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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  
UNOPPOSED MOTION OF  
RECEIVER MICHELE VIVES FOR  
ORDER (1) APPROVING  
PROCEDURES FOR THE  
ADMINISTRATION OF CLAIMS  
AGAINST THE RECEIVERSHIP  
ESTATE; (2) SETTING CLAIMS  
BAR DATE; AND (3) APPROVING  
CLAIMS BAR DATE NOTICE AND  
PROOF OF CLAIM FORM**

Date: January 27, 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 27, 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 of defendant 1 in MM  
6 Capital, LLC and its subsidiaries, affiliates and over the assets more particularly  
7 described in the *Order on Appointment of Permanent Receiver*, dated January 14,  
8 2022 [ECF #70], will and hereby does move the Court for entry of an order (i)  
9 approving procedures for the administration of claims against the Estate; (ii) setting  
10 a claims bar date; and (iii) approving a claims bar date notice and proof of claim  
11 form (the “Motion”).

12 The Motion is based on the Memorandum of Points and Authorities below  
13 and is supported by: (a) the *Declaration of Michele Vives*, dated December 20, 2024  
14 (the “Vives Decl.”), copy attached as **Exhibit 1**; (b) a general form of notice to be  
15 sent to all prospective claimants (the “Claims Bar Date Notice”), copy attached as  
16 **Exhibit 2**; (c) a representation of the proof of claim form that will be on the  
17 receivership website, a link to which will be in the Claims Bar Date Notice (the  
18 “Proof of Claim Form”), copy attached as **Exhibit 3**; and (d) a proposed W9 form  
19 to be distributed to all claimants (the “W9 Form”), copy attached as **Exhibit 4**.

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

23 Dated: December 20, 2024

Respectfully submitted,

24 **KATTEN MUCHIN ROSENMAN LLP**

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

27 *Attorneys for the Receiver*  
28 Michele Vives

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**MEMORANDUM OF POINTS AND AUTHORITIES**

Michele Vives, the duly appointed permanent receiver (the “Receiver”) of 1inMM Capital, LLC and its subsidiaries and affiliates (“1inMM”), and over assets that are attributable to funds derived from investors or clients of the above-captioned defendants or were fraudulently transferred by the defendants (collectively, the “Estate”), by and through her counsel, hereby respectfully moves this Court for an order (i) approving procedures for the administration of claims against the Estate; (ii) setting a claims bar date; and (iii) approving the Claims Bar Date Notice and Proof of Claim Form, as follows:

**Introduction**

On April 5, 2021, the SEC commenced this action against Horwitz and 1inMM (together, the “Defendants”), alleging that they committed an offering fraud and Ponzi scheme in violation of the federal securities laws (the “Ponzi Scheme”). On January 14, 2022, the Court appointed the Receiver pursuant to the *Order on Appointment of Permanent Receiver*, dated January 14, 2022 [ECF #70] (the “Receiver Order”). Since her appointment, the Receiver and her retained professionals have, among other things, assumed control of the Estate, conducted a comprehensive forensic accounting analysis to identify potential sources of recovery, negotiated major settlements with several net winning investors of the 1inMM Ponzi Scheme and other third parties and conducted other activities required by the Receiver Order to administer and maximize the value of the Estate.<sup>1</sup> (Vives Decl. ¶ 5.)

With her forensic accounting now essentially completed, the Receiver hereby requests approval of procedures to efficiently administer claims against the Estate in anticipation of making distributions upon Court approval of a distribution plan. The ultimate goal of the claims process is to reach an approved list of allowed claims as

<sup>1</sup> The Receiver’s quarterly reports include more details regarding her actions to date.

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1 efficiently as possible, while also providing claimants an opportunity to be heard as  
2 to their respective claim amounts. (*Id.* ¶ 6.)

3 The claims process is an integral step in determining and confirming the full  
4 scope of losses incurred by victims of the 1inMM Ponzi Scheme. (*Id.* ¶ 7.) This loss  
5 figure, in conjunction with the ultimate recovery from assets, forms the fundamental  
6 calculation necessary to determine a comprehensive distribution plan for investor  
7 victims. (*Id.*) The Receiver has deferred requesting approval of a claims process until  
8 she could identify all investor victims through a forensic accounting analysis to  
9 ensure their participation in the claims process. (*Id.* ¶ 8.) Due to the investment  
10 structure of 1inMM, which was complicated by its use of aggregator and sub-  
11 aggregator funds to funnel investment dollars into the Ponzi Scheme, it often was  
12 not possible for the Receiver to ascertain the identities of individual investors, as  
13 that information was held only by the aggregators, sub-aggregators and other third  
14 parties. (*Id.*) It therefore took a considerable amount of time and effort for the  
15 Receiver to obtain all investor-level detail, which involved a comprehensive review  
16 of 1inMM’s bank accounts and transactions as well as voluminous records the  
17 Receiver subpoenaed or otherwise obtained from other parties of interest. (*Id.*) The  
18 Receiver now believes she has identified nearly all, if not all, potential investors in  
19 the 1inMM Ponzi Scheme. (*Id.*)

20 The Receiver’s forensic accounting analysis determined the preliminary value  
21 of prospective claims held by investor claimants and any potential non-investor  
22 claimants. (*Id.* ¶ 9.) As discussed below, the Receiver proposes to transmit to all  
23 claimants the Claims Bar Date Notice and a Proof of Claim Form. All claimants—  
24 regardless of whether they agree with the Receiver’s calculations of their respective  
25 claims—must submit to the Receiver, on or before the Claims Bar Date (as defined  
26 herein), a completed Proof of Claim Form along with all relevant supporting  
27 documentation to substantiate their claims. Supporting documentation may include,  
28 for example, cancelled checks, bank statements, account ledgers, promissory notes,

1 purchase orders, invoices, itemized statements of running accounts, contracts, court  
2 judgments, security agreements, and/or evidence of perfection of liens. Claims that  
3 are untimely submitted or not submitted at all will be disallowed, even if the claimant  
4 does not dispute the Receiver’s calculated claim amount.

5 The streamlined claims process that the Receiver proposes uses her extensive  
6 accounting work as its foundation. It will allow the Receiver and the Court to  
7 efficiently determine the appropriate claim amounts for all investors and other  
8 prospective claimants, which is a key step towards being able to make a fair and  
9 equitable distribution of Estate funds.

### 10 **Proposed Claim Procedures**

#### 11 **A. Summary and Timeline**

12 While the Receiver believes her forensic accounting accurately reflects the  
13 investors’ transactional details to a high degree, there are particular challenges  
14 regarding investors (a) who invested or received payments through aggregators or  
15 sub-aggregators and/or (b) whose records may not reconcile with those compiled by  
16 the Receiver for various reasons, including, but not limited to, scenarios where  
17 investors invested multiple times, through different (but affiliated) entities, through  
18 multiple types of accounts, or through joint accounts. (*Id.* ¶ 10.) The claims process  
19 will assist in determining how these investments ultimately get segregated or  
20 aggregated as a “unique” claim. (*Id.*)

21 In order to determine the appropriate claim amount for each claimant and  
22 formulate a proposed plan for distributing Estate funds, there must be an orderly  
23 process for the submission and review of claim information and the reconciliation  
24 of any disputed claims. As such, at the appropriate time following the completion of  
25 this process, the Receiver will seek Court approval of a distribution plan in order to  
26 proceed with the actual distribution of funds from the Estate. (*Id.* ¶ 11.)

27 The Receiver proposes that the Court establish a deadline for all claimants,  
28 known and unknown, to submit claims (a “Claims Bar Date”), such that all claims

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1 can be determined at one time in a manner that brings certainty and finality to the  
2 claims process. (*Id.* ¶ 12.) This receivership has been in place since January 14, 2022,  
3 i.e., for approximately three years, and during that time has been the subject of  
4 attention from both the media and plaintiffs’ lawyers representing various groups of  
5 1inMM investors. (*Id.* ¶ 13.) Therefore, anyone with a connection to the 1inMM  
6 Ponzi Scheme who might assert a claim should by now be aware of the case and the  
7 receivership. (*Id.*) Accordingly, the Receiver recommends that the Court establish a  
8 Claims Bar Date of 90 days after the date of service of the Claims Notice Package  
9 (as defined herein), which the Receiver believes is a fair and reasonable amount of  
10 time for prospective claimants to submit their claims. (*Id.*)

11 Within 90 days following entry of the Court’s order approving this Motion,  
12 the Receiver will send a Claims Notice Package to all prospective claimants. The  
13 Claims Notice Package will consist of: (a) the proposed Claims Bar Date Notice, a  
14 copy of which is attached as **Exhibit 2**; (b) a link to the Proof of Claim Form on the  
15 receivership website, a representation of which is attached as **Exhibit 3**; (c) the W9  
16 Form, a copy of which is attached as **Exhibit 4**; (d) a copy of the order granting this  
17 Motion; and (e) contact information so prospective claimants may reach the  
18 Receiver for further assistance. The Claims Notice Package may, in the Receiver’s  
19 discretion, include the Receiver’s calculation of the claimant’s respective claim and  
20 further details supporting that calculation. Taken together, the Claims Notice  
21 Package will clearly inform all prospective claimants that they must submit to the  
22 Receiver a Proof of Claim Form, the W9 Form and all relevant supporting  
23 documentation on or before the Claims Bar Date, i.e., within 90 days of service of  
24 the Claims Notice Package. (*Id.* ¶ 14.)

