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Michele Vives

**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

**NOTICE OF MOTION AND  
UNOPPOSED MOTION OF  
RECEIVER MICHELE VIVES FOR  
ORDER APPROVING  
SETTLEMENT WITH AMERICAN  
EXPRESS NATIONAL BANK, AND  
FOR RELATED RELIEF;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

Date: January 13, 2025  
Time: 10:00 a.m. PT  
Judge: Hon. Christina A. Snyder  
Courtroom: 8D

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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT, on January 13, 2025, at 10:00 a.m., or as  
3 soon thereafter as the matter may be heard in Courtroom 8D, located at the United  
4 States Courthouse, 350 West First Street, Los Angeles, California 90012, Michele  
5 Vives, not individually, but solely as the federal equity receiver (the “Receiver”) of  
6 defendant 1inMM Capital, LLC and its subsidiaries, affiliates and over the assets  
7 more particularly described in the *Order on Appointment of Permanent Receiver*,  
8 dated January 14, 2022 [ECF #70] (the “Receiver Order”), will and hereby does  
9 move the Court for entry of an order approving the settlement with American  
10 Express National Bank, and for related relief (the “Motion”).

11 The Motion is based on the Memorandum of Points and Authorities below  
12 and is supported by: (a) the *Settlement Agreement and Mutual Release*, dated  
13 November 1, 2024 (the “Settlement Agreement”), copy attached as **Exhibit 1**; (b)  
14 the *Declaration of Michele Vives*, dated December 2, 2024 (“Vives Decl.”), copy  
15 attached as **Exhibit 2**; and (c) the *Declaration of Frank N. White*, dated December  
16 2, 2024 (“White Decl.”), copy attached as **Exhibit 3**.

17 This Motion is made following the Local Rule 7-3 conference of counsel  
18 which took place on December 2, 2024. **No party requests a hearing on the**  
19 **Motion.**

20 Dated: December 2, 2024

Respectfully submitted,

21 **KATTEN MUCHIN ROSENMAN LLP**

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

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

**Factual Background**

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

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

**B. The Transfers and the Receiver Claims**

Upon the Receiver’s appointment, it was immediately apparent that Horwitz and others associated with 1inMM spent a great deal of money using credit cards issued by American Express National Bank (“AmEx”). (Vives Decl. ¶ 9.) The Receiver promptly established contact with AmEx and its national counsel, Frank N. White, of Arnall Golden Gregory LLP, to obtain records in order to evaluate whether the Estate had any viable claims against AmEx. (*Id.*) Mr. White worked cooperatively with the Receiver, and AmEx produced a large volume of financial documents and related information. (*Id.* ¶ 10; White Decl. ¶ 5.) To facilitate the Receiver’s investigation, AmEx also entered into a tolling agreement with the Receiver that was subsequently extended several times. (Vives Decl. ¶ 10; White Decl. ¶ 5.)

The Receiver and her professional staff carefully reviewed and analyzed the documents and information that AmEx produced. (*Id.* ¶ 11.) From that analysis, the Receiver determined that AmEx issued credit cards in the names of: (a) 1inMM (account ending x81003 and x81011) (the “1inMM Card Account”); (b) Horwitz (account ending x31003); (c) Julio Hallivis (account ending x83031); (d) LayJax

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1 Ventures, LLC (account ending x21001); and (e) Rogue Black, LLC (account ending  
2 x11006) (collectively, the “Accounts”). (*Id.*) The Receiver also discovered that  
3 Horwitz permitted insiders of 1inMM to use the Accounts as additional  
4 cardmembers (collectively, the “Card Users”). (*Id.*)

5 Based on the Receiver’s review of the account activity for these AmEx cards,  
6 it appears that Horwitz and the other Card Users only used the cards primarily to buy  
7 goods and services for themselves personally. (*Id.* ¶ 12.) Specifically, Horwitz, his  
8 then-wife, Mallory Horwitz, and others associated with 1inMM lived extravagant  
9 lifestyles using the proceeds of the 1inMM Ponzi Scheme. (*Id.*) They spent lavishly  
10 on goods and services for themselves and their friends, almost exclusively using the  
11 AmEx card associated with the Accounts. (*Id.*) The Receiver found no evidence that  
12 any Card User utilized the AmEx cards for any legitimate business purpose of 1inMM.  
13 (*Id.*) Nor could there have been any legitimate use of these credit cards, as 1inMM  
14 was an illegal Ponzi scheme from the very beginning of its existence. Excluding the  
15 transfers to AmEx that predated the period covered by the parties’ tolling agreement,  
16 the Receiver identified transfers from the Defendants to or for the benefit of AmEx  
17 totaling \$7,208,006.68 (collectively, the “Transfers”). (*Id.*)

18 The Receiver asserted that she may avoid and recover the Transfers from  
19 AmEx as actual fraudulent transfers pursuant to § 3439.04(a)(1) of the California  
20 Uniform Voidable Transactions Act, Cal. Civ. Code §§ 3439 *et seq.* (“UVTA”) (the  
21 “Receiver Claims”). As the Receiver contended, 1inMM and Horwitz made the  
22 Transfers with the actual intent to hinder, delay, or defraud their creditors, as  
23 Horwitz pled guilty and admitted that he used 1inMM to operate a Ponzi scheme,  
24 which conclusively establishes intent for purposes of a UVTA actual fraudulent  
25 transfer claim. The Receiver further argued that she could recover the Transfers from  
26 AmEx because it was the first transferee of the Transfers. AmEx asserted several  
27 defenses and various other arguments (discussed *infra*). (Vives Decl. ¶ 13.)  
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### C. The Settlement

After months of negotiations, the Receiver and AmEx reached a settlement (“Settlement”), which is documented in the Settlement Agreement, whereby AmEx agreed to pay the sum of \$2,500,000 (the “Settlement Payment”) to the Estate to resolve the Receiver Claims. The Settlement Payment is 34 percent of the Transfers. The parties will also exchange mutual general releases, but AmEx will retain any claim or cause of action it may have to recover unpaid balances on the Accounts against any third-party AmEx account holder or individual card holder. The validity of the Settlement Agreement is subject to the condition precedent that the Court approves it. (Vives Decl. ¶ 14; White Decl. ¶ 6.)

### D. Analysis of the Settlement

The Receiver believes the Settlement is in the best interest of the Estate and its creditors—the net losing investors in the Ponzi Scheme. The Settlement Payment constitutes a substantial recovery for the Estate without the expense and risk of litigation, and the Settlement represents an equitable, good-faith resolution of the Receiver Claims. (Vives Decl. ¶ 15.)

While the Receiver was confident in the Receiver Claims, the risk of an adverse result always loomed. As discussed below, AmEx asserted multiple meaningful defenses that, if successful, may have resulted in the Receiver recovering nothing. The Settlement thus avoids protracted and expensive litigation, thereby avoiding litigation risk and conserving Estate resources. (*Id.* ¶ 16.)

