecute against any of [REDACTED] any action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding that concerns or

relates to the Settled Claims or the JJMT Settled Claims, whether in a court or any other Forum, and regardless of whether pursued individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever. Notwithstanding the previous sentence, however, the Receiver retains the right to sue to enforce or effectuate this Agreement, or to assert an alleged breach of this Agreement.

45. Covenant Not to Sue by the Investors: As of the Agreement Date, and except as may be necessary to seek the approvals and orders in the SEC Action that are contemplated by this Agreement, the Investors covenant not to, directly or indirectly, or through a third party, institute, reinstitute, initiate, commence, maintain, continue, file, encourage, solicit, support, participate in, collaborate in, or otherwise prosecute against any of [REDACTED] any action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding that concerns or relates to the Settled Claims, whether in a court or any other Forum, and regardless of whether pursued individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever. Notwithstanding the previous sentence, however, the Investors retain the right to sue to enforce or effectuate this Agreement, or to assert an alleged breach of this Agreement.

46. Covenant Not to Sue by [REDACTED]: As of the Agreement Date, and except as may be necessary to seek the approvals and orders in the SEC Action that are contemplated by this Agreement, [REDACTED] covenants not to, directly or indirectly, or through a third party, institute, reinstitute, initiate, commence, maintain, continue, file, encourage, solicit, support, participate in, collaborate in, or otherwise prosecute against any of the Receiver Released Parties or the Investor Released Parties any action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding that concerns or relates to the Settled Claims, whether in a court or any other Forum,

and regardless of whether pursued individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever. Notwithstanding the previous sentence, however, [REDACTED] retains the right to sue to enforce or effectuate this Agreement or to assert an alleged breach of this Agreement.

47. Complete Defense: Any Person released under this Agreement may plead this Agreement as a complete defense and bar to any Settled Claim brought in contravention hereof. Any [REDACTED] additionally may plead this Agreement as a complete defense and bar to any JJMT Settled Claim brought in contravention hereof.

48. No Release of Obligations Under Agreement: Notwithstanding anything to the contrary in this Agreement, the releases and covenants contained in this Agreement do not release the Parties' rights and obligations under this Agreement or the Settlement.

XII. Other Obligations of the Receiver and/or the Investors.

49. Future Settlement Agreements: The Receiver agrees to engage in best efforts to include, in any future settlement agreements related to the 1inMM Ponzi Scheme with alleged tortfeasors, terms in which the alleged tortfeasors release, in writing, all claims arising from or related to the 1inMM Ponzi Scheme that such tortfeasor may have against [REDACTED].

50. Waiver of Further Discovery: As of the Agreement Date, the Receiver, the 1inMM Estate, and the Investors shall be deemed to have waived all further rights, if any, to take or request discovery, including but not limited to testimony or documents, from any of [REDACTED] [REDACTED] in relation to or concerning the Settled Claims (as well as, for the Receiver, the JJMT Settled Claims), except in any proceeding related to disputes under or the enforcement of this Agreement.

XIII. Representations and Warranties; No Admission of Fault.

51. Bar Order Necessary to Settlement: The Parties represent and warrant that, except for provisions concerning the Administrative Claim, entry of the terms, findings, and relief (including all specified releases, bars, restraints, and injunctions) that are set out in the proposed Settlement Approval & Bar Order that is attached hereto as **Exhibit B** is a necessary condition of their Settlement. In particular, [REDACTED] is not willing to agree to the Settlement or this Agreement (including its requirement for the payment of the very substantial Settlement Amount) without the assurance of “total peace” in relation to the Settled Claims and the JJMT Settled Claims. Other than the provisions regarding the Administrative Claim, the terms, findings, and relief (including all specified releases, bars, restraints, and injunctions) that are set out in the proposed Settlement Approval & Bar Order that is attached hereto as **Exhibit B** are necessary to provide [REDACTED] such “total peace.”

52. No Additional Claims:

a. The Receiver represents that she does not know of, and has not filed or asserted, any claim or potential claim against any of [REDACTED] that (i) the Receiver owns, possesses, or has the authority to assert (on behalf of the linMM Estate and/or all other Persons for whom the Receiver has authority to act) and (ii) is not being released pursuant to the terms of this Agreement. The Receiver further represents that she does not know of any claim or potential claim held by any Person against any of [REDACTED] that is within the scope of the Settled Claims or the JJMT Settled Claims and that is not being released pursuant to either the terms of this Agreement or the terms of the Settlement Approval & Bar Order.

b. The Investors each represent that they do not know of, and have not filed or asserted, any claim or potential claim against any of [REDACTED] that

(i) such Investor owns, possesses, or has the authority to assert and (ii) is not being released pursuant to the terms of this Agreement. The Investors further represent that they do not know of any claim or potential claim held by any Person against any of [REDACTED] [REDACTED] that is within the scope of the Settled Claims or the JJMT Settled Claims and that is not being released pursuant to either the terms of this Agreement or the terms of the Settlement Approval & Bar Order.

c. [REDACTED] represents that it does not know of, and has not filed or asserted, any claim or potential claim against the Receiver, any of the other Receiver Released Parties, or any of the Investor Released Parties that (i) it owns, possesses, or has the authority to assert and (ii) is not being released pursuant to the terms of this Agreement.

53. No Assignment, Encumbrance, or Transfer: The Receiver represents and warrants that she owns and has not, in whole or in part, assigned, encumbered, sold, pledged as security, or in any manner transferred or compromised, any of the Settled Claims or the JJMT Settled Claims that she is releasing under this Agreement. The Investors and [REDACTED] each represent and warrant that they own and have not, in whole or in part, assigned, encumbered, sold, pledged as security, or in any manner transferred or compromised, any of the Settled Claims that each is releasing under this Agreement.

54. Authority: Each individual executing this Agreement or any related documents on behalf of another Person represents and warrants that they have full authority both to execute the documents on behalf of such other Person and to take action required or permitted to be taken pursuant to this Agreement to effectuate its terms; provided, however, that the Federal Court must approve the Settlement and this Agreement (as set forth in Condition (a) in Paragraph 3(a)) before the Receiver can be considered authorized to perform any of the obligations that are triggered,

under this Agreement, upon the occurrence of the Settlement Effective Date. Loftus & Eisenberg, Ltd. and Alexander Loftus also represent and warrant in the declaration under penalty of perjury attached hereto as **Exhibit C** that they have authority to enter into the Settlement and this Agreement on behalf of the Investors, including to release Settled Claims against [REDACTED] [REDACTED] on behalf of the Investors. Loftus & Eisenberg, Ltd. and Alexander Loftus shall defend, indemnify, and hold [REDACTED] harmless from and against any claim asserting that Alexander Loftus and/or Loftus & Eisenberg, Ltd. was not so authorized on behalf of any of the Investors.

55. No Admission of Fault or Wrongdoing: The Settlement and this Agreement, as well as the negotiation and mediation thereof, shall in no way constitute, be construed as, or be evidence of an admission or concession of any violation of any statute or law; of any fault, liability, or wrongdoing; or of any infirmity in the claims or defenses of the Parties with regard to any Settled Claim or JJMT Settled Claim. [REDACTED] expressly denies liability and all allegations of wrongdoing or negligence of any kind. The Settlement and this Agreement are a resolution of disputed claims to avoid the risk and very substantial expense of protracted litigation. The Settlement, this Agreement, and evidence thereof shall not be used, directly or indirectly, in any way in any proceeding, other than to seek the orders and approvals in the SEC Action that are contemplated by this Agreement or to enforce the terms of the Settlement, this Agreement, or the Settlement Approval & Bar Order, and even then, the confidentiality requirements of Section XIV must be followed.

XIV. Confidentiality.

56. Confidentiality is Material: [REDACTED] represents and warrants that it would not be willing to enter into this Agreement without the promises of confidentiality set forth in this

Section XIV. The Parties agree that the following terms addressing confidentiality are material, bargained-for terms of their Settlement and this Agreement.

57. Confidentiality of Settlement Information: Except as expressly provided in this Agreement or as may be waived by [REDACTED] in writing in its sole, exclusive, and unfettered discretion, the Parties agree to keep the terms of the Settlement and the Agreement itself, including the Settlement Amount and the identity of [REDACTED] as the counterparty to the Settlement (collectively, the “Settlement Information”), strictly confidential and not to disclose any Settlement Information other than as expressly provided in this Section XIV.