25 The Receiver has continuously used the receivership website throughout this  
26 case as an efficient means of disseminating information and providing updates to  
27 interested parties. (*Id.* ¶ 15.) Accordingly, the receivership website is an appropriate  
28 platform to post the Claims Bar Date Notice and host the Proof of Claim Form, thus

1 allowing any claimants, including non-investors who wish to assert claims, a  
 2 reasonable and fair opportunity to do so. (*Id.*)

3 The Receiver proposes the following timeline for the claims process, as  
 4 described more fully below:

Phase	Timeline
Send Claims Notice Package to all claimants	Within 90 days after entry of Court order approving this Motion
Claims Bar Date	90 days after Claims Notice Package is sent
Review and reconcile claims with claimants	During the six months following the Claims Bar Date
File motion to allow and deny claims	Following completion of claim review and reconciliation process
File motion to approve distribution plan	Following Court’s ruling on motion to allow and deny claims

14 **Send Claims Notice Package** – Within 90 days following entry of the Court’s  
 15 order approving this Motion, the Receiver will prepare and send out the Claims  
 16 Notice Package to all prospective investor and non-investor claimants via email and  
 17 United States Mail. Copies of these documents will also be posted to the receivership  
 18 website.

19 The Receiver will use the contact information obtained from various sources  
 20 to generate the Claims Notice Packages. This includes the email addresses that the  
 21 Receiver has used to send notices to investors (or their counsel) throughout the case.  
 22 The Receiver believes she has current email contact information for nearly all  
 23 prospective investor claimants. (*Id.* ¶ 16.)<sup>2</sup> The Receiver will additionally give  
 24

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25  
 26 <sup>2</sup> Since her appointment, the Receiver has also been in contact with, and maintained a list of, a  
 27 very limited number of potential non-investor claimants, including vendors, taxing authorities and  
 28 others. (*Id.*) However, due to the nature of the 1inMM Ponzi Scheme, the vast majority of the  
 financial harm was limited to investors rather than other third-party creditors. (*Id.*)

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1 claimants the option to submit their claim in paper form, should they specifically  
2 request to do so. All prospective claimants will be asked to review, sign their Proof  
3 of Claim Form under penalty of perjury and submit it (with any supporting  
4 documents) by the Claims Bar Date electronically via the receivership website (or,  
5 if the claimant elects to do so, physically via United States Mail or a third-party  
6 commercial carrier).

7 The Claims Notice Package for each claimant may also include the Receiver’s  
8 calculation of the claimant’s respective claim and further details supporting that  
9 calculation. (*Id.* ¶ 17.) The Receiver has calculated all investor claims using a  
10 standard “net investment” method, which takes the total principal amount the  
11 investor invested in the 1inMM Ponzi Scheme and subtracts that amount by the total  
12 amount of distributions the investor received. (*Id.*) Through her comprehensive  
13 forensic accounting analysis, the Receiver has compiled detailed logs of each  
14 investor’s investment amounts and distributions received, which she then used to  
15 calculate the claim amount to which she believes each investor is entitled (each, a  
16 “Determined Claim Amount”). (*Id.*)

17 A Determined Claim Amount will not incorporate interest, points, premiums,  
18 attorney’s fees, damages or any other investment adjustments. (*Id.* ¶ 18.) If an  
19 investor rolled over any investment that matured, only the principal that was  
20 originally invested may be used and counted once. (*Id.*) The Receiver considered  
21 each investor on a holistic basis, meaning that even if an investor invested in the  
22 1inMM Ponzi Scheme through one or more entities, the Receiver consolidated those  
23 investments to an individual investor level. (*Id.*) Therefore, each individual investor  
24 will have just one Determined Claim Amount, no matter how many channels they  
25 used to invest in the 1inMM Ponzi Scheme. (*Id.*)

26 **Claim Review and Reconciliation Process** – Following the Claims Bar Date,  
27 the Receiver and her professional staff will commence a process to review and  
28 reconcile timely filed claims with the bank records, documents and accounting

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1 analysis in the Receiver’s possession. (*Id.* ¶ 19.) The Receiver expects this process  
2 to require a fair amount of back-and-forth with claimants, as certain claimants may  
3 assert claims in amounts that vary from the Receiver’s analysis and/or may not  
4 submit sufficient documentation to substantiate their claims. (*Id.*) The Receiver’s  
5 present estimate is that the claim review and reconciliation process will take about  
6 six months following the occurrence of the Claims Bar Date. (*Id.*) In her upcoming  
7 quarterly reports, the Receiver will provide the Court with updates regarding her  
8 progress on the claim review and reconciliation process, as applicable. (*Id.*)

9 **File Motion to Allow or Deny Claims** – At an appropriate time following  
10 completion of the claim review and reconciliation process, the Receiver will prepare  
11 and file a motion to allow or disallow claims, which will also include  
12 recommendations for the Court as to next steps (the “Claims Motion”). (*Id.* ¶ 20.)  
13 The Claims Motion will include objections to claims she recommends be disallowed  
14 and requests to approve claims she recommends be allowed in amounts certain. (*Id.*)

15 To the extent there are any claims disputes that cannot be resolved via the  
16 review and reconciliation process described above, the Receiver will identify those  
17 claims in the Claims Motion, state her position as to each claim and recommend any  
18 further proceedings that may be necessary or appropriate to resolve that particular  
19 claim. (*Id.* ¶ 21.) Such further proceedings would, subject to the Court’s direction,  
20 permit the claimant to file a response to the Claims Motion stating their position and  
21 setting forth their supporting evidence, and may require evidentiary hearings. (*Id.*)

22 **File Motion to Approve Distribution Plan** – Once the Court has heard and  
23 determined the Claims Motion and resolved any remaining claim objections in  
24 connection therewith, the Receiver will file a motion seeking approval of a proposed  
25 distribution plan with respect to the available Estate funds. (*Id.* ¶ 22.)  
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**B. Return of Proof of Claim Forms**

The Receiver’s intent is to conduct the claims process through the receivership website to the greatest extent possible. A representation of the Proof of Claim Form that will be on the receivership website is attached hereto as **Exhibit 3**.

As noted above, the Receiver proposes to establish a Claims Bar Date of 90 days following the date when the Claims Notice Packages are sent to prospective claimants. The Receiver further proposes that *all* claimants—regardless of whether they dispute the Receiver’s calculations of their respective claims—must submit to the Receiver, on or before the Claims Bar Date, a completed Proof of Claim Form, signed under penalty of perjury, along with the W9 Form and all relevant supporting documentation to substantiate their claim. (*Id.* ¶ 23.) The Proof of Claim Form and W9 Form must be executed by the actual claimant unless the Receiver accepts such Proof of Claim Form from a successor, heir, or power of attorney who is authorized to act on the prospective claimant’s behalf. (*Id.*) A claimant’s failure to properly and timely submit a signed Proof of Claim Form and sufficient supporting documentation will result in the disallowance of the claimant’s claim. (*Id.*)

If a known prospective claimant fails to complete, sign and submit the Proof of Claim Form and W9 Form to the Receiver by the Claims Bar Date, or for any Claims Bar Date Notices that are returned to the Receiver as undeliverable, the Receiver will attempt to contact the prospective claimant and/or conduct a reasonable search to locate a current physical address or email address for the claimant and resend the notice package, as appropriate. (*Id.* ¶ 24.) The search will include the Receiver’s records, as well as publicly available online websites and databases. (*Id.*) Through these steps, the Receiver hopes to be able to locate and successfully transmit notice packages to all known prospective claimants in order to ensure their participation in the claims process. (*Id.*)

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**C. Procedures for Claim Disputes**

The Receiver will review all completed Proof of Claim Forms, W9 Forms and supporting documents upon receipt. (*Id.* ¶ 25.) Each prospective claimant will have the burden of proof to establish their identity as a legitimate claimant and their claim amount.