### Legal Standards

District courts have “extremely broad” power and “wide discretion” in overseeing the administration of a receivership. *SEC v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986). The Ninth Circuit “affords ‘broad deference’ to the [district] court’s supervisory role” in receivership cases, and “generally uphold[s] reasonable procedures instituted by the district court that serve th[e] purpose of orderly and efficient administration of the receivership for the benefit of creditors.” *Commodity*



1 *Futures Trading Comm’n v. Topworth Int’l, Ltd.*, 205 F.2d 1107, 1115 (9th Cir.  
2 1999) (cleaned up).

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

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

23 Courts in this circuit typically apply bankruptcy principles to evaluate  
24 approval of settlements in receivership cases. *SEC v. Champion-Cain*, 2022 WL  
25 126114, at \*1 (S.D. Cal. Jan. 13, 2022) (applying bankruptcy principles regarding  
26 approval of settlements in receivership case); *SEC v. Total Wealth Mgmt., Inc.*, 2019  
27 WL 13179068, at \*2 (S.D. Cal. Sept. 18, 2019) (same). Bankruptcy courts evaluate  
28 whether a compromise is “fair and equitable,” considering “[a] the probability of

1 success in litigation, [b] any difficulties that may be encountered in collection, [c]  
2 the complexity of the litigation, the expense, inconvenience, and delay necessarily  
3 attending, and [d] the interest of the receivership entities’ creditors and their  
4 reasonable views.” *Champion-Cain*, 2022 WL 126114, at \*1 (quoting *In re*  
5 *Woodson*, 839 F.2d 610, 620 (9th Cir. 1988)); *see also Martin v. Kane (In re A&C*  
6 *Props.)*, 784 F.2d 1377, 1381 (9th Cir. 1986). “[W]hen engaging in this analysis,  
7 bankruptcy courts need not conduct a mini trial on the merits, but need only canvass  
8 the issues.” *In re TBH19, LLC*, 2022 WL 16782946, at \*6 (B.A.P. 9th Cir. Nov. 8,  
9 2022).

10 “The analysis under these factors is holistic; the Court must canvass the issues  
11 and see whether the settlement falls below the lowest point in the range of  
12 reasonableness...[I]t is not necessary to satisfy each of these factors provided that  
13 the factors as a whole favor approving the settlement.” *Total Wealth Mgmt., Inc.*,  
14 2019 WL 13179068, at \*3 (internal citations and quotations omitted); *accord In re*  
15 *Open Med. Inst., Inc.*, 639 B.R. 169, 185 (B.A.P. 9th Cir. 2022) (“a settlement can  
16 satisfy the *A&C Properties* test even if the evidence supporting one or more of the  
17 four factors is relatively weak”). The “range of reasonableness” is “a range that  
18 recognizes the uncertainties of law and fact in any particular case and the  
19 concomitant risks and costs necessarily inherent in taking any litigation to  
20 completion.” *SEC v. Ruderman*, 2013 WL 153266, at \*2 (C.D. Cal. Jan. 15, 2013)  
21 (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972) (cleaned up)).

22 The Court should consider the *A&C Properties* factors “as a whole, and not  
23 individually in a vacuum, to ascertain whether the settlement is a good deal  
24 compared to litigation.” *Open Med. Inst.*, 639 B.R. at 185. Further, when assessing  
25 a settlement, the Court need not decide issues of disputed fact or questions of law  
26 raised in the controversies sought to be settled. *Burton v. Ulrich (In re Schmitt)*, 215  
27 B.R. 417, 423 (B.A.P. 9th Cir. 1997).

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

9 **Argument**

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

11 The Receiver respectfully submits that the Settlement satisfies the *A&C*  
12 *Properties* test. (Vives Decl. ¶ 17.)

13 **A. Probability of success**

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

19 **1. Receiver Claims**

20 The Receiver’s potential claims against AmEx arise under UVTA, the purpose  
21 of which is “to prevent debtors from placing, beyond the reach of creditors, property  
22 that should be made available to satisfy a debt by transferring that property to  
23 others.” *RPB SA v. Hyla, Inc.*, 2021 WL 4980092, at \*4 (C.D. Cal. June 24, 2021)  
24 (cleaned up). UVTA enables a creditor to bring an action to avoid a fraudulent  
25 transfer of an asset to the extent necessary to satisfy its claim. UVTA §  
26 3439.07(a)(1). A transfer is fraudulent—and thus avoidable—if the debtor  
27 transferred the asset either (1) with actual intent to hinder, delay, or defraud any of  
28 its creditors (i.e., “actual fraud”), or (2) without receiving reasonably equivalent

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1 value in exchange therefor when it had unreasonably small capital or was insolvent  
2 (i.e., “constructive fraud”). *Id.* §§ 3439.04(a)(1)-(2). A creditor may bring an action  
3 under UVTA against the “first transferee” of the asset, the person for whose benefit  
4 the transfer was made or any subsequent transferees. *Id.* §§ 3439.08(b)(1)(A)-(B).

5 Fraudulent transfer claims are among a receiver’s most important tools to  
6 recover monies lost by Ponzi-scheme investors. *Donell v. Kowell*, 533 F.3d 762, 767  
7 (9th Cir. 2008). The Ponzi-scheme operator is the “debtor” and each investor is a  
8 “creditor,” although the investors who profited from the scheme on a net basis—  
9 sometimes called “net winners”—are the recipients of the Ponzi-scheme operator’s  
10 fraudulent transfers, and are thus liable under UVTA. *Id.* at 767-71. An equity  
11 receiver has standing to pursue fraudulent transfer claims “to redress injuries that  
12 [the receivership entity] suffered when its managers caused [it] to commit waste and  
13 fraud.” *Id.* at 777; *see also Winkler v. McCloskey*, 83 F.4th 720, 727 (9th Cir. 2023)  
14 (“[A] receiver has standing to pursue a fraudulent transfer claim because the receiver  
15 is acting on behalf of the receivership entity, seeking to claw back transfers that the  
16 perpetrator of the scheme fraudulently made to the net winners.”) A receiver may  
17 assert that a transfer was actually or constructively fraudulent. *Donell*, 533 F.3d at  
18 770. But the debtor’s admission that it operated a Ponzi scheme *conclusively*  
19 establishes fraudulent intent for a UVTA actual fraud claim (*In re Slatkin*, 525 F.3d  
20 805, 814 (9th Cir. 2008)), as well as financial distress for a UVTA constructive fraud  
21 claim (*Donell*, 533 F.3d at 770-71).