58. Confidentiality in Settlement Approval Proceedings:

a. The Receiver (and her counsel) and the Investors (and their counsel) may not disclose any Settlement Information in any public filing or proceeding in the SEC Action or any other Forum. To the extent the Receiver believes she must discuss or disclose the fact or existence of the Settlement in any public filing in the SEC Action, the Receiver (a) shall not identify the Settlement Amount, [REDACTED], and (b) shall seek written approval, in advance, from counsel for [REDACTED] of the specific language she intends to use in such public filing to describe the Settlement.

b. To implement the confidentiality requirements of this Section XIV, the Receiver shall file in the SEC Action an application consistent with the local rules of the Federal Court seeking leave to file the Approval Motion and its accompanying exhibits (including this Agreement and its exhibits) under seal in the SEC Action (the “Application”). The Receiver’s counsel shall meet and confer with counsel for [REDACTED] about the Application and the process for seeking such leave, and provide an opportunity

for [REDACTED] counsel to review and approve the Application and all other materials the Receiver plans to file in connection with same. Counsel for [REDACTED] shall review the proposed filings promptly to confirm that the Application adequately implements the confidentiality requirements of this Section XIV and, once appropriate, provide its approval thereof in writing.

c. If the Federal Court enters an order granting the Application (the “Sealing Order”), then the Receiver shall comply with the Sealing Order and file complete and unredacted versions of the Approval Motion under seal in the SEC Action. The Receiver shall create redacted versions of the Approval Motion and its accompanying materials for use in the Notice process (including for posting to the Receivership website). Counsel for [REDACTED] shall review and approve, in writing, such redacted versions before they are used in the Notice process or posted to the website. Further, the Receiver shall request that the Settlement Approval & Bar Order (**Exhibit B**) be entered in two forms: (i) a fully public version with redactions as approved by [REDACTED] counsel, and (ii) a sealed version in which [REDACTED] is identified by name.

d. If the Federal Court denies the Application or requires some or all of the Approval Motion and its accompanying materials to be filed publicly in redacted form, counsel for the Receiver and counsel for [REDACTED] shall meet and confer about the appropriate next steps, and [REDACTED] shall have the right to approve the form of the Receiver’s proposed filings to facilitate approval of the Settlement and entry of the Settlement Approval & Bar Order, as well as any redactions thereto.

e. The Notice and the Published Notice shall state that Persons may contact the Receiver for additional, non-public information about the Settlement. If any Person

contacts the Receiver and asks the Receiver to reveal any non-public Settlement Information, the Receiver shall refrain from disclosing any non-public Settlement Information to that Person unless and until the Receiver or her counsel first verifies that the Person is a creditor of the 1inMM Estate who is identified in the Receiver's records and then receives a signed non-disclosure agreement (the "NDA") from such Person, with such NDA in substantially the form that is attached hereto as **Exhibit E**. The Receiver shall notify counsel for [REDACTED] of both the identity of any Person who enters into any such NDA and receives non-public Settlement Information, as well as the nature of the information provided to such Person pursuant to such NDA.

f. To the extent any Person objects to the Settlement, this Agreement, or the Settlement Approval & Bar Order, (a) counsel for the Receiver shall inform counsel for the Investors and counsel for [REDACTED], and (b) counsel for the Receiver and counsel for [REDACTED] shall work together in good faith to ensure the Receiver provides her response to such objection in a manner that complies with [REDACTED] requirements as to confidentiality.

59. Confidentiality of Settlement Negotiations: Except as provided expressly in this Section XIV, the Parties shall keep strictly confidential, at all times, information about the settlement negotiations that led to the Settlement and this Agreement, including their settlement and mediation discussions and term sheet (collectively, "Settlement Negotiation Information"). The Parties' Settlement Negotiation Information shall be protected as confidential under applicable law, including Federal Rule of Evidence 408, California Evidence Code § 1119, and other law providing a mediation privilege, to the maximum extent possible.

60. Exceptions to Confidentiality for Settlement Information and/or Settlement Negotiation Information:

a. On a confidential basis at any time, [REDACTED] and its counsel shall be permitted to disclose Settlement Information or Settlement Negotiation Information to [REDACTED] and any counsel for the foregoing. [REDACTED] and/or its counsel shall inform all such Persons that they have an obligation to keep all Settlement Information and Settlement Negotiation Information strictly confidential consistent with this Agreement.

b. A Party may disclose Settlement Information if required by law or regulation, so long as that Party provides prompt advance notice to the other Parties, seeks to minimize the disclosure to what is strictly necessary, and takes any steps available to protect confidentiality (such as filing under seal).

c. A Party may disclose Settlement Information to a professional (such as an attorney or accountant) advising such Party in linMM matters who owes a duty of confidentiality to such Party, so long as such Party advises the professional of the confidentiality protections that apply to this information and such professional agrees to comply with same.

d. A Party may disclose specific Settlement Information if they have obtained written consent of all other Parties or their respective counsel before making such disclosure.

61. Confidentiality of [REDACTED] Information: The Receiver and the Investors, as well as their respective counsel, agree to maintain strict confidentiality to the maximum extent possible

over [REDACTED]

[REDACTED]

[REDACTED] (the “[REDACTED]

Information”). In particular, the Receiver and the Investors, including their respective counsel,

may not use or disclose the [REDACTED] Information [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. If the Receiver, Investors, or their

respective counsel believe a disclosure of [REDACTED] Information is required by law, such

disclosure may be made only after notifying counsel for [REDACTED], which notification shall occur

as promptly as is practicable, and the Receiver, Investors, or their respective counsel must take

available steps to protect the confidentiality of the [REDACTED] Information being disclosed to the

maximum extent practicable.

62. Breach: The Receiver, Investors, and their respective counsel acknowledge that a

breach of the confidentiality provisions set forth in this Section XIV would give rise to irreparable

harm on the part of [REDACTED]. Alexander Loftus and Loftus & Eisenberg, Ltd. shall defend,

indemnify, and hold [REDACTED] harmless against any damages arising from any breach of the confidentiality requirements of this Agreement by Loftus & Eisenberg, Ltd., Alexander Loftus, or the Investors.

XV. Dispute Resolution.

63. Mandatory Mediation: With respect to any dispute between the Parties (or any of them) arising out of or relating to the Settlement or this Agreement, the Parties shall first attempt to resolve that dispute informally. If that effort is not successful, then the Parties shall mediate such disputes with [REDACTED], or if he is unwilling or unavailable, a different mediator acceptable to all Parties, on a confidential basis and otherwise in accordance with the confidentiality requirements of Section XIV. The Parties agree to participate in such mediation in good faith over the course of not less than thirty (30) days, or such longer period as is necessary to allow the Parties to meet not less than two times with the mediator in an effort to resolve their dispute. The fees, costs, and expenses charged by the mediator shall be borne equally by the Parties. The Parties shall each bear their own attorneys' fees, costs, and expenses with respect to the mediation process contemplated by this paragraph.

64. Court Intervention; Arbitration:

a. After mediation efforts pursuant to Paragraph 63 have concluded and a dispute still exists between the Parties (or any of them) arising out of or relating to the Settlement or this Agreement (including but not limited to requests to construe or interpret this Agreement or to effectuate or enforce compliance with its terms) (a "Dispute"), then the Receiver shall file a motion or application asking the Federal Court to interpret or enforce the Settlement Approval & Bar Order and resolve the Dispute, though the confidentiality obligations of Section XIV apply to such proceedings.

b. If the Federal Court declines to hear and determine (or decides that it lacks jurisdiction to hear and determine) the motion or application referenced in Paragraph 64(a), or indicates that will not hear and determine such motion or application on a confidential basis in compliance with the requirements of Section XIV, then the Parties agree that the Dispute will be determined by confidential binding arbitration [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] and in

accordance with the confidentiality requirements of Section XIV herein. The fees, costs, and expenses charged by [REDACTED] shall be borne equally by the Parties. The Parties shall each bear their own attorneys' fees, costs, and expenses with respect to any arbitration or court proceedings contemplated by this paragraph.

65. Venue and Jurisdiction: Except as provided in Paragraph 64(b), the Federal Court shall retain jurisdiction and venue over the Parties for purposes of (i) the Approval Motion, the Settlement Approval & Bar Order, the Notice, the Published Notice, and the Distribution Plan; and (ii) matters involving the Federal Court's continuing jurisdiction over the SEC Action and the activities and conduct of the Receiver. The Parties agree to conduct any proceedings in the Federal Court that are contemplated by this paragraph in as confidential a manner as possible, including by seeking to file relevant documents under seal and ensuring that [REDACTED] is not mentioned publicly by name. The Parties shall each bear their own attorneys' fees, costs, and expenses with respect to any proceedings in the Federal Court contemplated by this paragraph.