The Receiver believes her accounting of investor deposits and disbursements is accurate to a high degree. (*Id.* ¶ 26.) However, many types of adjustments may be necessary during the claims process, including, but not limited to, where: investors invested through aggregators, sub-aggregators and/or other third parties; married couples invested in the 1inMM Ponzi Scheme and since got divorced, meaning the claim needs to be split between the two former spouses; or investors invested through multiple types of accounts (e.g., personal accounts *and* retirement accounts) where investments appear separate but the ultimate beneficiary was the same. (*Id.*) Other issues may also arise due to claimants’ misunderstanding of the applicable accounting methodologies and/or claims submission process. (*Id.*)

In any event, the Receiver expects to work through any claim issues after sending out the Claims Bar Date Notices, reviewing submitted claims, and engaging with the applicable claimants. (*Id.* ¶ 27.) The Receiver further expects that most, if not all, claim issues will be resolved consensually and that the claims can then be presented to the Court in the Claims Motion. (*Id.*) If necessary, the Claims Motion will describe any unresolved claim disputes, the applicable claimants will have an opportunity to respond, and the Court can thereafter make a determination of the proper claims and amounts. (*Id.*)

**Relief Requested**

**A. Legal Standards**

District courts have “extremely broad” power and “wide discretion” in overseeing the administration of a receivership. *Sec. & Exch. Comm’n v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986); *Sec. & Exch. Comm’n v. Wells Fargo Bank, N.A.*,

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1 848 F.3d 1339, 1343-44 (11th Cir. 2017). “The power of a district court to impose a  
2 receivership or grant other forms of ancillary relief does not in the first instance  
3 depend on a statutory grant of power from the securities laws. Rather, the authority  
4 derives from the inherent power of a court of equity to fashion effective relief.” *Sec.*  
5 *& Exch. Comm’n v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). These broad  
6 powers include “the power to establish proof of claim procedures and set an effective  
7 claims bar date.” *Wells Fargo Bank*, 848 F.3d at 1344.

8 A court imposing a receivership assumes custody and control of all assets and  
9 property of the receivership, and it has broad equitable authority to issue all orders  
10 necessary for the proper administration of the receivership estate. *Sec. & Exch.*  
11 *Comm’n v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *Liberte Cap*  
12 *Grp. v. Capwill*, 854 F. Supp. 2d 478, 483 (N.D. Ohio 2012). The Ninth Circuit in  
13 particular “affords broad deference to the [district] court’s supervisory role” in  
14 receivership cases, and “generally uphold[s] reasonable procedures instituted by the  
15 district court that serve th[e] purpose of orderly and efficient administration of the  
16 receivership for the benefit of creditors.” *Commodity Futures Trading Comm’n v.*  
17 *Topworth Int’l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) (cleaned up; quotations  
18 and citations omitted). Such procedures must be “practicable as well as equitable.”  
19 *Hardy*, 803 F.2d at 1039 (citations omitted).

20 Local Rule 66-8 directs a receiver to “administer the estate as nearly as  
21 possible in accordance with the practice in the administration of estates in  
22 bankruptcy.” Accordingly, district courts sitting in receivership may look to  
23 bankruptcy law for guidance about the administration of a receivership. *See, e.g.,*  
24 *Sec. & Exch. Comm’n v. Cap. Consultants, LLC*, 397 F.3d 733, 745 (9th Cir. 2005)  
25 (bankruptcy law “analogous” and therefore persuasive in administration of  
26 receivership estates); *Wells Fargo Bank*, 848 F.3d at 1344 (“bankruptcy law is both  
27 analogous and instructive” with respect to receivership administration issues). This  
28 is largely because “the purpose of bankruptcy receiverships and equity receiverships

1 is essentially the same—to marshal assets, preserve value, equally distribute to  
2 creditors, and, either reorganize, if possible, or orderly liquidate.” *Sec. & Exch.*  
3 *Comm’n v. Stanford Int’l Bank, Ltd.*, 927 F.3d 830, 841 (5th Cir. 2019) (internal  
4 citation and quotations omitted).

5 **B. Approval of Proposed Claim Procedures**

6 As detailed below, the Receiver respectfully submits that the claim  
7 administration procedures outlined herein are practicable and equitable, satisfy due  
8 process requirements and will promote the orderly and efficient administration of  
9 the receivership for the benefit of all creditors. (Vives Decl. ¶ 28.)

10 **1. Appropriateness of Summary Proceedings**

11 All claim disputes in this case can and should be resolved via summary  
12 proceedings, i.e., a noticed motion served on the claimant in question. A district  
13 court overseeing a receivership has “the general power to use summary procedure in  
14 allowing, disallowing, and subordinating claims of creditors” and, more broadly, in  
15 “determin[ing] appropriate relief in equity receivership.” *Hardy*, 803 F.2d at 1040  
16 (quoting *United States v. Ariz. Fuel Corp.*, 739 F.2d 455, 458 (9th Cir. 1984)).  
17 Resolving claim disputes via summary proceedings is “a reasonable and practicable  
18 attempt to administer the receivership” that “promotes judicial efficiency and  
19 reduces litigation costs to the receivership.” *Hardy*, 803 F.2d at 1040 (citations  
20 omitted); *see also Ariz. Fuel Corp.*, 739 F.2d at 460 (“A summary proceeding  
21 reduces the time necessary to settle disputes, decreases litigation costs, and prevents  
22 further dissipation of receivership assets.”); *Sec. & Exch. Comm’n v. Wencke*, 783  
23 F.2d 829, 836-38 (9th Cir. 1986) (approving summary proceedings to adjudicate  
24 claims on receivership assets); *Sec. & Exch. Comm’n v. Universal Fin.*, 760 F.2d  
25 1034, 1037 (9th Cir. 1985) (same, and finding “distinction between summary and  
26 plenary proceedings” to be “of no consequence” where “district court offered  
27 [i]nvestors virtually all of the procedural protections which would have been  
28 available in plenary proceedings”). Using plenary proceedings to resolve each

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1 disputed claim, on the other hand, would unduly delay the administration of the case  
2 and waste Estate and judicial resources. (Vives Decl. ¶ 29.)

### 3 2. Satisfaction of Due Process

4 The Receiver’s proposed claim administration procedures will also satisfy due  
5 process requirements by affording creditors reasonable notice and an opportunity to  
6 be heard regarding their claims. “[T]he rights of creditors of a receivership must be  
7 balanced against the need for expeditious administration of the receivership.” *Hardy*,  
8 803 F.2d at 1039; *see also Sec. & Exch. Comm’n v. Torchia*, 922 F.3d 1307, 1319  
9 (11th Cir. 2019) (“the need for expediency and a district court’s authority to utilize  
10 summary proceedings in receivership do not outweigh an investor’s right to due  
11 process”).

12 To afford due process, summary proceedings, at minimum, “must provide  
13 affected investors with necessary information, a meaningful opportunity to argue the  
14 facts and their claims and defenses, and an adjudication of their claims and defense.”  
15 *Torchia*, 922 F.3d at 1319; *see also Sec. & Exch. Comm’n v. Elliott*, 953 F.2d 1560,  
16 1567 (11th Cir. 1992) (holding that “a district court does not generally abuse its  
17 discretion if its summary procedures permit parties to present evidence when the  
18 facts are in dispute and to make arguments regarding those facts”). Ninth Circuit  
19 courts in particular have affirmed the use of summary procedures under similar  
20 circumstances to this case. *See, e.g., Sec. & Exch. Comm’n v. Champion-Cain*, No.  
21 19-CV-1628-LAB-AHG, 2023 WL 2215955, at \*9 (S.D. Cal. Feb. 24, 2023)  
22 (finding summary proceedings “more than satisf[ied]” due process where investors  
23 received notice of proposed distribution plan over 90 days prior to hearing, had  
24 almost 60 days to file objections, and had full and fair opportunity to present  
25 objections at hearing); *cf. Wencke*, 783 F.2d at 838 (rejecting creditors’ arguments  
26 that due process rights were violated where notice was provided just 19 days before  
27 summary proceeding in which disgorgement order was issued).

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1 As described above, the Receiver’s proposed claims administration  
2 procedures will provide all known prospective claimants with formal notice and an  
3 opportunity to be heard. Anyone who might assert a claim should already be aware  
4 of this receivership, which has been pending for about three years and has received  
5 considerable attention from both the media and plaintiffs’ lawyers. Throughout this  
6 case, the Receiver has also maintained a receivership website for any interested party  
7 to stay apprised of case developments. Regardless, the Receiver contemplates  
8 standard procedures to ensure that all prospective claimants will receive notice via  
9 email and U.S. Mail of the Claims Bar Date, allowing them 90 days to properly  
10 submit a claim. *All* claimants—even those who agree with the Receiver’s  
11 Determined Claim Amount—will be required to affirmatively submit a claim,  
12 thereby effectively acknowledging they received proper notice. The Receiver seeks  
13 to further simplify this process by allowing claimants to submit claims directly via  
14 the receivership website (or, if preferred, by mail). And, as an extra precaution, the  
15 Receiver will actively attempt to contact any known prospective claimants who fail  
16 to timely submit a claim by the Claims Bar Date.

17 Moreover, following the Claims Bar Date, the Receiver will work with  
18 claimants as necessary to consensually resolve any claim disputes. The Receiver will  
19 then address any remaining unresolved claims in her Claims Motion, and the  
20 applicable claimants will have the opportunity to file a response stating their position  
21 and setting forth their supporting evidence, leading to an evidentiary hearing if  
22 necessary.

23 In light of the procedures and safeguards outlined above, the Receiver  
24 respectfully submits that the relief sought in this Motion satisfies all due process  
25 requirements and thus should be approved. (Vives Decl. ¶ 30.)