22 Here, the Receiver demonstrated through documentation that AmEx had  
23 received the Transfers from 1inMM, and argued that she could avoid the Transfers  
24 as actually fraudulent under UVTA § 3439.04(a)(1). The Receiver argued that an  
25 actual fraud claim would not require her to prove that 1inMM was insolvent or made  
26 the transfers for less than reasonably equivalent value. Instead, the Receiver would  
27 have to show that 1inMM made the Transfers “with actual intent to hinder, delay or  
28 defraud any creditor of the debtor.” UVTA § 3439.04(a)(1). Because Horwitz pled

1 guilty to securities fraud and admitted that he used 1inMM to operate a Ponzi  
2 scheme, 1inMM’s fraudulent intent was conclusively established for purposes of a  
3 UVTA actual fraud claim. *Slatkin*, 525 F.3d at 814. The Transfers were thus  
4 avoidable.

5 Having demonstrated that the Transfers are avoidable, the Receiver noted that  
6 UVTA permits a creditor to recover an avoided actually fraudulent transfer or its  
7 value from the “first transferee” of the transfer, or the person for whose benefit the  
8 transfer was made. UVTA § 3439.08(b)(1)(A). The flow of funds for the Transfers  
9 was that 1inMM transferred cash directly to AmEx (usually on a monthly basis) to  
10 pay off the invoices generated by the Card Users’ purchases. (Vives Decl. ¶ 18.)  
11 AmEx would then exercise dominion over the transferred cash by applying it to the  
12 receivables then due. (*Id.*) Consequently, the Receiver contended that AmEx was the  
13 first transferee of the Transfers.

14 **2. Defenses and other arguments**

15 AmEx asserted various arguments in its defense. AmEx primarily asserted  
16 that it was not liable for the substantial amount of transfers from 1inMM that paid  
17 down the balance due on the 1inMM Card Account (i.e., the card that AmEx issued  
18 to 1inMM), as 1inMM was contractually liable to pay those charges and those  
19 transfers reduced that liability on a dollar-for-dollar basis.

20 Under UVTA, a transfer is not voidable “against a person that took [the  
21 transfer] in good faith and for a reasonably equivalent value given the debtor...”  
22 UVTA § 3439.08(a). And, more to the point, a transferee gives value in exchange  
23 for a transfer when “an antecedent debt is...satisfied[.]” UVTA § 3439.03; *see also*  
24 *Universal Home Improvement, Inc. v. Robertson*, 51 Cal. App. 5th 116, 127 (2020)  
25 (“transfers on account of antecedent debt...constitute reasonably equivalent value  
26 pursuant to [UVTA] § 3439.08”). As the amounts that 1inMM paid AmEx for  
27 charges on the 1inMM Card Account were satisfactions of antecedent debt, the  
28

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1 Receiver agreed that AmEx likely had a complete defense as to those transfers. This  
2 materially reduced AmEx’s potential liability.

3 AmEx additionally argued that the Receiver could not pursue her claims on  
4 the basis of actual fraud because the Transfers were not made “in furtherance of” the  
5 1inMM Ponzi Scheme. Although Horwitz’s admission that he operated a Ponzi  
6 scheme conclusively establishes fraudulent intent for a UVTA actual fraud claim,  
7 AmEx asserted that this presumption does not apply because AmEx was not an  
8 investor in the 1inMM Ponzi Scheme, but simply a third-party vendor.

9 The Receiver disagreed, noting that courts have held that the Ponzi scheme  
10 presumption applies not only to traditional investors, but also to ordinary creditors  
11 and other non-investors. *See, e.g., In re EPD Inv. Co, LLC*, 2020 WL 6937351, at  
12 \*18 (Bankr. C.D. Cal. Oct. 29, 2020) (holding there was “no merit” to the argument  
13 that Ponzi scheme presumption did not apply to transferee who was “not an  
14 investor”); *In re Maui Indus. Loan & Fin. Co.*, 463 B.R. 499, 502 (Bankr. D. Haw.  
15 2011) (holding that “*all transfers* made by a debtor conducting a Ponzi scheme are  
16 made with the intent to defraud,” which may include “transfers made in the ordinary  
17 course of business” under Hawaii’s Uniform Fraudulent Transfer Act) (emphasis  
18 added). In any event, the Transfers allowed 1inMM and Horwitz to project the  
19 appearance of a legitimate business and reap the benefits of an extravagant lifestyle,  
20 as paid by the investors, all with the knowledge that the payments to AmEx would  
21 contribute to the eventual collapse of the 1inMM Ponzi Scheme. (Vives Decl. ¶ 19.)  
22 So the Receiver asserted that all of the Transfers were made with the requisite intent  
23 to defraud. (*Id.*)

24 AmEx also argued that, even if the Receiver could establish the *prima facie*  
25 elements of an actual fraud claim, certain Transfers still are not avoidable because  
26 AmEx took them in good faith and for reasonably equivalent value. That argument,  
27 if viable, is a defense to avoidance under UVTA § 3439.08(a). In particular, AmEx  
28 asserted that “reasonably equivalent value” is measured from the perspective of the

1 transferee (i.e., AmEx) rather than the transferor (i.e., 1inMM). The Receiver  
2 countered that the plain language of UVTA § 3439.08(a) provides that a transfer is  
3 not voidable against a transferee “that took in good faith and for a reasonably  
4 equivalent value *given the debtor*.” (emphasis added).

5 To determine whether the good faith and for value defense is satisfied, the  
6 Receiver asserted that Ninth Circuit courts examine the value of *what the debtor*  
7 *received*, not what the transferee gave. *See, e.g., In re Walldesign, Inc.*, 2017 WL  
8 1228395, at \*8 (C.D. Cal. Mar. 31, 2017) (“reasonably equivalent value should be  
9 determined from the perspective of the debtor” because such an approach “is  
10 consistent with the policy considerations of [UVTA], which are further evidenced  
11 by the 2015 amendments that clarify this point”), *appeal dismissed*, 2017 WL  
12 5158713 (9th Cir. Aug. 15, 2017); *In re AFI Holding, Inc.*, 525 F.3d 700, 707 (9th  
13 Cir. 2008) (holding the good faith defense “require[s] the determination of whether  
14 ‘reasonably equivalent value’ was transferred from the transferee *to the debtor*”)  
15 (emphasis added); *Maddox v. Robertson (In re Prejean)*, 994 F.2d 706, 708 (9th Cir.  
16 1993) (construing the term “reasonably equivalent value” as “direct[ing] attention  
17 away from what is fair as between the parties and instead measur[ing] consideration  
18 in terms of its objective worth to all the transferor’s creditors”) (citations omitted).

19 Because value is a function of what the debtor received, the Receiver  
20 contended that AmEx could not meet its burden to show it took the Transfers in good  
21 faith and for value, especially considering that 1inMM was never a legitimate  
22 business.