XVI. Miscellaneous.

66. Final and Complete Resolution: The Parties intend the Settlement and this Agreement and the Settlement to be and to constitute a final, complete, and worldwide resolution of all matters and disputes between, on the one hand, the Receiver Released Parties and the Investor Released Parties, and, on the other hand, [REDACTED]. This Agreement, including its exhibits, shall be interpreted to effectuate this purpose.

67. Binding Agreement: As of the Agreement Date, this Agreement shall be binding upon and shall inure to the benefit of the Parties, as well as their respective heirs, executors, administrators, successors, and assigns, although certain provisions do not become effective until the Settlement Effective Date (as set forth in this Agreement). No Party may assign any of its rights or obligations under this Agreement without the express written consent of the other Parties.

68. Disclaimer of Reliance: The Parties represent that the terms of this Agreement have been the subject of active and extensive negotiations and that, in negotiating and entering into the Settlement and this Agreement, they have not relied on, and have not been induced by, any representation, warranty, statement, estimate, communication, or information of any nature whatsoever, whether written or oral, by or on behalf of any other Party or any agent of any other Party, or concerning such other Party, except as expressly set forth in this Agreement. To the contrary, each of the Parties affirmatively represents and acknowledges that, in deciding to enter into the Settlement and this Agreement, such Party is relying solely on the express terms contained within this Agreement. The Parties each have consulted with competent legal counsel and advisors, have considered the advantages and disadvantages of entering into the Settlement and this Agreement, and have relied solely on their own judgment and the advice of their respective legal counsel in negotiating and making an informed and competent decision to enter into the Settlement and this Agreement. The Parties further acknowledge that they are deciding to enter

into the Settlement and this Agreement based on incomplete information about the respective claims and defenses they are releasing under this Agreement, yet the Parties nevertheless believe, represent, and warrant that they have all necessary information to freely and voluntarily consent to such releases and otherwise to agree to enter into the Settlement and this Agreement.

69. Third-Party Beneficiaries: This Agreement is not intended to and does not create rights enforceable by any Person other than the Parties (or their respective heirs, executors, administrators, successors, and assigns, as provided in Paragraph 67 of this Agreement), and in particular “Settled Claims,” “JJMT Settled Claims” and “Unknown Claims” exclude any and all claims or causes of action that the Receiver and/or 1inMM Estate may have against any Person other than [REDACTED]. But any Person who is released or should not be sued as a consequence of a covenant not to sue provided in this Agreement may enforce the release or covenant not to sue as it relates to said Person.

70. Negotiation and Drafting: The Parties agree and acknowledge that they each have reviewed and cooperated in the preparation of this Agreement, that no Party should or shall be deemed the drafter of this Agreement or any provision hereof, and that any rule, presumption, or burden of proof that would construe this Agreement, any ambiguity, or any other matter against the drafter shall not apply and is waived. The Parties are entering into this Agreement freely and after a good-faith, arm’s-length negotiation, with the advice of counsel and in the absence of coercion, duress, or undue influence.

71. Construction: The titles and headings in this Agreement are for convenience only, are not part of this Agreement, and shall not bear on the meaning of this Agreement. The words “include,” “includes,” or “including” shall be deemed to be followed by the words “without limitation.” The words “and” and “or” shall be interpreted broadly to have the most inclusive

meaning, regardless of any conjunctive or disjunctive tense. Words in the masculine, feminine, or neutral gender shall include any gender. The singular shall include the plural, and vice versa. “Any” shall be understood to include and encompass “all,” and “all” shall be understood to include and encompass “any.” All dollar amounts in this Agreement are expressed in United States dollars. Any reference herein to any statute, rule, regulation, or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation, or agreement as it may be modified, varied, amended, or supplemented from time to time.

72. Cooperation: The Parties agree to execute any additional documents reasonably necessary to finalize and carry out the terms of this Agreement. In the event a third party or any Person other than a Party at any time challenges any term of this Agreement or the Settlement, including the Settlement Approval & Bar Order, the Parties agree to cooperate with each other, including using reasonable efforts to make documents or personnel available as needed to defend any such challenge, and to comply with the confidentiality requirements of Section XIV in doing so. Further, the Parties shall reasonably cooperate to defend and enforce the Settlement Approval & Bar Order and any other orders issued in connection with or to facilitate entry of same. Each Party shall bear their own fees, costs, and expenses in relation to the cooperation efforts contemplated by this paragraph.

73. Notice: Any notices, documents, or correspondence of any nature required to be sent pursuant to this Agreement shall be transmitted by both e-mail and overnight delivery to the following recipients, and will be deemed transmitted upon receipt by the overnight delivery service:

If to the Receiver:

Michele Vives
DOUGLAS WILSON COMPANIES
1620 Fifth Ave., Ste. 400
San Diego, CA 92101
Telephone: (619) 906-4376
Email: mvives@douglaswilsoncompanies.com

Terence G. Banich
KATTEN MUCHIN ROSENMAN LLP
525 W. Monroe St.
Chicago, IL 60661
Telephone: (312) 902-5200
Email: terence.banich@katten.com

If to the Investors:

Alexander Loftus
LOFTUS & EISENBERG, LTD.
161 N. Clark Suite 1600
Chicago, Illinois 60601
Telephone: (312) 899-6625
Email: alex@loftusandeisenberg.com

If to [REDACTED]:

[REDACTED]

[REDACTED]

[REDACTED]

Each Party shall provide notice of any change to the service information set forth above to all other Parties by the means set forth in this paragraph.

74. Choice of Law: This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California (or United States federal law, to the extent applicable), including any applicable statutes of limitation, without regard to any otherwise-applicable principles of conflicts of law or choice of law rules (whether of the State of California

or any other jurisdiction) that would result in the application of the substantive or procedural rules or law of any other jurisdiction.

75. Timing: If any deadline imposed by this Agreement falls on a non-business day, then the deadline is extended until the next business day.

76. Waiver: The waiver by a Party of any breach of this Agreement by the other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

77. Exhibits: The exhibits annexed to this Agreement are incorporated by reference as though fully set forth in this Agreement.

78. Integration and Modification: This Agreement sets forth the entire understanding and agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations, and communications, whether oral or written, with respect to such subject matter, including drafts of the Agreement, the Parties' term sheet executed after their mediation, and email and other exchanges between counsel for the Parties discussing the Settlement before this Agreement was executed. Except where this Agreement states that [REDACTED] has the sole, exclusive, and unfettered right to waive a particular term or provision of this Agreement, neither this Agreement, nor any provision or term of this Agreement, may be amended, modified, revoked, supplemented, waived, or otherwise changed except by a writing signed by all Parties.

79. Counterparts and Signatures: This Agreement may be executed in one or more counterparts, each of which for all purposes shall be deemed an original but all of which taken together shall constitute one and the same instrument. A signature delivered by fax or other electronic means shall be deemed to be, and shall have the same binding effect as, a handwritten, original signature.

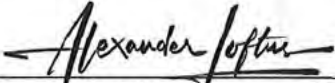
EXECUTION COPY

IN WITNESS HEREOF, the Parties have executed this Agreement signifying their agreement to the foregoing terms.

Michele Vives, in her capacity as the Receiver for the 1inMM Estate Dated: December 11, 2023



The Investors (Each Person and Entity Listed on the Attached Exhibit A) Dated: December 12, 2023

By: 

Alexander N. Loftus,
Loftus & Eisenberg, Ltd.,
Counsel to the Investors (Each Person and Entity Listed on Exhibit A)

 Dated: _____

By: _____


IN WITNESS HEREOF, the Parties have executed this Agreement signifying their agreement to the foregoing terms.