### 26 3. Claims Bar Date Standards

27 A district court’s broad powers in overseeing a receivership include the power  
28 to “set an effective claims bar date” for creditors to establish and provide support for

1 their claims. *Wells Fargo Bank*, 848 F.3d at 1344 (citing *Sec. & Exch. Comm’n v.*  
2 *Tipco, Inc.*, 554 F.2d 710, 711 (5th Cir. 1977)); *Sec. & Exch. Comm’n v. Onix Cap.,*  
3 *LLC*, No. 16-24678-CIV, 2018 WL 1124435, at \*2 (S.D. Fla. Feb. 23, 2018)  
4 (citations omitted). A bar date is simply a deadline set by a court for creditors to file  
5 proofs of claim. *In re Licup*, 95 F.4th 1234, 1238 n.1 (9th Cir. 2024); *see also In re*  
6 *First Magnus Fin. Corp.*, 415 B.R. 416, 422 (Bankr. D. Ariz. 2009) (“The Federal  
7 Rules of Bankruptcy Procedure permit bankruptcy courts to establish bar dates by  
8 which proofs of claim must be filed or thereafter forfeited.”) (citing Fed. R. Bankr.  
9 P. 3003(c)(3)). A bar date allows a court “to determine with finality what payments  
10 are required,” while also “serv[ing] to prevent prejudice to timely filing claim  
11 holders by preventing late-filed claims from unfairly reducing the *pro rata* dividend  
12 of those who did timely file.” *In re First Alliance Mortg. Co.*, 269 B.R. 428, 439  
13 (C.D. Cal. 2001) (cleaned up; citations omitted).

14 “[T]he district court’s decision to establish deadlines for filing claims, and to  
15 bar untimely claims is reasonable in light of the complexity of [a] receivership and  
16 the procedure employed to notify potential claimants.” *Hardy*, 803 F.2d at 1038-39.  
17 Generally, as in a bankruptcy case, it is ultimately “the claimant’s burden to establish  
18 a valid claim against the receivership estate.” *Champion-Cain*, 2023 WL 2215955,  
19 at \*3; *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir.  
20 2000). Thus, a district court may bar a claim against a receivership estate that is  
21 untimely—and therefore improperly—filed. *See, e.g., Callahan v. Moneta Cap.*  
22 *Corp.*, 415 F.3d 114, 117-18 (1st Cir. 2005) (rejecting creditors’ objection to order  
23 disposing of claims against receivership where creditors failed to submit claim prior  
24 to bar date and did not attempt to file a late claim with receiver); *Futures Trading*  
25 *Comm’n v. Lake Shore Asset Mgmt. Ltd.*, 646 F.3d 401, 404-05 (7th Cir. 2011)  
26 (affirming order denying leave for investor to file late claim against receivership,  
27 even though investor did not receive notice of claims bar date and would have been  
28 entitled to receive \$2.6 million, where investor failed to take any reasonable steps

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1 for over two years after learning receivership entity was under investigation for  
2 fraud, investor failed to identify proper addressee for notice, and granting leave  
3 would have further prolonged receivership proceeding).

4 As described above, the Receiver contemplates a reasonable Claims Bar Date  
5 of 90 days following service of the Claims Bar Date Notice. *See, e.g., Hardy*, 803  
6 F.2d at 1038-39 (approving two-and-one-half month deadline for filing claims as a  
7 “reasonable length of time”). Given the standard procedures and safeguards  
8 proposed by the Receiver, all claimants will receive proper notice of the Claims Bar  
9 Date and instructions to timely submit their claims. The Receiver thus proposes that  
10 the Court approve the proposed Claims Bar Date, which will serve the interest of  
11 finality and the efficient administration of the receivership. (Vives Decl. ¶ 31.)

12 In an effort to administer claims in an efficient and practical manner, the  
13 Receiver has conducted an extensive accounting analysis of the sources and uses of  
14 funds by the Defendants to reach an accurate determination of each prospective  
15 claimant’s claim. Based on that comprehensive analysis, the Receiver has calculated  
16 each investor’s claim using a standard net investment method, which the Receiver  
17 believes is consistent with applicable Ninth Circuit law. (*Id.* ¶ 32.) *Donell v. Kowell*,  
18 533 F.3d 762, 771 (9th Cir. 2008) (holding that courts should apply “netting rule” to  
19 determine whether Ponzi scheme investor is a net “winner” or net “loser”).  
20 Claimants who dispute the calculated claim amount in their Proof of Claim Notices  
21 will have the burden to provide sufficient documentary support for their own  
22 calculations in order to rebut the Receiver’s accounting in a timely fashion. If they  
23 fail to do so, the amounts reflected in the Receiver’s accounting should be accepted  
24 as their allowed claim amount.

25 **Conclusion**

26 Based on her experience in complex federal equity receivership matters and  
27 her forensic accounting work performed to date in this case, the Receiver believes  
28 the rules and procedures for administration of claims proposed herein are reasonable

1 and fair, consistent with the requirements of due process, and will promote the  
2 orderly and efficient determination of all claims against the Estate, including any  
3 and all claim disputes that cannot be resolved consensually by the Receiver and any  
4 applicable claimants. (Vives Decl. ¶ 33.) As noted above, having all claims against  
5 the Estate resolved and set by Court order will be a critical step in being able to make  
6 a fair and equitable distribution of Estate funds. (*Id.*)

7 **Notice to Creditors**

8 “Creditors are entitled to ‘notice reasonably calculated, under all the  
9 circumstances, to apprise interested parties of the pendency of the action and afford  
10 them an opportunity to present their objections.’” *Perez v. Safety-Kleen Sys., Inc.*,  
11 253 F.R.D. 508, 518 (N.D. Cal. 2008) (quoting *Mullane v. Central Hanover Trust*  
12 *Co.*, 339 U.S. 306, 314 (1950)). “[D]ue process...is not a technical conception with  
13 a fixed content unrelated to time, place and circumstances[.]” *Grimm v. City of*  
14 *Portland*, 971 F.3d 1060, 1065 (9th Cir. 2020). Instead, “due process is flexible and  
15 calls for such procedural protections as the particular situation demands.” *Muñoz v.*  
16 *United States Dep’t of State*, 50 F.4th 906, 922 (9th Cir. 2022). The Court may  
17 “exercise[] significant control over the time and manner” of any proceeding to hear  
18 a creditor’s objections. *Liberte Cap Grp. v. Capwill*, 462 F.3d 543, 552 (6th Cir.  
19 2006).

20 The Receiver will give notice of the Motion by: (a) CM/ECF to  
21 parties/interested parties; (b) email to all known creditors of the Estate (or, if  
22 represented, their counsel) with a link to this Motion and supporting exhibits; and  
23 (c) posting it on the receivership website. These communications will include  
24 instructions on how to advise the Receiver of any objections to the Motion by no  
25 later than seven days before the hearing. The Receiver will thereafter file a status  
26 report.

27 The Court should deem this notice sufficient under the circumstances. *See,*  
28 *e.g., Fed. Trade Comm’n v. Cardiff*, 2020 WL 9938072, at \*4 (C.D. Cal. Mar. 10,

1 2020) (receiver’s notice of settlement satisfied due process where receiver posted  
2 motion to its website and served on all parties, known creditors and interested  
3 parties); *Sec. & Exch. Comm’n v. Adams*, 2021 WL 8016843, at \*2 (S.D. Miss. Feb.  
4 25, 2021) (same, where receiver provided mail notice to interested parties,  
5 publicized settlement on receivership website and gave interested parties  
6 instructions how to submit comment or objection to settlement); *Sec. & Exch.  
7 Comm’n v. Nadel*, 2012 WL 12910648, at \*1 (M.D. Fla. Feb. 10, 2012) (same, where  
8 receiver published notice once in two newspapers).

9 **WHEREFORE**, the Receiver respectfully requests that the Court enter an  
10 order: (a) granting the Motion; (b) approving the proposed rules and procedures for  
11 the administration of claims against the Estate discussed herein; (c) establishing the  
12 proposed Claims Bar Date; (d) approving the Claims Bar Date Notice, Proof of  
13 Claim Form and W9 Form; and (e) granting such other relief as is just and equitable.

14 Dated: December 20, 2024

Respectfully submitted,

15 **KATTEN MUCHIN ROSENMAN LLP**

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

17 *Attorneys for the Receiver*  
18 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 5,338 words, which complies with the word limit of L.R. 11-6.1.

Dated: December 20, 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 20, 2024, I served the following document(s) described as:

**UNOPPOSED MOTION OF RECEIVER MICHELE VIVES FOR ORDER (1) APPROVING PROCEDURES FOR THE ADMINISTRATION OF CLAIMS AGAINST THE RECEIVERSHIP ESTATE; (2) SETTING CLAIMS BAR DATE; AND (3) APPROVING CLAIMS BAR DATE NOTICE AND PROOF OF CLAIM FORM**

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.