23 In light of the above arguments, the Receiver believes AmEx is liable under  
24 UVTA for the Transfers or their value, but it is not guaranteed that litigation would  
25 have resulted in the Receiver avoiding and recovering *all* of the Transfers. (Vives  
26 Decl. ¶ 20.) *Cf. In re ISE Corp.*, 2012 WL 1377085, at \*8 (Bankr. S.D. Cal. Apr. 13,  
27 2012) (“the success of litigation also entails consideration of the risk of uncertainty  
28 and the desire for expediency”). The Court may have sustained some of AmEx’s

1 defenses, which would be an outcome worse than the Settlement. Rather than take  
2 that risk, the Receiver compromised. (Vives Decl. ¶ 20.) *See, e.g., SEC v. Cap. Cove*  
3 *Bancorp LLC*, 2016 WL 11752897, at \*2 (C.D. Cal. Dec. 15, 2016) (approving  
4 settlement, reasoning it “provide[d] a recovery that is proportionate to the successful  
5 prosecution of this action when discounts are factored in for the risk, time, and  
6 expense of fully litigating the case, and maximize[d] the funds available for  
7 distribution to creditors”); *Open Med. Inst.*, 639 B.R. at 183-84 (same, where trustee  
8 averred the odds of success as a “coin flip” and “thought it was safer to settle”).

9 For these reasons, the Receiver concluded that the Settlement appropriately  
10 takes into account the mixed probability of success on the merits as well as AmEx’s  
11 likely complete defense as to transfers pertaining to the 1inMM Card Account.  
12 (Vives Decl. ¶ 21.)

### 13 **B. Collection difficulties**

14 “Assessing the difficulties in collection is largely a bird-in-the-hand  
15 consideration that weighs the certainty of settlement against the potential uncertainty  
16 of collection even where a receiver secures a favorable judgment.” *Total Wealth*  
17 *Mgmt.*, 2019 WL 13179068, at \*3. The Receiver assumes that a large multinational  
18 corporation like AmEx would have had sufficient assets to satisfy an adverse  
19 judgment entered in the Receiver’s favor. (Vives Decl. ¶ 22.) But AmEx would  
20 almost certainly appeal an adverse judgment, which would delay collection for  
21 months, if not years. (*Id.*) So this factor is neutral.

### 22 **C. Complexity/expense**

23 It would be complex, expensive and time-consuming for the parties to litigate  
24 the Receiver Claims. (*Id.* ¶ 23.) This factor is particularly important in liquidations  
25 like here where the goal is “obtaining the best possible realization upon the available  
26 assets and without undue waste by needless or fruitless litigation.” *In re Law*, 308 F.  
27  
28



1 App’x 152, 153 (9th Cir. 2009). Litigating AmEx’s defenses would necessarily  
2 entail discovery and trial to resolve, along with the associated time and expense.

3 Given the evidence and defense arguments, the Receiver believes litigation  
4 against AmEx would be expensive and time-consuming, as it would likely require  
5 extensive discovery, retention of experts and numerous witnesses. (Vives Decl. ¶  
6 24.) A trial and appeal would likely take at least two years to complete and cost the  
7 Estate several hundred thousand dollars in fees and expenses. (*Id.*) This factor,  
8 therefore, weighs heavily in favor of approving the Settlement. *See, e.g., TBH19*,  
9 2022 WL 16782946, at \*3 (complexity element weighed in favor of settlement  
10 where dispute would require extensive discovery, cost the estate hundreds of  
11 thousands of dollars and take years to complete).

#### 12 **D. Creditors**

13 “The opposition of the creditors of the estate to approval of a compromise  
14 may be considered by the court, but is not controlling and will not prevent approval  
15 of the compromise where it is evident that the litigation would be unsuccessful and  
16 costly...In short, creditors have a voice but not a veto.” *In re Bondanelli*, 2020 WL  
17 1304140, at \*4 (B.A.P. 9th Cir. Mar. 18, 2020). As discussed below, the Receiver is  
18 giving notice of this Motion to all known creditors of the Estate.

#### 19 **II. The Settlement should be approved.**

20 In light of the foregoing, the Receiver believes the Settlement is fair, equitable  
21 and adequate under the circumstances to realize the value of the Estate’s interest in  
22 the Transfers. (Vives Decl. ¶ 25.) Litigation is, certainly, an alternative course, but  
23 “while the [Receiver] might do better in litigation, she is not likely to do so.” *In re*  
24 *Tidwell*, 2018 WL 1162511, at \*3 (Bankr. C.D. Cal. Mar. 1, 2018) (cleaned up).

25 As noted above, the Settlement results in the Estate recovering 34 percent of  
26 the Transfers. This result is easily within the range of reasonableness as to fraudulent  
27 transfer settlements with AmEx in similar circumstances. *See, e.g., In re W. Funding*  
28 *Inc.*, 550 B.R. 841, 845-54 (B.A.P. 9th Cir. 2016) (affirming liquidating trustee’s

1 settlement with AmEx of fraudulent transfer claims arising out of \$2 million of  
2 personal charges on AmEx card paid by corporate debtor, finding that settlement of  
3 only 16 percent of transfers satisfied the *A&C Properties* test where claims were  
4 susceptible to factual dispute and proving insolvency was contested and difficult),  
5 *aff'd*, 705 F. App'x 600 (9th Cir. 2017); *SEC v. Whitney*, 2023 WL 5017995, at \*1-  
6 2 (C.D. Cal. July 19, 2023) (finding receiver's settlement of fraudulent transfer  
7 claims with AmEx for 49 percent of total transfers satisfied the *A&C Properties* test  
8 where receiver thought claims were meritorious but AmEx asserted several defenses,  
9 and further litigation would be costly without a guarantee of success); *Ruderman*,  
10 2013 WL 153266, at \*3 (similar). The Court should therefore approve the Settlement  
11 because it satisfies the *A&C Properties* test.

### 12 Notice to Creditors

13 “Creditors are entitled to ‘notice reasonably calculated, under all the  
14 circumstances, to apprise interested parties of the pendency of the action and afford  
15 them an opportunity to present their objections.’” *Perez v. Safety-Kleen Sys., Inc.*,  
16 253 F.R.D. 508, 518 (N.D. Cal. 2008) (quoting *Mullane v. Central Hanover Trust*  
17 *Co.*, 339 U.S. 306, 314 (1950)). “[D]ue process...is not a technical conception with  
18 a fixed content unrelated to time, place and circumstances[.]” *Grimm v. City of*  
19 *Portland*, 971 F.3d 1060, 1065 (9th Cir. 2020). Instead, “due process is flexible and  
20 calls for such procedural protections as the particular situation demands.” *Muñoz v.*  
21 *United States Dep't of State*, 50 F.4th 906, 922 (9th Cir. 2022). The Court may  
22 “exercise[] significant control over the time and manner” of any proceeding to hear  
23 a creditor's objections. *Liberte Cap. Grp.*, 462 F.3d at 552.