Michele Vives, in her capacity as the Receiver for the 1inMM Estate Dated: _____

The Investors (Each Person and Entity Listed on the Attached Exhibit A) Dated: _____

By: _____
Alexander N. Loftus,
Loftus & Eisenberg, Ltd.,
Counsel to the Investors (Each Person and Entity Listed on Exhibit A)


By:  _____ Dated: December 12, 2023

Exhibit A

The Investors, as that term is defined in the foregoing Agreement, consist of the following persons and entities:

1. AFA Marketing
2. Altgeld Groupo SPE I LLC
3. Arenson, Paul
4. Aronson, Mike
5. AVR Group, LLC
6. Awerbuch, Ilan
7. Balliet, Lori
8. Barry Rosenthal Revocable Trust
9. BCP, LLC
10. Benjamin Altman Trust
11. Bottini, Domenick
12. C421-Uyen Huynh
13. Callero, Frank
14. Callero, Paul
15. Carter, Jocelyn
16. Castanada, Robert
17. CD LLC
18. Codegard EV LLC
19. Cohen, Helane
20. Cohen, Scott
21. Cowley, Shelby
22. Crandall, Bonnie
23. Cummings, Robert
24. DASH 401k Trust
25. DeFrenza, Mike
26. DiMattia, Mario
27. Dolan, Michael
28. Duffy, Joe
29. Durham, Debra
30. Dziurgot, Dominic
31. Dziurgot, Mike
32. Eggener, Brian
33. Ellustionist.com
34. Elwell, Andrew
35. Empirius
36. Fackelmayer, Harry
37. Fehling, Brian
38. Ferrari, Adam
39. Fiene, Christian
40. Forge Trust FBO Carl Hirsch IRA #552677
41. Forge Trust FBO Ilan Awerbuch IRA #491275

42. Franklin River, LLC
43. Franz, Jerome Steven
44. Friedman, Ari
45. Futoransky, Stas
46. Gardosik, Mary
47. Global Hospitality Concept
48. Gould, Michael
49. Greendot, LLC
50. Hawley, Scott
51. Heinecke, Eric
52. Hemenway, Linda
53. Henny, Robert
54. Hirsch Trust DTD 2/9/90
55. Holloway, Scott
56. Hopkins, Lawrence
57. Hutchinson, Gail
58. Huynh, Uyen
59. IRA Services Trust Company FBO Sadia Lone IRA 299509
60. IRVRU Company
61. Jahangirzadeh, Parviz
62. James D Lepak Management
63. JCE Solutions Inc.
64. Jonker, Nicholas
65. Kalin, Carson
66. Karlander, Dan
67. Karmin, Jonathan
68. Keith, Jeff
69. Kiser, Erik
70. Kittle, Cody
71. Kittle, Ralph
72. Knoska, James
73. Lawson, Brett
74. Lazarus, Jason
75. Leish, Nicholas
76. Lingren, Treven
77. Lone Revocable Trust
78. Martin, Daniel
79. Mauri, Cody
80. McGarvey, Patrick
81. MEK Investments
82. Miller, Kyle
83. Moller-Tank, Annake
84. Mouton, Brent
85. Nanya Family Trust
86. Nanya, Joseph
87. NDTCO as Custodian FBO Sadia Lone HAS

88. Next Generation Investment Group
89. Pacht, Doug
90. Pak, Gene
91. Palace Court Capital, LLC
92. Pazouki, Fatemeh
93. Peltz, Michael
94. Phillips, Chris
95. Phoenix Affordable Housing Authority, LLC
96. Prag, Stephen
97. Romanowski, Steve
98. Romanzi, Alexander
99. Ryan, Mathew
100. Ryley, James
101. Schaps, Jason
102. Schweet, Ryan
103. SerotLaz LLC
104. Southwest Investments Funds, LLC
105. Steingraber, Jonathan
106. Stoutt, Windell
107. Stoutt, Karen
108. Sutter, Jacqueline
109. Tabai, Nahid
110. The DASH Revocable Trust
111. Toner, John
112. Trident Asset Management, Inc.
113. Wahls, Aaron
114. Wong, Hong Ling
115. Yong, Da (Robert)
116. Zaleski, Steven

Exhibit B

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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 AND ENTERING
FINAL BAR ORDER**

1 Upon consideration of the *Motion of Receiver Michele Vives for Order*
2 *Approving Proposed Settlement*, dated [DATE] (the “Motion”), the Court, having
3 jurisdiction to hear and determine the Motion, has reviewed the Motion,
4 accompanying memorandum of points and authorities, declarations in support
5 thereof and other exhibits thereto. After due deliberation and consideration of the
6 Motion, and there being good cause to grant the relief provided herein, the Court,
7 pursuant to the Court’s power to supervise equity receiverships and all other powers
8 in that behalf so enabling, finds and orders as follows:

9 1. The Motion is GRANTED. Capitalized terms not defined in this Order
10 have the meanings ascribed to them in the Settlement Agreement (the “Agreement”)
11 that is the subject of the Motion.

12 2. The Motion requests approval of a proposed confidential settlement
13 (the “Settlement”) among and between the Receiver, the Investors and [REDACTED]
14 [REDACTED]. The Receiver, having previously obtained an order from the
15 Court pursuant to Local Rule 79-5.2.2: (a) filed under seal full, unredacted versions
16 of the Agreement, the Motion, its supporting declarations and this Order; and (b)
17 caused redacted versions of the aforesaid documents to be served on creditors of the
18 1inMM Estate¹ who are identified in the Receiver’s records and to be posted to the
19 Receiver’s website.

20 3. The Court FINDS that all parties in interest have had due and sufficient
21 notice of the Motion and an opportunity to be heard, and that forms of service of the
22 Motion effected by the Receiver, including the Published Notice, provides sufficient
23 notice under the circumstances and satisfies due process, and any further notice
24 otherwise required by Local Rule 66-7 is waived.

25 _____
26 ¹ “1inMM Estate” means 1inMM Capital LLC and 1inMM Productions LLC, as well as their
27 subsidiaries and affiliates and all assets that are attributable to funds derived from investors or
28 clients of those entities and/or Zachary Horwitz or that were fraudulently transferred by those
entities and/or Zachary Horwitz.

1 4. The Court further FINDS that terms of the Settlement with [REDACTED]
2 memorialized in the Agreement are adequate, fair, reasonable, and equitable,
3 including without limitation the restraints and injunctions contained herein (the “Bar
4 Order”). Accordingly, the Agreement and its terms should be and are hereby
5 APPROVED. For the avoidance of doubt, the Settled Claims, the JJMT Settled
6 Claims and the Unknown Claims (as those terms are defined in Section II of the
7 Agreement) exclude any and all claims and causes of action that the Receiver and/or
8 the 1inMM Estate may have against any other Person other than [REDACTED]
9 [REDACTED].

10 5. The Court further FINDS that entry of the Bar Order sought in the
11 Motion—and given effect by Paragraph 6 of this Order—is both essential to the
12 Settlement between the Receiver, Investors and [REDACTED] (the “Parties”) and fair
13 and equitable under the circumstances.

14 6. The Court hereby PERMANENTLY BARS, RESTRAINS, and
15 ENJOINS all persons and entities (except any governmental unit, as that term is
16 defined by 11 U.S.C. § 101(27)), as well as their respective heirs, successors,
17 assigns, subsidiaries, parents, affiliates, officers, directors, shareholders, owners,
18 members, managers, partners, representatives, agents, employees, and attorneys, and
19 whether individually, derivatively, on behalf of a class, as a member of a class, or in
20 any other capacity whatsoever, from commencing, participating in, continuing, or in
21 any manner joining in any civil action, administrative proceeding, arbitration or
22 other adversarial proceeding that asserts any claim, cause of action, counter-claim,
23 or cross-claim of any kind or nature against [REDACTED]

24 [REDACTED]
25 [REDACTED] that in any way concerns, relates to, is based upon, arises
26 from, or is in any manner connected with—
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- (a) the 1inMM Ponzi Scheme and/or any person or entity involved in such scheme;
- (b) any act or omission by [REDACTED] that relates to 1inMM Capital, LLC, 1inMM Productions, LLC, Zachary Horwitz, any entity currently or previously owned or controlled by or affiliated with any of them, or any of their respective agents or employees;
- (c) any matter or fact that was asserted or alleged in, or that could have been asserted or alleged in, this action or the related criminal proceedings against Zachary Horwitz (Case No. CR-21-214-MCS, C.D. Cal.); or
- (d) any direct or indirect account with, payment or transfer of money to, loan to, or investment of any type with, directed toward (including through an intermediary), or related to 1inMM Capital, LLC, 1inMM Productions, LLC, or Zachary Horwitz.

(collectively, the “1inMM Claims”). All 1inMM Claims are hereby channeled into the 1inMM Estate’s claims distribution process that the Court will establish by separate order.

7. The restraints and injunctions contained in Paragraph 6 of this Order—

- (a) Include (but are not limited to) any claim against [REDACTED], however such claim is denominated, that seeks contribution, indemnity, damages, or another

1 remedy where the alleged injury or the claim asserted
2 arises out of, relates to, or is based in whole or in part upon
3 (i) such claimant's actual or alleged liability to the
4 Receiver, the 1inMM Estate, or the Investors, or
5 (ii) money owed, demanded, requested, offered, paid,
6 agreed to be paid, or required to be paid to the Receiver,
7 the 1inMM Estate, or the Investors, whether pursuant to a
8 demand, judgment, claim, agreement, settlement or
9 otherwise;

10 (b) Do not operate to release the rights and obligations of the
11 Receiver, the Investors, or [REDACTED] under the
12 Settlement, the Agreement, or this Order; and

13 (c) Do not bar, restrain or enjoin—

14 i. The Receiver from asserting any claim or cause of
15 action against any Person other than [REDACTED]
16 [REDACTED];

17 ii. The Receiver, the Investors, or [REDACTED] from
18 enforcing, effectuating, or suing for alleged
19 breaches of the Settlement, the Agreement, or this
20 Order; or

21 iii. Any Person released under the Agreement or this
22 Order from enforcing, effectuating, or suing to
23 enforce such release.