**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 20, 2024, at Winnetka, Illinois.

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

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*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

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1 I, Michele Vives, declare as follows:

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

7 2. I submit this declaration in support of the *Unopposed Motion of*  
8 *Receiver Michele Vives for Order (1) Approving Procedures for the Administration*  
9 *of Claims Against the Receivership Estate; (2) Setting Claims Bar Date; and (3)*  
10 *Approving Claims Bar Date Notice and Proof of Claim Form*, dated December 20,  
11 2024 (the “Motion”). Any capitalized terms not defined herein have the meanings  
12 ascribed to them in the Motion.

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

21 **A. Introduction; Forensic Accounting Analysis**

22 4. On January 14, 2022, this Court entered the *Order on Appointment of*  
23 *a Permanent Receiver* [ECF #70] (the “Receiver Order”), which appointed me to be  
24 the federal equity receiver of defendant 1inMM Capital, LLC (“1inMM”) as well as  
25 assets that are attributable to investor or client funds or that were fraudulently  
26 transferred by 1inMM or Zachary J. Horwitz (“Horwitz,” and together with 1inMM,  
27 “Defendants”) (collectively, the “Estate”).  
28

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1           5.     Since my appointment, my retained professionals and I have, among  
2 other things, assumed control of the Estate, conducted a comprehensive forensic  
3 accounting analysis to identify potential sources of recovery, negotiated major  
4 settlements with several net winning investors of the 1inMM Ponzi Scheme and  
5 other third parties and conducted other activities required by the Receiver Order to  
6 administer and maximize the value of the Estate.

7           6.     With my forensic accounting now essentially completed, I hereby  
8 request approval of procedures to efficiently administer claims against the Estate in  
9 anticipation of making distributions upon Court approval of a distribution plan. The  
10 ultimate goal of the claims process is to reach an approved list of allowed claims as  
11 efficiently as possible, while also providing claimants an opportunity to be heard as  
12 to their respective claim amounts.

13           7.     The claims process is an integral step in determining and confirming  
14 the full scope of losses incurred by victims of the 1inMM Ponzi Scheme. This loss  
15 figure, in conjunction with the ultimate recovery from assets, forms the fundamental  
16 calculation necessary to determine a comprehensive distribution plan for investor  
17 victims.

18           8.     I have deferred requesting approval of a claims process until I could  
19 identify all investor victims through a forensic accounting analysis to ensure their  
20 participation in the claims process. Due to the investment structure of 1inMM, which  
21 was complicated by its use of aggregator and sub-aggregator funds to funnel  
22 investment dollars into the Ponzi Scheme, it often was not possible for me to  
23 ascertain the identities of individual investors, as that information was held only by  
24 the aggregators, sub-aggregators and other third parties. It therefore took a  
25 considerable amount of time and effort for me to obtain all investor-level detail,  
26 which involved a comprehensive review of 1inMM's bank accounts and transactions  
27 as well as voluminous records I subpoenaed or otherwise obtained from other parties  
28

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1 of interest. I now believe I have identified nearly all, if not all, potential investors in  
2 the 1inMM Ponzi Scheme.

3 9. My forensic accounting analysis determined the preliminary value of  
4 prospective claims held by investor claimants and any potential non-investor  
5 claimants.

6 **B. Proposed Claim Procedures**

7 10. While I believe my forensic accounting accurately reflects the  
8 investors' transactional details to a high degree, there are particular challenges  
9 regarding investors (a) who invested or received payments through aggregators or  
10 sub-aggregators and/or (b) whose records may not reconcile with those compiled by  
11 me for various reasons, including, but not limited to, scenarios where investors  
12 invested multiple times, through different (but affiliated) entities, through multiple  
13 types of accounts, or through joint accounts. The claims process will assist in  
14 determining how these investments ultimately get segregated or aggregated as a  
15 "unique" claim.

16 11. At the appropriate time following the completion of the claim  
17 submission process, I will seek Court approval of a distribution plan in order to  
18 proceed with the actual distribution of funds from the Estate.

19 12. I propose that the Court establish a deadline for all claimants, known  
20 and unknown, to submit claims (a "Claims Bar Date"), such that all claims can be  
21 determined at one time in a manner that brings certainty and finality to the claims  
22 process.

23 13. This receivership has been in place since January 14, 2022, i.e., for  
24 approximately three years, and during that time has been the subject of attention  
25 from both the media and plaintiffs' lawyers representing various groups of 1inMM  
26 investors. Therefore, anyone with a connection to the 1inMM Ponzi Scheme who  
27 might assert a claim should by now be aware of the case and the receivership.  
28 Accordingly, I recommend that the Court establish a Claims Bar Date of 90 days

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1 after the date of service of the Claims Notice Package, which I believe is a fair and  
2 reasonable amount of time for prospective claimants to submit their claims.

3 14. The Claims Notice Package will clearly inform all prospective  
4 claimants that they must submit to me a Proof of Claim Form, the W9 Form and all  
5 relevant supporting documentation on or before the Claims Bar Date, i.e., within 90  
6 days of service of the Claims Notice Package.

7 15. I have continuously used the receivership website throughout this case  
8 as an efficient means of disseminating information and providing updates to  
9 interested parties. Accordingly, the receivership website is an appropriate platform  
10 to post the Claims Bar Date Notice host the Proof of Claim Form, thus allowing any  
11 claimants, including non-investors who wish to assert claims, a reasonable and fair  
12 opportunity to do so.

13 16. I believe I have current email contact information for nearly all  
14 prospective investor claimants. Also, since my appointment, I have been in contact  
15 with, and maintained a list of, a very limited number of potential non-investor  
16 claimants, including vendors, taxing authorities and others. However, due to the  
17 nature of the 1inMM Ponzi Scheme, the vast majority of the financial harm was  
18 limited to investors rather than other third-party creditors.

19 17. The Claims Notice Package for each claimant may also include my  
20 calculation of the claimant's respective claim and further details supporting that  
21 calculation. I have calculated all investor claims using a standard "net investment"  
22 method, which takes the total principal amount the investor invested in the 1inMM  
23 Ponzi Scheme and subtracts that amount by the total amount of distributions the  
24 investor received. Through my comprehensive forensic accounting analysis, I have  
25 compiled detailed logs of each investor's investment amounts and distributions  
26 received, which I then used to calculate the claim amount to which I believe each  
27 investor is entitled (each, a "Determined Claim Amount").  
28

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1 18. A Determined Claim Amount will not incorporate interest, points,  
2 premiums, attorney’s fees, damages or any other investment adjustments. If an  
3 investor rolled over any investment that matured, only the principal that was  
4 originally invested may be used and counted once. I considered each investor on a  
5 holistic basis, meaning that even if an investor invested in the 1inMM Ponzi Scheme  
6 through one or more entities, I consolidated those investments to an individual  
7 investor level. Therefore, each individual investor will have just one Determined  
8 Claim Amount, no matter how many channels they used to invest in the 1inMM  
9 Ponzi Scheme.

10 19. Following the Claims Bar Date, my professional staff and I will  
11 commence a process to review and reconcile timely filed claims with the bank  
12 records, documents and accounting analysis in my possession. I expect this process  
13 to require a fair amount of back-and-forth with claimants, as certain claimants may  
14 assert claims in amounts that vary from my analysis and/or may not submit sufficient  
15 documentation to substantiate their claims. My present estimate is that the claim  
16 review and reconciliation process will take about six months following the  
17 occurrence of the Claims Bar Date. In my upcoming quarterly reports, I will provide  
18 the Court with updates regarding my progress on the claim review and reconciliation  
19 process, as applicable.

20 20. At an appropriate time following completion of the claim review and  
21 reconciliation process, I will prepare and file a motion to allow or disallow claims,  
22 which will also include recommendations for the Court as to next steps (the “Claims  
23 Motion”). The Claims Motion will include objections to claims I recommend be  
24 disallowed and requests to approve claims I recommend be allowed in amounts  
25 certain.

26 21. To the extent there are any claims disputes that cannot be resolved via  
27 the review and reconciliation process described above, I will identify those claims  
28 in the Claims Motion, state my position as to each claim and recommend any further

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1 proceedings that may be necessary or appropriate to resolve that particular claim.  
2 Such further proceedings would, subject to the Court’s direction, permit the claimant  
3 to file a response to the Claims Motion stating their position and setting forth their  
4 supporting evidence, and may require evidentiary hearings.

5 22. Once the Court has heard and determined the Claims Motion and  
6 resolved any remaining claim objections in connection therewith, I will file a motion  
7 seeking approval of a proposed distribution plan with respect to the available Estate  
8 funds.

9 23. I further propose that *all* claimants—regardless of whether they dispute  
10 my calculations of their respective claims—must submit to me, on or before the  
11 Claims Bar Date, a completed Proof of Claim Form, signed under penalty of perjury,  
12 along with the W9 Form and all relevant supporting documentation to substantiate  
13 their claim. The Proof of Claim Form and W9 Form must be executed by the actual  
14 claimant unless I accept such Proof of Claim Form from a successor, heir, or power  
15 of attorney who is authorized to act on the prospective claimant’s behalf. A  
16 claimant’s failure to properly and timely submit a signed Proof of Claim Form and  
17 sufficient supporting documentation will result in the disallowance of the claimant’s  
18 claim.