24 The Receiver will give notice of the Motion by: (a) CM/ECF to  
25 parties/interested parties; (b) email to all known creditors of the Estate (or, if  
26 represented, their counsel) with a link to this Motion and supporting exhibits; and  
27 (c) posting it on the receivership website. These communications will include  
28 instructions on how to advise the Receiver of any objections to the Motion by no

1 later than seven days before the hearing. The Receiver will thereafter file a status  
2 report. (Vives Decl. ¶ 26.)

3 The Court should deem this notice sufficient under the circumstances. *See,*  
4 *e.g., Fed. Trade Comm’n v. Cardiff*, 2020 WL 9938072, at \*4 (C.D. Cal. Mar. 10,  
5 2020) (receiver’s notice of settlement satisfied due process where receiver posted  
6 motion to its website and served on all parties, known creditors and interested  
7 parties); *SEC v. Adams*, 2021 WL 8016843, at \*2 (S.D. Miss. Feb. 25, 2021) (same,  
8 where receiver provided mail notice to interested parties, publicized settlement on  
9 receivership website and gave interested parties instructions how to submit comment  
10 or objection to settlement).

11 **WHEREFORE**, the Receiver respectfully requests the Court enter an order:  
12 (a) granting the Motion; (b) finding notice of the Motion is sufficient under the  
13 circumstances and satisfies due process, and waiving any further notice otherwise  
14 required by Local Rule 66-7; (c) approving the terms of the Settlement memorialized  
15 in the Settlement Agreement as fair and equitable; (d) authorizing the Receiver to  
16 take such further actions as may be necessary to consummate the transactions in the  
17 Settlement Agreement; and (e) granting such further relief as the Court deems  
18 necessary and appropriate.

19 Dated: December 2, 2024

Respectfully submitted,

**KATTEN MUCHIN ROSENMAN LLP**

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

*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 4,460 words, which complies with the word limit of L.R. 11-6.1.

Dated: December 2, 2024

Respectfully submitted,

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

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**PROOF OF SERVICE**

**STATE OF ILLINOIS, COUNTY OF COOK**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Cook, State of Illinois. My business address is 525 W. Monroe St., Chicago, Illinois 60661. On December 2, 2024, I served the following document(s) described as:

**UNOPPOSED MOTION OF RECEIVER MICHELE VIVES FOR ORDER APPROVING SETTLEMENT WITH AMERICAN EXPRESS NATIONAL BANK, AND FOR RELATED RELIEF**

as follows:

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

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

Frank N. White – [frank.white@agg.com](mailto:frank.white@agg.com)

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

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

I declare under penalty of perjury under the laws of the State of Illinois that the foregoing is true and correct. Executed on December 2, 2024, at Winnetka, Illinois.

*/s/Terence G. Banich*  
Terence G. Banich

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**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (this “Agreement”) is made and entered into as of this 1st day of November, 2024 (the “Effective Date”), between and among: (a) Michele Vives, not individually, but solely as the receiver (the “Receiver”) as more particularly described in the second recital of this Agreement, on the one hand, and (b) American Express National Bank, on behalf of itself and its affiliates, including, without limitation, American Express Company and American Express Travel Related Services Company, Inc. (collectively, “AmEx”), on the other hand. The Receiver and AmEx are referred to collectively herein as the “Parties.”

**Recitals**

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

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

**WHEREAS**, the Receivership Estate includes, among other things, the assets and operations of (a) Rogue Black, LLC (“Rogue Black”) and (b) LayJax Ventures, LLC, now known as Haus Capital, LLC (“LayJax”), which the Receiver has continuously administered with the assistance of Phil Haus (“Haus”) since the entry of the Appointment Order;

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

**WHEREAS**, following a diligent investigation, including the review and analysis of the books and records of the 1inMM Defendants as well as documents and information provided by AmEx, the Receiver has identified transfers from the 1inMM Defendants to or for the benefit of AmEx totaling \$7,834,636.64 (the “Transfers”);

**WHEREAS**, the Transfers were applied to pay charges on five credit card accounts between AmEx and: (a) 1inMM (account ending x81003 and x81011); (b) Horwitz (account ending x31003); (c) Julio Hallivis (account ending x83031); (d) LayJax (account ending x21001) and (e) Rogue Black (account ending x11006) (collectively, the “Accounts”);

**WHEREAS**, the Receiver contends that the Transfers are subject to avoidance and recovery under the Uniform Voidable Transactions Act as enacted in California (California Civil Code §§ 3439-3439.14) (“UVTA”), and that, consequently, she has, on behalf of the Receivership Estate, causes of action against AmEx under the UVTA to avoid and recover the Transfers or their value (collectively, irrespective of how styled and inclusive of any and all claims that could have been but were not asserted against AmEx by the Receiver, the “Receiver Claims”);

**WHEREAS**, AmEx has asserted various factual and legal defenses to the Receiver Claims and denies that it is liable to the Receivership Estate on account of the Receiver Claims;

**WHEREAS**, the Receiver and AmEx, wishing to avoid the expense, delay, and uncertainty of litigation of the Receiver Claims, have agreed to settle and resolve all claims and disputes between them arising out of or relating to 1inMM, the 1inMM Ponzi Scheme, the Transfers, the Accounts and the Receiver Claims (collectively, the “Disputes”) on the terms and conditions set forth in this Agreement.

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

**Agreement**

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

2. **Approval Order.** The validity of this Agreement, and the Parties’ obligations hereunder, are subject to the condition precedent that the Court enters an order approving the material terms of the settlement documented in this Agreement (the “Approval Order,” and the date that the Court enters the Approval Order on the docket of the Action, the “Approval Date”). AmEx will support the entry of the Approval Order and will, upon the Receiver’s reasonable request, submit a declaration in support of, and attend any hearing on, the Approval Motion. If, however, the Court declines to approve the settlement documented by this Agreement, then this Agreement (including the releases contained in paragraphs 4 and 5 hereof) will be void, and the Parties will retain all of their respective rights, claims and defenses as if this Agreement never existed.

3. **Settlement Payment.** In exchange for the releases contained in paragraphs 4 and 5 of this Agreement, AmEx agrees to pay the sum of \$2,500,000.00 (two million five hundred thousand dollars and zero cents) (the “Settlement Payment”) to “Michele Vives, Receiver of 1inMM Capital, LLC” (the “Payee”) by the later of (a) forty (40) days following execution of this Agreement by both Parties and receipt by AmEx’s counsel of an IRS Form W-9 completed by the Payee and the Electronic Deposit Authorization Form attached as Exhibit A hereto, completed and signed by the Payee, or (b) ten (10) days following the Approval Date. AmEx shall remit the Settlement Payment in accordance with the instructions provided by the Payee in the Electronic Deposit Authorization Form. In the event that the Payee receives the Settlement Payment prior to the Approval Date, (x) the Payee shall hold the Settlement Payment in trust pending the occurrence of the Approval Date, and (y) if the Court declines to approve the settlement documented by this Agreement, the Payee shall promptly return the Settlement Payment to AmEx.