24 8. The Court further FINDS that—

25 (a) There is no indication of—and there in fact has been no—
26 collusion, bad faith, or wrongful conduct between the Parties in
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1 connection with reaching agreement on the Settlement and the
2 Settlement Amount; and

3 (b) The Agreement was entered into in good faith, including within
4 the meaning of 740 ILCS 100/2(d), Cal. Code Civ. Proc. §
5 877.6(c), N.Y. Gen. Oblig. L. § 15-108(b), and similar laws in
6 other states.

7 9. The Receiver is AUTHORIZED to take such further actions as may be
8 necessary to consummate the transactions in the Agreement, including, without
9 limitation, paying the Administrative Claim to the holder thereof in the amount
10 specified in the Agreement.

11 10. Nothing in this Order or the Agreement (including its exhibits), and no
12 aspect of the Settlement or negotiation or mediation thereof, is or shall be construed
13 to be a finding, admission, or concession of any violation of any statute or law or any
14 fault, liability, or wrongdoing by [REDACTED]

15 [REDACTED].

16 11. If this Order or any portion thereof is successfully challenged after it
17 becomes Final (as that term is defined in paragraph 5 of the Agreement), the Court
18 intends that such challenged portion be excised from this Order as narrowly as
19 possible and that the remainder of the Order continue to be in full force and effect to
20 the maximum extent of such remaining terms.

21 12. This Order (a) includes a permanent injunction within the meaning of
22 28 U.S.C. § 1292(a)(1), and (b) is a complete disposition of an asset of the 1inMM
23 Estate—namely, the Receiver’s potential claims against [REDACTED]. Upon entry of
24 this Order, there is no further action required by this Court to resolve the Receiver’s
25 potential claims against [REDACTED]. No claims that remain pending in this
26 proceeding seek the relief the Receiver could have sought on such claims, and there
27 is no factual overlap between the matters resolved in this Order and the claims and
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1 issues left to be addressed in this proceeding. As such, the Court expressly FINDS
2 and DETERMINES that this Order is a partial final judgment under Federal Rule of
3 Civil Procedure 54(b).

4 13. The Court further expressly FINDS and DETERMINES, pursuant to
5 Rule 54(b), that there is no just reason for any delay in entering this partial final
6 judgment. To the contrary, any delay in this Order reaching finality would defeat the
7 purpose of the Settlement (and impede the progress of this receivership proceeding)
8 because the Settlement is expressly conditioned on this Order becoming Final (as
9 that term is defined in paragraph 5 of the Agreement). Deferring finality of this Order
10 until the receivership proceeding is fully and finally concluded as to all matters and
11 all issues would delay the effectiveness of the Settlement and thereby delay the
12 payment of the Settlement Amount into the 1inMM Estate. For all these reasons, the
13 Court intends this Order to become Final upon the expiration of any right to appeal,
14 despite the continued pendency of the above-captioned civil action, including the
15 receivership therein.

16 14. Pursuant to Local Rule 58-6, the Court ORDERS the Clerk to treat this
17 Order, and its entry on the docket, as an entry of judgment for purposes of Federal
18 Rules of Civil Procedure 58 and 79(a).

19 15. The Court retains jurisdiction to hear and determine any disputes
20 arising out of or relating to the Settlement approved by this Order, as detailed further
21 in the Agreement.

22 Dated:

23 _____
United States District Judge

Exhibit C

Declaration of Alexander N. Loftus

I, Alexander N. Loftus, declare as follows:

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

2. I submit this declaration pursuant to Paragraph 54 of the *Settlement Agreement*, dated December 12, 2023 (the "Agreement"), to which this declaration is attached as Exhibit C. Any capitalized terms not defined herein have the meanings ascribed to them in the Agreement.

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

4. I represent the Investors listed on Exhibit A to the Agreement.

5. All Investors have approved the terms and conditions of this Agreement, including the payments of attorney's fees on account of the Administrative Claim described in Paragraph 31.

6. I have authority to enter into the Settlement and this Agreement on behalf of the Investors, including to release Settled Claims against [REDACTED] on behalf of the Investors.

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

Executed on December 12, 2023
in Chicago, Illinois



Alexander N. Loftus

Exhibit D

Form of Published Notice

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 Settlement Approval & Bar Order (a “1inMM Claim”). All 1inMM Claims will be channeled into a receivership claims process that 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 [____], 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.)

Exhibit E

Form of NDA

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 receiver (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 the 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 because the Receiving Party asserts an interest in knowing the identity of the party (the “Settling Party”) who has agreed to settle and is the beneficiary of the bar order (the “Legitimate Purpose”), with the provision of such Confidential Information conditioned upon the Receiving Party’s written commitment not to disclose any of the Confidential Information 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 Agreement and agrees to abide by all of its terms and conditions. The Receiving Party and his, her or its attorneys 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 to the Receiving Party;
- c. is published or made known to the public by the Receiver in a manner not precluded by her obligations to the Settling Party under their written confidential settlement agreement;
- d. 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 the Settling Party are third-party beneficiaries of this Agreement and may seek specific performance of its terms or any other remedy that may be available at law or in equity for any actual or threatened breach of the Agreement. Each Party further 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/or the Settling Party. Accordingly, the Receiver and the Settling Party shall be entitled to seek an injunction or other appropriate 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 Party or any third party.

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 [REDACTED]

[REDACTED] 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 to the extent they contain Confidential Information and will not be disclosed to the public or any third party, 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, or, if the Parties have agreed to an alternate arbitral forum, any court of competent jurisdiction in that forum. This provision is intended to provide the Receiving Party and the Receiver with the exclusive procedure for redressing grievances that arise under, relate to or are in any way connected to this Agreement, except the Receiver (or the Settling Party) 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 Paragraph 4 above. Any arbitration proceeding conducted pursuant to this Paragraph 6 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 Party 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 Party, 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"), the Receiving Party shall, at the 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 to the Receiver 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 and remediate 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.

EXECUTION COPY

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 Paragraph).

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 and agrees to maintain the confidentiality of the Confidential Information beyond the completion and termination of the Legitimate Purpose and never to 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 2

Vives Declaration

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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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 MICHELE
VIVES**

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

DOCUMENT FILED UNDER SEAL
PURSUANT TO ORDER OF THE
COURT DATED MARCH 19, 2024
[ECF #330]

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 Related Relief,*
9 dated April 1, 2024 (the “Motion”). Any capitalized terms not defined herein have
10 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. Over one hundred investors (“Investors”) represented by Loftus &
6 Eisenberg, Ltd. (“L&E”) privately threatened to sue █████ based on █████
7 █████. The Investors—who believed that
8 they had financed the acquisition/licensing of film distribution rights to HBO and
9 Netflix—asserted that █████ was liable for their losses based on █████
10 █████ (“Investor
11 Claims”), principally alleging that █████
12 █████.

13 7. █████ asserted several defenses that could have ultimately resulted in
14 the Investors taking nothing.

15 8. I could have pursued claims against █████ on behalf of 1inMM, █████
16 █████ (“Receiver Claims”), but deferred to the Investors. Because the
17 Investor Claims are derivative of the Receiver Claims (collectively, “Claims”), I
18 closely monitored the parties’ settlement negotiations.

19 9. █████ expressed interest to me in settling globally, but only if the Court
20 entered a bar order. I also conferred with L&E about a potential settlement, and
21 secured the Investors’ agreement that any settlement payment would be paid to the
22 Estate for the benefit of all creditors.

23 10. █████ worked cooperatively with me █████
24 █████
25 █████. From my review of the available evidence, I determined that █████
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[REDACTED]

C. Settlement

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

12. [REDACTED] obligation to pay the Settlement Amount does not arise unless and until the Court enters—without material modification—the proposed order attached as Exhibit B to the Settlement Agreement, which both approves the Settlement Agreement and enters the Bar Order (“Approval Order”), and the Approval Order then becomes final and non-appealable. The parties intend that the Approval Order, once entered, be an immediately appealable partial final judgment. Accordingly, the proposed Approval Order expressly finds and determines that it is a partial final judgment under Rule 54(b), and directs the Clerk, pursuant to Local Rule 58-6, to treat the Approval Order, and its entry on the docket, as an entry of judgment for purposes of Rules 58 and 79(a). Satisfying these conditions will ensure the Approval Order has the same finality and appealability as a judgment entered at the end of a civil action.