19 24. If a known prospective claimant fails to complete, sign and submit the  
20 Proof of Claim Form and W9 Form to me by the Claims Bar Date, or for any Claims  
21 Bar Date Notices that are returned to me as undeliverable, I will attempt to contact  
22 the prospective claimant and/or conduct a reasonable search to locate a current  
23 physical address or email address for the claimant and resend the notice package, as  
24 appropriate. The search will include my records, as well as publicly available online  
25 websites and databases. Through these steps, I hope to be able to locate and  
26 successfully transmit notice packages to all known prospective claimants in order to  
27 ensure their participation in the claims process.  
28

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1 25. I will review all completed Proof of Claim Forms, W9 Forms and  
2 supporting documents upon receipt.

3 26. I believe my accounting of investor deposits and disbursements is  
4 accurate to a high degree. However, many types of adjustments may be necessary  
5 during the claims process, including, but not limited to, where: investors invested  
6 through aggregators, sub-aggregators and/or other third parties; married couples  
7 invested in the 1inMM Ponzi Scheme and since got divorced, meaning the claim  
8 needs to be split between the two former spouses; or investors invested through  
9 multiple types of accounts (e.g., personal accounts *and* retirement accounts) where  
10 investments appear separate but the ultimate beneficiary was the same. Other issues  
11 may also arise due to claimants' misunderstanding of the applicable accounting  
12 methodologies and/or claims submission process.

13 27. In any event, I expect to work through any claim issues after sending  
14 out the Claims Bar Date Notices, reviewing submitted claims, and engaging with the  
15 applicable claimants. I further expect that most, if not all, claim issues will be  
16 resolved consensually and that the claims can then be presented to the Court in the  
17 Claims Motion. If necessary, the Claims Motion will describe any unresolved claim  
18 disputes, the applicable claimants will have an opportunity to respond, and the Court  
19 can thereafter make a determination of the proper claims and amounts.

20 **C. Approval of Proposed Claim Procedures**

21 28. I respectfully submit that the claim administration procedures outlined  
22 in the Motion are practicable and equitable, satisfy due process requirements and  
23 will promote the orderly and efficient administration of the receivership for the  
24 benefit of all creditors.

25 29. Using plenary proceedings to resolve each disputed claim would  
26 unduly delay the administration of the case and waste Estate and judicial resources.  
27  
28

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1 30. In light of the procedures and safeguards outlined above and in the  
2 Motion, I respectfully submit that the relief sought in the Motion satisfies all due  
3 process requirements and thus should be approved.

4 31. I propose that the Court approve the proposed Claims Bar Date, which  
5 will serve the interest of finality and the efficient administration of the receivership.

6 32. Based on my comprehensive accounting analysis of the sources and  
7 uses of funds by the Defendants, I have calculated each investor’s claim using a  
8 standard net investment method, which I believe is consistent with applicable Ninth  
9 Circuit law.

10 33. Based on my experience in complex federal equity receivership matters  
11 and my forensic accounting work performed to date in this case, I believe the rules  
12 and procedures for administration of claims proposed in the Motion are reasonable  
13 and fair, consistent with the requirements of due process, and will promote the  
14 orderly and efficient determination of all claims against the Estate, including any  
15 and all claim disputes that I cannot resolve consensually with any applicable  
16 claimants. Having all claims against the Estate resolved and set by Court order will  
17 be a critical step in being able to make a fair and equitable distribution of Estate  
18 funds.

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

21 Executed on December 20, 2024  
22 in San Diego, California

*/s/Michele Vives*  
Michele Vives

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CHICAGO, IL 60661  
(312) 902-5200

UNITED STATES DISTRICT COURT  
Central District of California

SECURITIES AND EXCHANGE COMMISSION

v.

ZACHARY J. HORWITZ and 1inMM CAPITAL, LLC

Case Number 2:21-cv-02927-CAS-PD

**NOTICE OF CLAIMS PROCEDURE AND INSTRUCTIONS**

You have received this notice by order of the United States District Court for the Central District of California (the "Court") because Michele Vives as Receiver ("Receiver") for 1inMM Capital, LLC and its subsidiaries and affiliates (collectively, "1inMM"), believes you may be a creditor of the receivership estate of 1inMM. Accompanying this notice are: (a) a Determination of Claim Amount letter, which details the Receiver's calculation of your individual claim amount; and (b) a W9 form. Please read the below instructions carefully as it may affect potential distributions to you. **If your signed Proof of Claim form and supporting documentation are not received before [BAR DATE] at 5:00 p.m. PT (the "Bar Date"), YOUR CLAIM WILL BE DISALLOWED ENTIRELY.**

- 1. WHO MUST FILE A PROOF OF CLAIM FORM?** All claimants must file a Proof of Claim form. To avoid any confusion, you must file a Proof of Claim form if you: (1) agree with the Receiver's calculated Claim Amount, as set forth in the Receiver's Determination of Claim Amount letter accompanying this notice, if applicable; (2) dispute the Receiver's calculated Claim Amount, as set forth in the Receiver's Determination of Claim Amount letter accompanying this notice, if applicable; (3) did not receive a Determination of Claim Amount letter but you believe that you are owed money by 1inMM on any basis whatsoever, including because you: (a) invested in or loaned money to 1inMM either directly or through any investment aggregator or sub-aggregator fund(s), including but not limited to JJMT Capital, LLC, Movie Fund LLC, SAC Advisory Group, LLC, Vausse Films, and Pure Health Enterprises (each an "Aggregator Fund"); (b) assert a claim against 1inMM or any of its assets based on primary, secondary, direct, indirect, secured, unsecured, or contingent liabilities; or (c) assert a claim against 1inMM on any other basis, such as contract, tort, contribution, indemnity, reimbursement, subrogation or other legal or equitable theory. If you invested in or loaned money to 1inMM with or through more than one person, affiliate, entity and/or Aggregator Fund, you must file a single Proof of Claim form for all claim(s) or interest(s) you allege to have. **Failure to submit a signed Proof of Claim form and adequate supporting documentation on or before the Bar Date will result in the disallowance of your claim.**
- 2. CONSENTS.** By submitting a Proof of Claim form, you irrevocably consent and agree: (a) to the jurisdiction of the Court for all purposes and agree to be bound by its decisions, including any determinations as to, among other things, the validity and amount of your claim and (b) that your participation in any distribution of the receivership estate will bar you from pursuing any other remedies against 1inMM as well as against certain third parties that have entered into Court-approved settlements with the Receiver.
- 3. HOW TO SUBMIT YOUR PROOF OF CLAIM.** You must submit your Proof of Claim form, any supporting documents and W9 form electronically via the receivership website by following this link: [www.1inmmreceivership.com/claims](http://www.1inmmreceivership.com/claims). If you would prefer to submit your claim documents in paper form, please email [1inmm@douglaswilson.com](mailto:1inmm@douglaswilson.com) or write *1inMM Claims, c/o Douglas Wilson Companies, 1620 Fifth Ave., Suite 400, San Diego, CA 92101* for further instructions.
- 4. WHAT IS THE DEADLINE TO FILE THIS PROOF OF CLAIM FORM?** The Proof of Claim form and W9 form must be received by the Receiver via one of the methods listed in paragraph 3 of this notice on or before [BAR DATE] at 5:00 p.m. PT. Please note that any late submitted or unsubmitted claim will be disallowed in its entirety.
- 5. SUPPORTING DOCUMENTS.** You must include with your Proof of Claim form copies of all documents evidencing that 1inMM (and/or any Aggregator Fund or other party, if applicable) owes the debts or amounts claimed. If supporting documents are not available, you must include an explanation of why they are not available. Failure to provide adequate supporting documentation may result in the disallowance of your claim in whole or in part.
- 6. ADDITIONAL INFORMATION.** Note that additional information regarding filing the Proof of Claim form, along with additional blank forms, can be obtained at [www.1inmmreceivership.com](http://www.1inmmreceivership.com), or by sending a request via email to [1inmm@douglaswilson.com](mailto:1inmm@douglaswilson.com) or mail at: *1inMM Claims, c/o Douglas Wilson Companies, 1620 Fifth Ave., Suite 400, San Diego, CA 92101*.
- 7. TAX AND LEGAL ADVICE.** The Receiver cannot provide tax or legal advice. You are encouraged to seek independent advice regarding tax and legal issues in regard to filing your claim.