4. **Release of AmEx by Receiver; Covenant Not to Sue.** The Receiver, on behalf of herself, the Receivership Estate and their respective agents, employees, officers, partners, managers, parents, subsidiaries, affiliates, insurers and attorneys (collectively, the “Receiver Releasing Parties”), hereby forever releases, remises and discharges AmEx as well as its respective heirs, successors, assigns, agents, employees, officers, shareholders, managers, parents, subsidiaries, affiliates, insurers and attorneys (collectively, the “AmEx Released Parties”), from any and all claims, counterclaims, actions, causes of action, lawsuits, proceedings, adjustments, offsets, contracts, obligations, liabilities, controversies, costs, expenses, attorney’s fees and losses whatsoever, whether known or unknown, disclosed or concealed, asserted or unasserted, liquidated or unliquidated, contingent or absolute, accrued or unaccrued, matured or unmatured, insured or uninsured, joint or several, determined or undetermined, determinable or otherwise, whether in law, in admiralty, in bankruptcy, or in equity, and whether based on any federal law, state law, common law right of action or otherwise, from the beginning of time to the Effective Date of this Agreement arising out of or relating to the Disputes or the 1inMM Defendants (collectively, the “Receiver Released Claims”), but specifically excluding any claims or causes of action arising out of or related to enforcement of this Agreement. With the same exclusion, the Receiver Releasing Parties hereby covenant not to sue any of the AmEx Released Parties on account of any Receiver Released Claim.

5. **Release of the Receivership Estate by AmEx; Covenant Not to Sue.** AmEx, on behalf of itself and its respective heirs, successors, assigns, agents, employees, officers, partners, managers,

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parents, subsidiaries, affiliates, insurers and attorneys (collectively, the “AmEx Releasing Parties”), hereby forever release, remise and discharge the Receiver, the Receivership Estate as well as their agents, employees, officers, shareholders, managers, parents, subsidiaries, affiliates, insurers and attorneys (collectively, the “Receiver Released Parties”), from any and all claims, counterclaims, actions, causes of action, lawsuits, proceedings, adjustments, offsets, contracts, obligations, liabilities, controversies, costs, expenses, attorney’s fees and losses whatsoever, whether known or unknown, disclosed or concealed, asserted or unasserted, liquidated or unliquidated, contingent or absolute, accrued or unaccrued, matured or unmatured, insured or uninsured, joint or several, determined or undetermined, determinable or otherwise, whether in law, in admiralty, in bankruptcy, or in equity, and whether based on any federal law, state law, common law right of action or otherwise, from the beginning of time to the Effective Date of this Agreement arising out of or relating to the Disputes or the 1inMM Defendants (collectively, the “AmEx Released Claims”), but specifically excluding (a) any claims or causes of action arising out of or related to enforcement of this Agreement, and (b) any contractual obligations (including charges on credit or charge cards) of any person or entity other than the Receiver, the Receivership Estate, Horwitz, 1inMM, LayJax/Haus Capital, LLC, Haus and Rogue Black. With the same exclusions, the AmEx Releasing Parties hereby covenant not to sue any of the Receiver Released Parties on account of any AmEx Released Claim.

6. **Section 1542 Waiver.** The Parties acknowledge that they have read and understand section 1542 of the California Civil Code (Cal. Civ. Code § 1542), which reads as follows:

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

The Parties hereby expressly waive and relinquish all rights and benefits under California Civil Code section 1542 with respect to the AmEx Released Claims and the Receiver Released Claims.

7. **Certain Claims Preserved.** AmEx retains and does not release, discharge or waive, any claim or cause of action it may have to recover unpaid balances on the Accounts against any AmEx account holder or individual card holder that is not one of the Receiver Released Parties. For the avoidance of doubt, and without limiting the generality of the definitions of “Receiver Released Parties” or “AmEx Released Claim” in paragraph 5, the Parties agree that Horwitz, 1inMM, LayJax/Haus Capital, LLC, Haus and Rogue Black are each Receiver Released Parties, and any claim asserted by AmEx against any or all of those persons or entities arising out of or relating to the Disputes is an AmEx Released Claim.

8. **Waiver of Claim and Distribution.** AmEx hereby waives any right to file, and covenants not to file, a claim against the Receivership Estate (a “Proof of Claim”). If, notwithstanding the immediately previous sentence, AmEx files a Proof of Claim, then the Receiver may apply to or move the Court to enter an order disallowing that Proof of Claim, and AmEx hereby waives any notice or opportunity to be heard on any such application or motion. AmEx acknowledges and agrees that it is not entitled to any distributions whatsoever from the Receivership Estate.

9. **Representations and Warranties.** The Parties warrant and represent to each other that: (a) each Party shall act in good faith seeking to accomplish the purpose of this Agreement; (b) each Party has not transferred, conveyed, released, pledged, assigned or made any other disposition of the claimed rights, interests, demands, actions or causes of action, obligations, or any other matter covered by this Agreement; (c) each Party has not relied upon any promises, agreements, representations, statements or warranties in entering into this Agreement, except those that are expressly set forth herein; (d) each signatory to this Agreement warrants that he, she or it has the authority to execute this Agreement and to bind the persons or entities on behalf of which he, she or it signs, including, without limitation, each of the AmEx Releasing Parties and the Receiver Releasing Parties specified in paragraphs 4 and 5; and (e) EACH



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PARTY ACKNOWLEDGES THAT HE, SHE OR IT HAS READ THIS AGREEMENT IN ITS ENTIRETY AND THAT HE, SHE OR IT UNDERSTANDS AND APPRECIATES ITS CONTENTS AND SIGNIFICANCE AND HEREBY EXECUTES THE SAME AND MAKES THE RELEASE PROVIDED FOR IN THIS AGREEMENT VOLUNTARILY AND OF HIS, HER OR ITS OWN FREE WILL, HAVING FIRST HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL.

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

11. **Binding on Successors and Assigns.** This Agreement is and shall be binding upon: (a) the officers, directors, successors, heirs and assigns of each Party; (b) each past, present, direct or indirect parent, subsidiary, division or affiliated entity of each Party; and (c) each past or present agent, representative or shareholder of each Party. Any person executing this Agreement on behalf of a Party represents and warrants that he or she is duly authorized to enter into this Agreement on behalf of said Party.

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

13. **No Third-Party Beneficiaries.** Nothing in this Agreement benefits, or is intended to benefit, or confers the power to enforce or claim any benefit under this Agreement, on any third party.

14. **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions of this Agreement.

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

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

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

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18. **Exculpation.** The Receiver is executing this Agreement solely in her representative capacity as the Receiver appointed by the Court, and the Receiver's liability hereunder shall be limited to the assets of the Receivership Estate. AmEx shall not have or assert any claims against the Receiver in her personal capacity.