13. The parties agreed that [REDACTED] identity must remain strictly confidential to prevent potential irreparable injury resulting from any public disclosure of the Claims. Because confidentiality is an essential term of the Settlement Agreement, I filed an application requesting that the Motion, the Bar Order and all supporting documents be sealed, which the Court granted. [ECF #330]

1 **D. Assessment of the Settlement**

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

7 15. While the Investors and I were confident in our Claims, there was a
8 significant risk of an adverse result. ██████ asserted meaningful responses and
9 defenses that may have resulted in no recovery. The Settlement thus avoids
10 protracted and expensive litigation, prevents a substantial risk of no recovery and
11 conserves Estate resources.

12 16. The Settlement Payment also far exceeds what ██████ would have paid
13 to resolve the Investor Claims alone without a bar order. So L&E’s work
14 undoubtedly enhanced the final settlement value, all of which is flowing to the
15 Estate. And because the Investors agreed that ██████ should remit the entire
16 Settlement Payment to the Estate, L&E helped create a common fund from which a
17 portion of their attorney’s fees may be paid.

18 17. Moreover, the Settlement resolves a particularly complex multiparty
19 dispute. The Claims arise from a common nucleus of operative facts—the Ponzi
20 Scheme—but my objectives were not necessarily the same as the Investors’
21 objectives; the Investors pursued ██████ to remedy their own personal damages, while
22 I focused on benefitting the Estate as a whole. Those goals often conflicted, resulting
23 in disagreements about settlement terms and how to proceed.

24 18. The Investor Claims are, nonetheless, derivative of the Receiver Claims
25 and compete with me for ██████ assets. The Investors are pursuing the same party
26 that I could have pursued on account of the same transactions and occurrences by
27 the same actors. As such, the Investor Claims affected the Estate’s assets and
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1 ultimate recoveries; every dollar the Investors managed to recover from ██████ was
2 arguably a dollar I could not have recovered for the Estate.

3 19. ██████ wanted to achieve finality with a settlement, which it really could
4 accomplish only through a deal with me. At the same time, I did not think it advisable
5 or practical to exclude the Investors from those discussions. Because the Investors
6 constitute a significant percentage of the known population of net losing investors, I
7 considered them to function effectively as an ad hoc creditors committee.

8 20. ██████, moreover, made clear that any settlement of the Claims had to
9 include a bar order enjoining any suits against it arising from the Ponzi Scheme and
10 be an immediately appealable partial final judgment, so I focused on meeting those
11 requirements. These factors, among others, made the litigation complex and
12 particularly difficult to settle on a global basis.

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

15 **1. Probability of success**

16 21. I believe the Settlement satisfies the *A&C Properties* factors.

17 22. In light of the conflicting arguments and potential problems with all of
18 the Claims, I considered ██████ defenses to be a significant risk factor. In litigation,
19 a court may have sustained ██████ defenses, which would have been an outcome
20 worse than the Settlement.

21 23. For the reasons discussed above and in the Motion, the Settlement
22 appropriately accounts for the mixed probability of success of the Claims.

23 **2. Collection difficulties**

24 24. It is unclear whether ██████ would have had sufficient assets to satisfy
25 an adverse judgment entered in the Investors' favor.

26 **3. Complexity/expense**

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

1 26. Given my review of the available evidence, I believe litigation against
2 [REDACTED] would be expensive and time-consuming, as it would likely require extensive
3 discovery, retention of multiple experts and the testimony of numerous witnesses.
4 Discovery, trial and an appeal would likely take at least two years to complete and
5 cost the estate at least several hundred thousand dollars in fees and expenses.

6 27. I believe the Settlement is fair, equitable and adequate under the
7 circumstances to realize the value of the Claims.

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

9 28. The Settlement reflects my approximation of the total potential
10 recovery from [REDACTED], [REDACTED]
11 [REDACTED] and the understanding that [REDACTED] is paying less than it would have if found
12 liable after a trial.

13 29. The Settlement was also the result of arm's-length negotiations before
14 a neutral mediator, thus demonstrating the absence of any collusion, fraud or tortious
15 conduct.

16 30. The proceeds of the Settlement will be paid into the Estate for the
17 benefit of *all* creditors, not just the Investors.

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

19 31. For the reasons discussed in the Motion, I respectfully submit that the
20 Bar Order is fair, equitable and in the best interests of the Estate.

21 32. The Settlement avoids protracted litigation of the Claims, the outcome
22 of which was uncertain due to the strength of [REDACTED] defenses. By settling, the Estate
23 avoided significant expenses and time associated with litigating. The Bar Order also
24 drove a higher settlement value, as [REDACTED] agreed to pay far more for a global
25 settlement with the Bar Order than it would have paid to settle the Investor Claims
26 alone.

27 33. The Bar Order helped resolve complex claims that would have been
28 difficult—if not impossible—to resolve independently. Absent a settlement, the

1 Investors and I would be left to compete for [REDACTED] assets, a result that would have
2 frustrated my efforts to make pro rata distributions to investors.

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

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

7 35. The Settlement is largely the result of L&E’s pursuit of the Investor
8 Claims. In recognition of that, I agreed that L&E should hold an allowed \$ [REDACTED]
9 administrative claim—or 33 percent of the total Settlement Payment—in exchange
10 for its contributions to the Estate (“Administrative Claim”).

11 36. L&E played an essential role in increasing the amount of the Settlement
12 Payment, all of which is coming into the Estate for eventual distribution to creditors.
13 The three-way nature of the settlement negotiations necessitated this. On the one
14 hand, [REDACTED] sought finality with a settlement, which it really could accomplish only
15 through a deal with me that would include a bar order. On the other hand, as I was
16 unwilling to settle with [REDACTED] over the objections of the Investors—over 100 of the
17 Estate’s creditors—any settlement had to resolve their claims too.

18 37. Finding a way to compensate L&E for its efforts in augmenting the
19 Estate was a hard-fought material term of the overall Settlement. I agreed to the
20 Administrative Claim amount in the exercise of my business judgment, which I felt
21 was necessary to achieve a global settlement.

22 38. I respectfully submit that the Court may approve the Administrative
23 Claim and associated disbursement under the common-fund doctrine.

24 **I. Notice to creditors**

25 39. I will give notice of the Motion by: CM/ECF to parties/interested
26 parties; email to all known creditors of the Estate (or, if represented, their counsel)
27 with a link to a redacted copy of the Motion and its supporting exhibits; posting it
28 on the receivership website; and publishing a notice once in the *Wall Street Journal*

1 and once in the *Los Angeles Times* in the form annexed to the Motion as **Exhibit 5**
2 (**“Published Notice”**). These communications will include instructions on how to
3 advise me of any objections to the Motion by no later than seven days before the
4 hearing. I will thereafter file a status report.

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

7 Executed on April 1, 2024
8 in San Diego, California

/s/Michele Vives
Michele Vives

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

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Exhibit 3

██████████ Declaration

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.
4 Chicago, IL 60661
Telephone: (312) 902-5665
5 Facsimile: (312) 902-1061

6 *Attorneys for the Receiver*
Michele Vives
7

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

10
11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

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

16 Defendants.
17

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

18 **DECLARATION OF** [REDACTED]
19 [REDACTED]

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

DOCUMENT FILED UNDER SEAL
PURSUANT TO ORDER OF THE
COURT DATED MARCH 19, 2024
[ECF #330]

1 I, [REDACTED], 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 Related Relief,*
9 dated April 1, 2024 (the "Motion"). Any capitalized terms not defined herein have
10 the meanings ascribed to them in the Motion. Hereinafter, [REDACTED] shall be
11 referred to as our "Client."

12 3. I am an attorney admitted to practice in Illinois. I am a partner at [REDACTED]
13 [REDACTED], a law firm that, among other things, [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED].

18 4. My colleagues and I at [REDACTED] represented our Client with
19 respect to the investigation and defense of the Investor Claims arising out of or
20 relating to the Ponzi Scheme, as well as the Settlement and other events described
21 in the Motion, [REDACTED]
22 [REDACTED]
23 [REDACTED].