**Proof of Claim Form Outline**

1. Create option at the top allowing an investor to simply update their address.
  - a. Add note:
    - i. IMPORTANT: This option is to simply update your address. If you dispute your Determined Claim Amount, you will need to fill out and complete the separate claim form.
2. Name and Address of Claimant
  - a. Check box of “Are you a Creditor or Investor?”
  - b. First Name
  - c. Last Name
  - d. Tax ID # or SSN
  - e. Nicknames/Other Names
  - f. Current Address
  - g. City
  - h. State
  - i. Zip
  - j. Country
  - k. Telephone Number
  - l. Email Address
3. Investment Information
  - a. Indicate the name(s) of the entity with, through, or in which you claim to have invested funds Claim Amount.
    - i. Directly with 1inMM Capital
    - ii. JJMT Capital, LLC
    - iii. Movie Fund LLC
    - iv. SAC Advisory Group, LLC
    - v. Vausse Films
    - vi. Pure Health Enterprises
    - vii. Other [FILL-IN BOX]
  - b. Claim Amount
    - i. State all amounts you invested or paid to 1inMM Capital prior to April 4, 2021. To calculate your claim simply take the total amount of principal invested, subtracted by the total amount of distributions received. Interest, points, premiums, attorneys fees, damages or any other investment adjustments are not a part of the calculation. If you rolled over an investment that matured, only the principal that was originally invested may be used and counted once. Attach all

documentation supporting said claim amount and the calculation of said claim.

- c. Dates and Amounts of Amounts of Funds Invested
    - i. Allow Multiple fields to enter in a Date and Amount
      1. 5(?) With a button to request the addition of more fields
  - d. Dates and Amounts of Any Distributions
    - i. Allow Multiple fields to enter in a Date and Amount
      1. 5(?) With a button to request the addition of more fields
  - e. Allow a “Browse” or “Choose File(s)” button
    - i. Instructions to state copies of all Agreements, Certificates, and any other documents you contend reflect the terms of your agreement or investment with 1inMM Capital or Aggregator Fund.
4. Supporting Documentation
- a. Please upload copies of supporting documents, such as cancelled checks (front and back), account ledgers, bank statements, promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, evidence of lien perfection, etc.
    - i. Provide check box that states “Check this box if documents are not available”.
  - b. Allow a “Browse” or “Choose File(s)” button.
    - i. \*Click the “Browse” or “Choose File” button and select the relevant file from your computer. The selected files will be uploaded when the “Agree and Submit” button is clicked.
5. Pending or Completed Legal Action
- a. If you have asserted any claims for damages related to your claim against third parties, please check the box and attach a brief description and state the amount of money recovered, if any.
    - i. Provide check box and comment box.
6. Acknowledgement
- a. Should the Receiver allow my claim in whole or in part and I receive a distribution on account thereof, by submitting this Proof of Claim I hereby release all claims that I may hold arising from or related to the 1inMM Ponzi Scheme against the persons and entities that were the subject of settlement approval orders previously entered by the Court in this civil action, whether or not such orders were docketed publicly.
7. Signatures
- a. Check box

- i. I declare under penalty of perjury under the laws of the United States of America (28 U.S.C. § 1746) that the information contained in this Claim Form and any back-up documentation provided is true and correct.
- ii. Type the name and title, if any, of all Claimants or other persons authorized to file this claim (attach copy of power of attorney, death certificate, or other document as needed if co-owner is unable to sign).
- iii. Your typed name will serve as your electronic signature.
  1. \*Signature
  2. Title (if any)
  3. Signature of Co-Filer
  4. Title (if any)
  5. "Submit" button

Form **W-9**  
(Rev. March 2024)  
Department of the Treasury  
Internal Revenue Service

## Request for Taxpayer Identification Number and Certification

Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

**Give form to the  
requester. Do not  
send to the IRS.**

**Before you begin.** For guidance related to the purpose of Form W-9, see *Purpose of Form*, below.

<b>Print or type. See Specific Instructions on page 3.</b>	<b>1</b>	Name of entity/individual. An entry is required. (For a sole proprietor or disregarded entity, enter the owner's name on line 1, and enter the business/disregarded entity's name on line 2.)	
	<b>2</b>	Business name/disregarded entity name, if different from above.	
	<b>3a</b>	Check the appropriate box for federal tax classification of the entity/individual whose name is entered on line 1. Check only <b>one</b> of the following seven boxes.  <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> C corporation <input type="checkbox"/> S corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate  <input type="checkbox"/> LLC. Enter the tax classification (C = C corporation, S = S corporation, P = Partnership) _____ <b>Note:</b> Check the "LLC" box above and, in the entry space, enter the appropriate code (C, S, or P) for the tax classification of the LLC, unless it is a disregarded entity. A disregarded entity should instead check the appropriate box for the tax classification of its owner.  <input type="checkbox"/> Other (see instructions) _____	<b>4</b> Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):  Exempt payee code (if any) _____  Exemption from Foreign Account Tax Compliance Act (FATCA) reporting code (if any) _____  <i>(Applies to accounts maintained outside the United States.)</i>
	<b>3b</b>	If on line 3a you checked "Partnership" or "Trust/estate," or checked "LLC" and entered "P" as its tax classification, and you are providing this form to a partnership, trust, or estate in which you have an ownership interest, check this box if you have any foreign partners, owners, or beneficiaries. See instructions _____ <input type="checkbox"/>	
	<b>5</b>	Address (number, street, and apt. or suite no.). See instructions.	Requester's name and address (optional)
	<b>6</b>	City, state, and ZIP code	
	<b>7</b>	List account number(s) here (optional)	

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

<b>Social security number</b>									
				-					
<b>or</b>									
<b>Employer identification number</b>									

**Note:** If the account is in more than one name, see the instructions for line 1. See also *What Name and Number To Give the Requester* for guidelines on whose number to enter.

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and, generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

<b>Sign Here</b>	Signature of U.S. person	Date
------------------	--------------------------	------

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

## What's New

Line 3a has been modified to clarify how a disregarded entity completes this line. An LLC that is a disregarded entity should check the appropriate box for the tax classification of its owner. Otherwise, it should check the "LLC" box and enter its appropriate tax classification.

New line 3b has been added to this form. A flow-through entity is required to complete this line to indicate that it has direct or indirect foreign partners, owners, or beneficiaries when it provides the Form W-9 to another flow-through entity in which it has an ownership interest. This change is intended to provide a flow-through entity with information regarding the status of its indirect foreign partners, owners, or beneficiaries, so that it can satisfy any applicable reporting requirements. For example, a partnership that has any indirect foreign partners may be required to complete Schedules K-2 and K-3. See the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS is giving you this form because they



must obtain your correct taxpayer identification number (TIN), which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid).
- Form 1099-DIV (dividends, including those from stocks or mutual funds).
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds).
- Form 1099-NEC (nonemployee compensation).
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers).
- Form 1099-S (proceeds from real estate transactions).
- Form 1099-K (merchant card and third-party network transactions).
- Form 1098 (home mortgage interest), 1098-E (student loan interest), and 1098-T (tuition).
- Form 1099-C (canceled debt).
- Form 1099-A (acquisition or abandonment of secured property).

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

**Caution:** If you don't return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding*, later.

**By signing the filled-out form**, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued);
2. Certify that you are not subject to backup withholding; or
3. Claim exemption from backup withholding if you are a U.S. exempt payee; and
4. Certify to your non-foreign status for purposes of withholding under chapter 3 or 4 of the Code (if applicable); and
5. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting is correct. See *What Is FATCA Reporting*, later, for further information.

**Note:** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Establishing U.S. status for purposes of chapter 3 and chapter 4 withholding.** Payments made to foreign persons, including certain distributions, allocations of income, or transfers of sales proceeds, may be subject to withholding under chapter 3 or chapter 4 of the Code (sections 1441–1474). Under those rules, if a Form W-9 or other certification of non-foreign status has not been received, a withholding agent, transferee, or partnership (payor) generally applies presumption rules that may require the payor to withhold applicable tax from the recipient, owner, transferor, or partner (payee). See Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*.

The following persons must provide Form W-9 to the payor for purposes of establishing its non-foreign status.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the disregarded entity.
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the grantor trust.
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust and not the beneficiaries of the trust.

See Pub. 515 for more information on providing a Form W-9 or a certification of non-foreign status to avoid withholding.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person (under Regulations section 1.1441-1(b)(2)(iv) or other applicable section for chapter 3 or 4 purposes), do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515). If you are a qualified foreign pension fund under Regulations section 1.897(l)-1(d), or a partnership that is wholly owned by qualified foreign pension funds, that is treated as a non-foreign person for purposes of section 1445 withholding, do not use Form W-9. Instead, use Form W-8EXP (or other certification of non-foreign status).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a saving clause. Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if their stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first Protocol) and is relying on this exception to claim an exemption from tax on their scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

## Backup Withholding

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include, but are not limited to, interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third-party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester;
2. You do not certify your TIN when required (see the instructions for Part II for details);
3. The IRS tells the requester that you furnished an incorrect TIN;
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only); or
5. You do not certify to the requester that you are not subject to backup withholding, as described in item 4 under "*By signing the filled-out form*" above (for reportable interest and dividend accounts opened after 1983 only).



Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

See also *Establishing U.S. status for purposes of chapter 3 and chapter 4 withholding*, earlier.

## What Is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all U.S. account holders that are specified U.S. persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

## Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you are no longer tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account, for example, if the grantor of a grantor trust dies.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

- **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

**Note for ITIN applicant:** Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040 you filed with your application.

- **Sole proprietor.** Enter your individual name as shown on your Form 1040 on line 1. Enter your business, trade, or “doing business as” (DBA) name on line 2.