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

20. **Modification.** This Agreement may only be modified by a writing signed by all Parties.

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

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

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

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

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

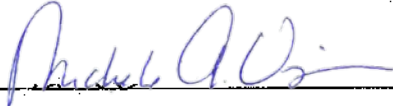
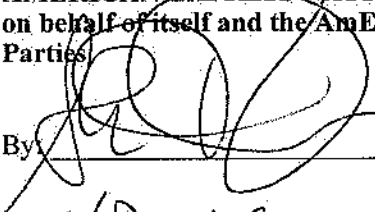
26. **Compromise.** The Parties agree and acknowledge that this Agreement is the result of a compromise and a decision to settle all disputes between them relating to the Disputes. The Parties expressly agree that this Agreement is a compromise of disputed claims for the purposes of avoiding the expense, delay, uncertainty and burden of litigation. This Agreement is inadmissible in any proceeding for any purpose other than to enforce its terms. The Parties further agree that executing this Agreement and making the Settlement Payment is not, and shall never be construed as, an admission by AmEx of any fact, liability, wrongdoing or violation of any law, statute or regulation.

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

**EXECUTION COPY**

<p>If to the Receiver:</p> <p>KATTEN MUCHIN ROSENMAN LLP Terence G. Banich 525 W. Monroe St. Chicago, IL 60661 terence.banich@katten.com</p> <p>with a copy to:</p> <p>Michele Vives, Receiver 1620 Fifth Ave., Ste. 400 San Diego, CA 92101 mvives@douglaswilson.com</p>	<p>If to AmEx:</p> <p>ARNALL GOLDEN GREGORY LLP Frank N. White 171 17th Street, Ste. 2100 Atlanta, GA 30363 frank.white@agg.com</p>
---	---

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

<p><b>MICHELE VIVES, Receiver, on behalf of herself and the Receiver Releasing Parties</b></p> <p> _____</p>	<p><b>AMERICAN EXPRESS NATIONAL BANK, on behalf of itself and the AmEx Releasing Parties</b></p> <p>By:  _____</p> <p>Its: <u>VP and Group Counsel</u></p>
---	--

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

*Attorneys for the Receiver*  
Michele Vives

**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

**DECLARATION OF MICHELE  
VIVES**

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

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

1 I, Michele Vives, declare as follows:

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

7 2. I submit this declaration in support of the *Unopposed Motion of*  
8 *Receiver Michele Vives for Order Approving Settlement with American Express*  
9 *National Bank, and for Related Relief*, dated December 2, 2024 (the “Motion”). Any  
10 capitalized terms not defined herein have the meanings ascribed to them in the  
11 Motion.

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

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

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

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

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

6 **B. The Transfers and the Receiver Claims**

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

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

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

26 9. Upon my appointment, it was immediately apparent that Horwitz and  
27 others associated with 1inMM spent a great deal of money using credit cards issued  
28 by American Express National Bank (“AmEx”). I promptly established contact with

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1 AmEx and its national counsel, Frank N. White, of Arnall Golden Gregory LLP, to  
2 obtain records in order to evaluate whether the Estate had any viable claims against  
3 AmEx.

4 10. Mr. White worked cooperatively with me, and AmEx produced a large  
5 volume of financial documents and related information. To facilitate my  
6 investigation, AmEx also entered into a tolling agreement with me that was  
7 subsequently extended several times.

8 11. My professional staff and I carefully reviewed and analyzed the  
9 documents and information that AmEx produced. From that analysis, I determined  
10 that AmEx issued credit cards in the names of: (a) 1inMM (account ending x81003  
11 and x81011) (the “1inMM Card Account”); (b) Horwitz (account ending x31003);  
12 (c) Julio Hallivis (account ending x83031); (d) LayJax Ventures, LLC (account  
13 ending x21001); and (e) Rogue Black, LLC (account ending x11006) (collectively,  
14 the “Accounts”). I also discovered that Horwitz permitted insiders of 1inMM to use  
15 the Accounts as additional cardmembers (collectively, the “Card Users”).

16 12. Based on my review of the account activity for these AmEx cards, it  
17 appears that Horwitz and the other Card Users only used the cards to buy goods and  
18 services for themselves personally. Specifically, Horwitz, his then-wife, Mallory  
19 Horwitz, and others associated with 1inMM lived extravagant lifestyles using the  
20 proceeds of the 1inMM Ponzi Scheme. They spent lavishly on goods and services  
21 for themselves and their friends, almost exclusively using the AmEx card associated  
22 with the Accounts. I found no evidence that any Card User utilized the AmEx cards  
23 for any legitimate business purpose of 1inMM. Excluding the transfers to AmEx that  
24 predated the period covered by the parties’ tolling agreement, I identified transfers  
25 from the Defendants to or for the benefit of AmEx totaling \$7,208,006.68  
26 (collectively, the “Transfers”).

27 13. I asserted that I may avoid and recover the Transfers from AmEx as  
28 actual fraudulent transfers pursuant to § 3439.04(a)(1) of the California Uniform

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1 Voidable Transactions Act, Cal. Civ. Code §§ 3439 *et seq.* (“UVTA”) (the “Receiver  
2 Claims”). As I contended, 1inMM and Horwitz made the Transfers with the actual  
3 intent to hinder, delay, or defraud their creditors, as Horwitz pled guilty and admitted  
4 that he used 1inMM to operate a Ponzi scheme, which conclusively establishes intent  
5 for purposes of a UVTA actual fraudulent transfer claim. I further argued that I could  
6 recover the Transfers from AmEx because it was the first transferee of the Transfers.  
7 AmEx asserted several defenses and various other arguments.

8 **C. The Settlement**

9 14. After months of negotiations, AmEx and I reached a settlement (the  
10 “Settlement”), which is documented in the Settlement Agreement, whereby AmEx  
11 agreed to pay the sum of \$2,500,000 (the “Settlement Payment”) to the Estate to  
12 resolve the Receiver Claims. The Settlement Payment is 34 percent of the Transfers.  
13 The parties will also exchange mutual general releases, but AmEx will retain any  
14 claim or cause of action it may have to recover unpaid balances on the Accounts  
15 against any third-party AmEx account holder or individual card holder. The validity  
16 of the Settlement Agreement is subject to the condition precedent that the Court  
17 approves it.

18 **D. Analysis of the Settlement**

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

24 16. While I was confident in the Receiver Claims, the risk of an adverse  
25 result always loomed. AmEx asserted multiple meaningful defenses that, if  
26 successful, may have resulted in me recovering nothing. The Settlement thus avoids  
27 protracted and expensive litigation, thereby avoiding litigation risk and conserving  
28 Estate resources.