24 5. [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]

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[REDACTED]

6. A group of Investors represented by Loftus & Eisenberg, Ltd. (“L&E”) approached our Client and threatened to assert claims against it, such as [REDACTED]. I participated in a number of discussions with the Receiver, counsel for the Receiver, and Alexander Loftus at L&E with respect to the nature and relative merit (or lack thereof) of those claims. I was also involved in reaching agreement between our Client, the Receiver, and the Investors to mediate the threatened claims. From the outset, we and our Client made it very clear that any settlement would need to resolve all potential claims and would require entry of a bar order.

7. On May 3, 2023, two of my partners and I, as well as [REDACTED], participated in an all-day confidential mediation before [REDACTED]. The Receiver, represented by counsel at Katten Muchin Rosenman LLP, attended the mediation, and Mr. Loftus and one of his colleagues attended the mediation on behalf of the Investors. Before the mediation, both our Client and the Investors prepared and submitted confidential mediation briefs to the mediator, as well as to each other. I was the lead drafter on the mediation brief for our Client, and I reviewed and evaluated the claims and evidence set forth in the briefs submitted by the Investors.

8. After a full day of mediation with [REDACTED], the parties reached a confidential Settlement. The Settlement was the product of arms’-length

1 negotiations. There was no collusion, fraud, or tortious conduct in reaching the
2 Settlement.

3 9. The Settlement was memorialized in a long-form confidential
4 Settlement Agreement executed on December 12, 2023. I was involved in preparing
5 the Settlement Agreement and in all discussions on behalf of our Client with the
6 Receiver, her counsel, and/or counsel for the Investors concerning the Settlement
7 Agreement. The parties' entire Settlement is reflected in the December 12, 2023
8 Settlement Agreement. There are no side agreements or other terms between the
9 Receiver and Investors, on the one hand, and our Client, on the other, that are not
10 reflected in the Settlement Agreement.

11 10. Our Client had many good-faith responses and defenses to the Investor
12 Claims, which we as counsel would have asserted in defense of any Investor Claims,
13 and that could have resulted in the Investors receiving nothing had they pursued their
14 claims rather than agreed to the Settlement.

15 11. For example, we would have asserted that [REDACTED]
16 [REDACTED]
17 [REDACTED]. We
18 had evidence to indicate, among other things, that [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]. For instance, if the claims had proceeded to litigation, we would have
22 presented evidence of [REDACTED]
23 [REDACTED]
24 [REDACTED]. We also would have presented evidence that [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]. We would have argued that [REDACTED]

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[REDACTED]
[REDACTED].

12. We would have also asserted a defense based upon [REDACTED]

[REDACTED]
[REDACTED]. We would have argued that, as a result, [REDACTED]

[REDACTED]
[REDACTED]. More broadly, if the matter had proceeded
to litigation, we would have sought to demonstrate that [REDACTED]

[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]

■ ■ [REDACTED] ■ [REDACTED] ■ [REDACTED] ■ [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

We contended, on behalf of our Client, that [REDACTED] would have
defeated each and every one of the Investors' threatened claims against [REDACTED].

1 13. If the parties had not settled, litigating the Investors’ claims and any
2 additional claims by the Receiver would have been complicated, time-consuming,
3 and expensive for all involved, particularly because our Client would have
4 vigorously and aggressively defended itself. Based on my experience [REDACTED]
5 [REDACTED]
6 [REDACTED], I would have expected years of litigation, a high volume
7 of documents and data for the parties to review and produce, numerous fact and
8 expert witnesses, and substantial and complex motion practice throughout the case.
9 Our Client agreed to the Settlement in large part to avoid such time-consuming and
10 expensive litigation, especially because the outcome of such litigation would have
11 been uncertain.

12 14. The Settlement provides our Client with certainty concerning the
13 Investor claims and any additional Receiver claims, but our Client would not have
14 agreed to the Settlement (or to [REDACTED]) without
15 additional assurances—namely, of confidentiality, finality, and complete peace from
16 other claims.

17 15. To achieve the required confidentiality, the parties have agreed that our
18 Client’s identity as a settling party must be and must remain strictly confidential.
19 Our Client fully supports the Receiver’s request to file the settlement materials under
20 seal with this Court, as well as the remainder of the process the Receiver has
21 articulated in the Motion to preserve confidentiality.

22 16. Achieving complete peace has two components:

- 23 • *first*, entry, without material modification, of the proposed order attached as
24 Exhibit B to the Settlement Agreement (the “Approval Order”), which both
25 (i) approves the Settlement Agreement and (ii) enters the Bar Order, *i.e.*, an
26 injunction restraining and enjoining all persons and entities (except any
27 governmental unit) from commencing or continuing any civil action,
28

1 administrative proceeding, arbitration or other adversarial proceeding against
2 our Client in connection with the Ponzi Scheme; and

- 3 • *second*, a finding from the Court in the Approval Order that the Settlement
4 was entered into in good faith within the meaning of California Code of Civil
5 Procedure § 877.6 and similar rules in other jurisdictions.

6 If the Approval Order is not entered with these terms (including the good-faith
7 finding), the Settlement terminates, and our Client's obligation to pay the Settlement
8 Amount does not arise. In other words, our Client is not willing to pay the Settlement
9 Amount *at all* unless it receives the comfort and peace that comes with entry of the
10 Bar Order and the good-faith finding. Similarly, our Client would not have been
11 willing to settle with the Investors alone, without the Receiver, or vice versa.

12 17. To achieve the required finality, the Approval Order must be entered as
13 a partial final judgment under Federal Rule of Civil Procedure 54(b) that is
14 immediately appealable, and then the deadline to appeal must expire. If the
15 Approval Order is entered, but not as a partial final judgment, then our Client would
16 have no obligation to pay the Settlement Payment until the entire receivership matter
17 closes through a final judgment that resolves the entirety of the case—a resolution
18 that is some time away at best.

19 18. Moreover, I understand that the Receiver will be asking for any
20 objections to the Settlement to be lodged no later than seven days before a hearing
21 that the Court sets to determine whether to approve the Settlement and enter the
22 Approval Order. It is important to our Client that all parties and the Court follow
23 the Receiver's proposed notice-and-objection procedure, and that the objection
24 period expire before the partial final judgment is entered, so that there is no question
25 regarding when the Approval Order becomes final and our Client's obligation to pay
26 the Settlement Payment is triggered under the Settlement Agreement.

27
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 April 1, 2024
4 in Chicago, Illinois

/s/ [REDACTED] _____
[REDACTED]

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Exhibit 4

Loftus Declaration

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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4 Telephone: (312) 902-5665
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
CAPITAL, LLC,

16 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 MARCH 19, 2024
[ECF #330]

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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 April 1, 2024 (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 over 100 investors on a contingent-fee basis with respect to the Investor Claims arising out of or relating to the 1inMM Ponzi Scheme.

4. The instant dispute 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 based on [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

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

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

1 high-reward Investor Claims were thoroughly presented and argued utilizing
2 evidence marshalled from extensive informal discovery and formal discovery in
3 related matters.

4 18. While the Investor Claims presented tremendous upside, the Investors
5 could have recovered nothing if [REDACTED] defenses were successful, and even if not,
6 very little of that upside could have been collected if the cases were litigated to
7 judgment. L&E thoughtfully evaluated [REDACTED] defenses and secured the assent of all
8 of its clients in order to secure a resolution.

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 April 1, 2024
12 in Chicago, Illinois

/s/ Alexander Loftus
Alexander Loftus

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Exhibit 5
Published Notice

Exhibit 5
Published Notice

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 that 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 April 29, 2024, though disclosure of certain information will require entry into a 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 AND ENTERING
FINAL BAR ORDER**

1 Upon consideration of the *Motion of Receiver Michele Vives for Order*
2 *Approving Settlement with [REDACTED] and for Related Relief*, dated April 1,
3 2024 (the “Motion”), the Court, having jurisdiction to hear and determine the
4 Motion, has reviewed the Motion, accompanying memorandum of points and
5 authorities, declarations in support thereof and other exhibits thereto. After due
6 deliberation and consideration of the Motion, and there being good cause to grant
7 the relief provided herein, the Court, pursuant to the Court’s power to supervise
8 equity receiverships and all other powers in that behalf so enabling, finds and orders
9 as follows:

10 1. The Motion is GRANTED. Capitalized terms not defined in this Order
11 have the meanings ascribed to them in the Settlement Agreement (the “Agreement”)
12 that is the subject of the Motion.