- **Partnership, C corporation, S corporation, or LLC, other than a disregarded entity.** Enter the entity’s name as shown on the entity’s tax return on line 1 and any business, trade, or DBA name on line 2.

- **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. Enter any business, trade, or DBA name on line 2.

- **Disregarded entity.** In general, a business entity that has a single owner, including an LLC, and is not a corporation, is disregarded as an entity separate from its owner (a disregarded entity). See Regulations section 301.7701-2(c)(2). A disregarded entity should check the appropriate box for the tax classification of its owner. Enter the owner’s name on line 1. The name of the owner entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For

example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner’s name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity’s name on line 2. If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

### Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, enter it on line 2.

### Line 3a

Check the appropriate box on line 3a for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3a.

IF the entity/individual on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation.
• Individual or • Sole proprietorship	Individual/sole proprietor.
• LLC classified as a partnership for U.S. federal tax purposes or • LLC that has filed Form 8832 or 2553 electing to be taxed as a corporation	Limited liability company and enter the appropriate tax classification: P = Partnership, C = C corporation, or S = S corporation.
• Partnership	Partnership.
• Trust/estate	Trust/estate.

### Line 3b

Check this box if you are a partnership (including an LLC classified as a partnership for U.S. federal tax purposes), trust, or estate that has any foreign partners, owners, or beneficiaries, and you are providing this form to a partnership, trust, or estate, in which you have an ownership interest. You must check the box on line 3b if you receive a Form W-8 (or documentary evidence) from any partner, owner, or beneficiary establishing foreign status or if you receive a Form W-9 from any partner, owner, or beneficiary that has checked the box on line 3b.

**Note:** A partnership that provides a Form W-9 and checks box 3b may be required to complete Schedules K-2 and K-3 (Form 1065). For more information, see the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

If you are required to complete line 3b but fail to do so, you may not receive the information necessary to file a correct information return with the IRS or furnish a correct payee statement to your partners or beneficiaries. See, for example, sections 6698, 6722, and 6724 for penalties that may apply.

### Line 4 Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

#### Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third-party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys’ fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space on line 4.

1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2).

- 2—The United States or any of its agencies or instrumentalities.
- 3—A state, the District of Columbia, a U.S. commonwealth or territory, or any of their political subdivisions or instrumentalities.
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities.
- 5—A corporation.
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or territory.
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission.
- 8—A real estate investment trust.
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940.
- 10—A common trust fund operated by a bank under section 584(a).
- 11—A financial institution as defined under section 581.
- 12—A middleman known in the investment community as a nominee or custodian.
- 13—A trust exempt from tax under section 664 or described in section 4947.

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
• Interest and dividend payments	All exempt payees except for 7.
• Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
• Barter exchange transactions and patronage dividends	Exempt payees 1 through 4.
• Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 5. <sup>2</sup>
• Payments made in settlement of payment card or third-party network transactions	Exempt payees 1 through 4.

<sup>1</sup> See Form 1099-MISC, Miscellaneous Information, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

**Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) entered on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37).

B—The United States or any of its agencies or instrumentalities.

C—A state, the District of Columbia, a U.S. commonwealth or territory, or any of their political subdivisions or instrumentalities.

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i).

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i).

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state.

G—A real estate investment trust.

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940.

I—A common trust fund as defined in section 584(a).

J—A bank as defined in section 581.

K—A broker.

L—A trust exempt from tax under section 664 or described in section 4947(a)(1).

M—A tax-exempt trust under a section 403(b) plan or section 457(g) plan.

**Note:** You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

**Line 5**

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, enter "NEW" at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

**Line 6**

Enter your city, state, and ZIP code.

**Part I. Taxpayer Identification Number (TIN)**

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have, and are not eligible to get, an SSN, your TIN is your IRS ITIN. Enter it in the entry space for the Social security number. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note:** See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at [www.SSA.gov](http://www.SSA.gov). You may also get this form by calling 800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/EIN](http://www.irs.gov/EIN). Go to [www.irs.gov/Forms](http://www.irs.gov/Forms) to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to [www.irs.gov/OrderForms](http://www.irs.gov/OrderForms) to place an order and have Form W-7 and/or Form SS-4 mailed to you within 15 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and enter "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, you will generally have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note:** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon. See also *Establishing U.S. status for purposes of chapter 3 and chapter 4 withholding*, earlier, for when you may instead be subject to withholding under chapter 3 or 4 of the Code.

**Caution:** A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

**Signature requirements.** Complete the certification as indicated in items 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.**

You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.**

You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third-party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLÉ accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

## What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
6. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
7. Grantor trust filing under Optional Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))**	The grantor*

For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing Form 1041 or under the Optional Filing Method 2, requiring Form 1099 (see Regulations section 1.671-4(b)(2)(i)(B))**	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name on line 1, and enter your business or DBA name, if any, on line 2. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

\* **Note:** The grantor must also provide a Form W-9 to the trustee of the trust.

\*\* For more information on optional filing methods for grantor trusts, see the Instructions for Form 1041.

**Note:** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

## Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information, such as your name, SSN, or other identifying information, without your permission to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax return preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity, or a questionable credit report, contact the IRS Identity Theft Hotline at 800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 877-777-4778 or TTY/TDD 800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.**

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 800-366-4484. You can forward suspicious emails to the Federal Trade Commission at [spam@uce.gov](mailto:spam@uce.gov) or report them at [www.ftc.gov/complaint](http://www.ftc.gov/complaint). You can contact the FTC at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see [www.IdentityTheft.gov](http://www.IdentityTheft.gov) and Pub. 5027.

Go to [www.irs.gov/IdentityTheft](http://www.irs.gov/IdentityTheft) to learn more about identity theft and how to reduce your risk.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and territories for use in administering their laws. The information may also be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payors must generally withhold a percentage of taxable interest, dividends, and certain other payments to a payee who does not give a TIN to the payor. Certain penalties may also apply for providing false or fraudulent information.

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

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

ZACHARY J. HORWITZ; and inMM  
CAPITAL, LLC,

Defendants.

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

**[PROPOSED] ORDER:**

**(1) APPROVING PROCEDURES  
FOR THE ADMINISTRATION OF  
CLAIMS AGAINST THE  
RECEIVERSHIP ESTATE;**

**(2) SETTING CLAIMS BAR DATE;  
AND**

**(3) APPROVING CLAIMS BAR  
DATE NOTICE AND PROOF OF  
CLAIM FORM**

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 (1) Procedures for the Administration of Claims Against the*  
3 *Receivership Estate; (2) Setting Claims Bar Date; and (3) Approving Claims Bar*  
4 *Date Notice and Proof of Claim Form*, dated December 20, 2024 (the “Motion”),  
5 the Court, having jurisdiction to hear and determine the Motion, has reviewed the  
6 Motion and accompanying memorandum of points and authorities and declarations  
7 in support thereof, considered the exhibits to the Motion and the objection(s) to the  
8 Motion, if any, and concluded that all parties in interest have due and sufficient  
9 notice of the Motion; after due deliberation and consideration of the Motion, and  
10 there being good cause to grant the relief provided herein; it is, pursuant to the  
11 Court’s power to supervise equity receiverships and all other powers in that behalf  
12 so enabling, hereby ORDERED:

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

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

17           3.     The rules and procedures for the administration of claims against the  
18 Estate, as proposed in the Motion, are APPROVED.

19           4.     The Claims Bar Date Notice, Proof of Claim Form and W9 Form  
20 attached to the Motion as Exhibit 2, Exhibit 3 and Exhibit 4, respectively, are each  
21 APPROVED.

22           5.     The contents and methods for service of the Claims Notice Package are  
23 APPROVED. The Receiver shall serve the Claims Notice Package on all prospective  
24 claimants on before the ninetieth (90th) day following the date of this order.

25           6.     The Claims Bar Date is hereby SET as the ninetieth (90th) calendar day  
26 after the Receiver serves the Claims Notice Package on potential claimants. The  
27 Receiver shall file a notice on the docket of this civil action identifying the calendar  
28 day that is the Claims Bar Date and post it on the receivership website.

KATTEN MUCHIN ROSENMAN LLP  
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CHICAGO, IL 60661  
(312) 902-5200

1 7. Any person or entity who asserts a claim against the Estate must,  
2 pursuant to the instructions in the Claims Bar Date Notice, submit a completed Proof  
3 of Claim Form, executed under penalty of perjury, a completed W9 Form and all  
4 relevant supporting documentation to the Receiver no later than the Claims Bar Date.  
5 To the extent any claims are untimely submitted (or are not submitted at all), the  
6 Receiver is AUTHORIZED to deem such claims forever barred and disallowed.

7 8. Following the occurrence of the Claims Bar Date, the Receiver is  
8 AUTHORIZED to review and reconcile claims against the Estate and, when she  
9 deems it appropriate, file a motion (or motions) to allow and disallow claims.

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

12 Dated:

13 \_\_\_\_\_  
14 United States District Judge

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