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

2                   **1. Probability of success**

3           17. I believe the Settlement satisfies the *A&C Properties* test.

4           18. The flow of funds for the Transfers was that 1inMM transferred cash  
5 directly to AmEx (usually on a monthly basis) to pay off the invoices generated by  
6 the Card Users' purchases. AmEx would then exercise dominion over the transferred  
7 cash by applying it to the receivables then due.

8           19. The Transfers allowed 1inMM and Horwitz to project the appearance  
9 of a legitimate business and reap the benefits of an extravagant lifestyle, as paid by  
10 the investors, all with the knowledge that the payments to AmEx would contribute  
11 to the eventual collapse of the 1inMM Ponzi Scheme. So I asserted that all of the  
12 Transfers were made with the requisite intent to defraud.

13           20. I believe AmEx is liable under UVTA for the Transfers or their value,  
14 but it is not guaranteed that litigation would have resulted in the avoidance and  
15 recovery of all of the Transfers. The Court may have sustained some of AmEx's  
16 defenses, which would be an outcome worse than the Settlement. Rather than take  
17 that risk, I compromised.

18           21. I concluded that the Settlement appropriately takes into account the  
19 mixed probability of success on the merits as well as AmEx's likely complete  
20 defense as to transfers pertaining to the 1inMM Card Account.

21                   **2. Collection difficulties**

22           22. I assume that a large multinational corporation like AmEx would have  
23 had sufficient assets to satisfy an adverse judgment entered in my favor. But AmEx  
24 would almost certainly appeal an adverse judgment, which would delay collection  
25 for months, if not years.

26                   **3. Complexity/expense**

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

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1 24. Given my review of the evidence and AmEx’s defense arguments, I  
2 believe litigation against AmEx would be expensive and time-consuming, as it  
3 would likely require extensive discovery, retention of multiple experts and the  
4 testimony of numerous witnesses. A trial and appeal would likely take at least two  
5 years to complete and cost the Estate several hundred thousand dollars in fees and  
6 expenses.

7 **F. The Settlement should be approved.**

8 25. I believe the Settlement is fair, equitable and adequate under the  
9 circumstances to realize the value of the Estate’s interest in the Transfers.

10 **G. Notice to creditors**

11 26. I will give notice of the Motion by: (a) CM/ECF to parties/interested  
12 parties; (b) email to all known creditors of the Estate (or, if represented, their  
13 counsel) with a link to the Motion and supporting exhibits; and (c) posting it on the  
14 receivership website. These communications will include instructions on how to  
15 advise me of any objections to the Motion by no later than seven days before the  
16 hearing. I will thereafter file a status report.

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

19 Executed on December 2, 2024  
20 in San Diego, California

*/s/Michele Vives*  
Michele Vives

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5  
6 *Attorneys for the Receiver*  
Michèle Vives

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

11 SECURITIES AND EXCHANGE  
12 COMMISSION,

13 Plaintiff,

14 v.

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

Defendants.

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

**DECLARATION OF FRANK N.  
WHITE**

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

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

1 I, Frank N. White, 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 *Unopposed Motion of*  
8 *Receiver Michele Vives for Order Approving Settlement with American Express*  
9 *National Bank, and for Related Relief*, dated December 2, 2024 (the “Motion”). Any  
10 capitalized terms not defined herein have the meanings ascribed to them in the  
11 Motion.

12 3. I am an attorney licensed to practice law in the State of Georgia. I am a  
13 partner in the Bankruptcy, Creditors’ Rights, & Financial Restructuring practice at  
14 Arnall Golden Gregory LLP, an Am Law 200 law firm with more than 200 attorneys  
15 in Atlanta and Washington, D.C. I have over 35 years of experience in commercial  
16 litigation, including, for the last 23 years, in bankruptcy proceedings, receiverships,  
17 and state law insolvency proceedings, including in the financial services, payment  
18 processing, and food services industries. In the bankruptcy area, I concentrate on  
19 creditors’ rights under the Bankruptcy Code, with an emphasis on unsecured  
20 creditors in large Chapter 7 and Chapter 11 cases.

21 4. I represent American Express National Bank (“AmEx”) with respect to  
22 the Receiver Claims, the Settlement and other events described in the Motion.

23 5. I worked cooperatively with the Receiver, and AmEx produced a large  
24 volume of financial documents and related information. To facilitate the Receiver’s  
25 investigation, AmEx also entered into a tolling agreement with the Receiver that was  
26 subsequently extended several times.

27 6. After months of negotiations, the Receiver and AmEx reached a  
28 settlement (“Settlement”), which is documented in the Settlement Agreement,

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

1 whereby AmEx agreed to pay the sum of \$2,500,000 (the “Settlement Payment”) to  
2 the Estate to resolve the Receiver Claims. The Settlement Payment is 34 percent of  
3 the Transfers. The parties will also exchange mutual general releases, but AmEx will  
4 retain any claim or cause of action it may have to recover unpaid balances on the  
5 Accounts against any third-party AmEx account holder or individual card holder.  
6 The validity of the Settlement Agreement is subject to the condition precedent that  
7 the Court approves it.

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

10 Executed on December 2, 2024  
11 in Atlanta, Georgia

*/s/ Frank N. White*  
Frank N. White

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

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

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

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

Defendants.

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

**[PROPOSED] ORDER  
APPROVING SETTLEMENT  
WITH AMERICAN EXPRESS  
NATIONAL BANK AND FOR  
RELATED RELIEF**

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

1 Upon consideration of the *Unopposed Motion of Receiver Michele Vives for*  
2 *Order Approving Settlement with American Express National Bank and for Related*  
3 *Relief*, dated December 2, 2024 (the “Motion”), the Court, having jurisdiction to hear  
4 and determine the Motion, has reviewed the Motion and accompanying  
5 memorandum of points and authorities and declarations in support thereof,  
6 considered the exhibits to the Motion and the objection(s) to the Motion, if any, and  
7 concluded that all parties in interest have due and sufficient notice of the Motion;  
8 after due deliberation and consideration of the Motion, and there being good cause  
9 to grant the relief provided herein; it is, pursuant to the Court’s power to supervise  
10 equity receiverships and all other powers in that behalf so enabling, hereby  
11 ORDERED:

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

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

16 3. The terms of the Settlement between and among the Receiver and  
17 Amex memorialized in the Settlement Agreement are fair, equitable and in the best  
18 interests of the Estate, and are therefore APPROVED.

19 4. For the avoidance of doubt, AmEx shall retain any claim or cause of  
20 action it may have to recover unpaid balances on the Accounts against any third-  
21 party AmEx account holder or individual card holder.

22 5. The Receiver is AUTHORIZED to take such further actions as may be  
23 necessary to consummate the transactions in the Settlement Agreement.

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

26 Dated:

27 United States District Judge

KATTEN MUCHIN ROSENMAN LLP  
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(312) 902-5200