13 2. The Motion requests approval of a proposed confidential settlement
14 (the “Settlement”) among and between the Receiver, the Investors and [REDACTED]
15 [REDACTED]. The Receiver, having previously obtained an order from the
16 Court pursuant to Local Rule 79-5.2.2: (a) filed under seal full, unredacted versions
17 of the Agreement, the Motion, its supporting declarations and this Order; and (b)
18 caused redacted versions of the aforesaid documents to be served on creditors of the
19 1inMM Estate¹ who are identified in the Receiver’s records and to be posted to the
20 Receiver’s website.

21 3. The Court FINDS that all parties in interest have had due and sufficient
22 notice of the Motion and an opportunity to be heard, and that forms of service of the
23 Motion effected by the Receiver, including the Published Notice, provides sufficient
24

25
26 _____
27 ¹ “1inMM Estate” means 1inMM Capital LLC and 1inMM Productions LLC, as well as their
28 subsidiaries and affiliates and all assets that are attributable to funds derived from investors or
clients of those entities and/or Zachary Horwitz or that were fraudulently transferred by those
entities and/or Zachary Horwitz.

1 notice under the circumstances and satisfies due process, and any further notice
2 otherwise required by Local Rule 66-7 is waived.

3 4. The Court further FINDS that terms of the Settlement with [REDACTED]
4 memorialized in the Agreement are adequate, fair, reasonable, and equitable,
5 including without limitation the restraints and injunctions contained herein (the “Bar
6 Order”). Accordingly, the Agreement and its terms should be and are hereby
7 APPROVED. For the avoidance of doubt, the Settled Claims, the JJMT Settled
8 Claims and the Unknown Claims (as those terms are defined in Section II of the
9 Agreement) exclude any and all claims and causes of action that the Receiver and/or
10 the InMM Estate may have against any other Person other than the [REDACTED]
11 [REDACTED].

12 5. The Court further FINDS that entry of the Bar Order sought in the
13 Motion—and given effect by Paragraph 6 of this Order—is both essential to the
14 Settlement between the Receiver, Investors and [REDACTED] (the “Parties”) and fair
15 and equitable under the circumstances.

16 6. The Court hereby PERMANENTLY BARS, RESTRAINS, and
17 ENJOINS all persons and entities (except any governmental unit, as that term is
18 defined by 11 U.S.C. § 101(27)), as well as their respective heirs, successors,
19 assigns, subsidiaries, parents, affiliates, officers, directors, shareholders, owners,
20 members, managers, partners, representatives, agents, employees, and attorneys, and
21 whether individually, derivatively, on behalf of a class, as a member of a class, or in
22 any other capacity whatsoever, from commencing, participating in, continuing, or in
23 any manner joining in any civil action, administrative proceeding, arbitration or
24 other adversarial proceeding that asserts any claim, cause of action, counter-claim,
25 or cross-claim of any kind or nature against [REDACTED]
26 [REDACTED]

1 [REDACTED] that in any way concerns, relates to, is based upon, arises
2 from, or is in any manner connected with—

3 (a) the 1inMM Ponzi Scheme and/or any person or entity
4 involved in such scheme;

5 (b) any act or omission by [REDACTED]

6 [REDACTED]
7 [REDACTED] that
8 relates to 1inMM Capital, LLC, 1inMM Productions,
9 LLC, Zachary Horwitz, any entity currently or previously
10 owned or controlled by or affiliated with any of them, or
11 any of their respective agents or employees;

12 (c) any matter or fact that was asserted or alleged in, or that
13 could have been asserted or alleged in, this action or the
14 related criminal proceedings against Zachary Horwitz
15 (Case No. CR-21-214-MCS, C.D. Cal.); or

16 (d) any direct or indirect account with, payment or transfer of
17 money to, loan to, or investment of any type with, directed
18 toward (including through an intermediary), or related to
19 1inMM Capital, LLC, 1inMM Productions, LLC, or
20 Zachary Horwitz.

21 (collectively, the “1inMM Claims”). All 1inMM Claims are hereby channeled into
22 the 1inMM Estate’s claims distribution process that the Court will establish by
23 separate order.

24 7. The restraints and injunctions contained in Paragraph 6 of this Order—

25 (a) Include (but are not limited to) any claim against [REDACTED]

26 [REDACTED]

27 [REDACTED]

1 [REDACTED], however such claim is denominated, that
2 seeks contribution, indemnity, damages, or another
3 remedy where the alleged injury or the claim asserted
4 arises out of, relates to, or is based in whole or in part upon
5 (i) such claimant's actual or alleged liability to the
6 Receiver, the 1inMM Estate, or the Investors, or
7 (ii) money owed, demanded, requested, offered, paid,
8 agreed to be paid, or required to be paid to the Receiver,
9 the 1inMM Estate, or the Investors, whether pursuant to a
10 demand, judgment, claim, agreement, settlement or
11 otherwise;

12 (b) Do not operate to release the rights and obligations of the
13 Receiver, the Investors, or [REDACTED] under the
14 Settlement, the Agreement, or this Order; and

15 (c) Do not bar, restrain or enjoin—

- 16 i. The Receiver from asserting any claim or cause of
17 action against any Person other than [REDACTED]
18 [REDACTED];
- 19 ii. The Receiver, the Investors, or [REDACTED] from
20 enforcing, effectuating, or suing for alleged
21 breaches of the Settlement, the Agreement, or this
22 Order; or
- 23 iii. Any Person released under the Agreement or this
24 Order from enforcing, effectuating, or suing to
25 enforce such release.
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1 8. The Court further FINDS that—

2 (a) There is no indication of—and there in fact has been no—
3 collusion, bad faith, or wrongful conduct between the Parties in
4 connection with reaching agreement on the Settlement and the
5 Settlement Amount; and

6 (b) The Agreement was entered into in good faith, including within
7 the meaning of 740 ILCS 100/2(d), Cal. Code Civ. Proc. §
8 877.6(c), N.Y. Gen. Oblig. L. § 15-108(b), and similar laws in
9 other states.

10 9. The Receiver is AUTHORIZED to take such further actions as may be
11 necessary to consummate the transactions in the Agreement, including, without
12 limitation, paying the Administrative Claim to the holder thereof (or its assignee or
13 designee) in the amount specified in the Agreement.

14 10. Nothing in this Order or the Agreement (including its exhibits), and no
15 aspect of the Settlement or negotiation or mediation thereof, is or shall be construed
16 to be a finding, admission, or concession of any violation of any statute or law or any
17 fault, liability, or wrongdoing by [REDACTED]
18 [REDACTED].

19 11. If this Order or any portion thereof is successfully challenged after it
20 becomes Final (as that term is defined in paragraph 5 of the Agreement), the Court
21 intends that such challenged portion be excised from this Order as narrowly as
22 possible and that the remainder of the Order continue to be in full force and effect to
23 the maximum extent of such remaining terms.

24 12. This Order (a) includes a permanent injunction within the meaning of
25 28 U.S.C. § 1292(a)(1), and (b) is a complete disposition of an asset of the 1 inMM
26 Estate—namely, the Receiver’s potential claims against [REDACTED]. Upon entry of
27 this Order, there is no further action required by this Court to resolve the Receiver’s
28

1 potential claims against [REDACTED]. No claims that remain pending in this
2 proceeding seek the relief the Receiver could have sought on such claims, and there
3 is no factual overlap between the matters resolved in this Order and the claims and
4 issues left to be addressed in this proceeding. As such, the Court expressly FINDS
5 and DETERMINES that this Order is a partial final judgment under Federal Rule of
6 Civil Procedure 54(b).

7 13. The Court further expressly FINDS and DETERMINES, pursuant to
8 Rule 54(b), that there is no just reason for any delay in entering this partial final
9 judgment. To the contrary, any delay in this Order reaching finality would defeat the
10 purpose of the Settlement (and impede the progress of this receivership proceeding)
11 because the Settlement is expressly conditioned on this Order becoming Final (as
12 that term is defined in paragraph 5 of the Agreement). Deferring finality of this Order
13 until the receivership proceeding is fully and finally concluded as to all matters and
14 all issues would delay the effectiveness of the Settlement and thereby delay the
15 payment of the Settlement Amount into the 1inMM Estate. For all these reasons, the
16 Court intends this Order to become Final upon the expiration of any right to appeal,
17 despite the continued pendency of the above-captioned civil action, including the
18 receivership therein.

19 14. Pursuant to Local Rule 58-6, the Court ORDERS the Clerk to treat this
20 Order, and its entry on the docket, as an entry of judgment for purposes of Federal
21 Rules of Civil Procedure 58 and 79(a).

22 15. The Court retains jurisdiction to hear and determine any disputes
23 arising out of or relating to the Settlement approved by this Order, as detailed further
24 in the Agreement.

25 Dated:

26 United States District Judge