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12 Attorneys for Court-Appointed Receiver
KRISTA L. FREITAG

13 UNITED STATES DISTRICT COURT
14
15 CENTRAL DISTRICT OF CALIFORNIA

16 SECURITIES AND EXCHANGE
17 COMMISSION,

18 Plaintiff,

19 vs.

20 INTEGRATED NATIONAL
21 RESOURCES, INC. dba
22 WEEDGENICS, ROLF MAX
HIRSCHMANN aka "MAX
BERGMANN," PATRICK EARL
WILLIAMS,

23 Defendants, and

24 WEST COAST DEVELOPMENT LLC,
25 INR CONSULTING LLC (WYOMING
26 ENTITY), OCEANS 19 INC.,
27 AUTOBAHN PERFORMANCE LLC,
28 ONE CLICK GENERAL MEDIA INC.,
OPUS COLLECTIVE, JOHN ERIC
FRANCOM, INR-CA INVESTMENT
HOLDINGS, LLC, MICHAEL
DELGADO. TOTAL SOLUTION

Case No. 8:23-cv-00855-JWH-KES

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR ORDER:**

**(1) APPROVING RECEIVER'S
RECOMMENDED TREATMENT OF
CLAIMS (ALLOWED,
DISALLOWED, DISPUTED);**

**(2) APPROVING DISTRIBUTION
METHODOLOGY;**

**(3) APPROVING PROPOSED
DISTRIBUTION PLAN; AND**

**(4) APPROVING INTERIM
DISTRIBUTION.**

Date: January 16, 2026
Time: 9:00 a.m.
Ctrm: 9D
Judge: Hon. John W. Holcomb

1 CONSTRUCTION LLC, BAGPIPE
2 HOLDINGS LLC, BAGPIPE
3 MULTIMEDIA LLC, TYLER
4 CAMPBELL, INR CONSULTING LLC
(CALIFORNIA ENTITY), HIDDEN
5 SPRINGS HOLDINGS GROUP LLC,
and ALEXANDRIA PORTER BOVEE
aka "AIA MONTGOMERY",

Relief Defendants.

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1 Krista Freitag (the “Receiver”), the Court-appointed permanent receiver for
2 Defendant Integrated National Resources, Inc., dba Weedgenics, and Relief
3 Defendants West Coast Development LLC, INR Consulting LLC (Wyoming
4 Entity), Oceans 19 Inc., Autobahn Performance LLC, One Click General Media
5 Inc., Opus Collective, INR-CA Investment Holdings, LLC, Total Solution
6 Construction LLC, Bagpipe Holdings LLC, Bagpipe Multimedia LLC, INR
7 Consulting LLC (California Entity), and Hidden Springs Holdings Group LLC, and
8 their subsidiaries and affiliates (collectively the “Receivership Entities”), hereby
9 submits this Memorandum of Points and Authorities in Support of Motion for Order
10 (1) Approving Receiver’s Recommended Treatment of Claims (Allowed,
11 Disallowed, Disputed), (2) Approving Distribution Methodology, (3) Approving
12 Proposed Distribution Plan, and (4) Approving Interim Distribution (“**Motion**”).

13 I. INTRODUCTION

14 On February 5, 2025 and March 13, 2025, the Receiver filed and the Court
15 approved the Receiver’s Motion for Order (1) Approving Procedures for the
16 Administration of Claims Against the Receivership Estate; (2) Setting Claims Bar
17 Date; and (3) Approving Claims Bar Date Notice and Proof of Claim Forms
18 (respectively, the “**Claims Motion**” and “**Claims Motion Order**”). Dkt. 307. 335.
19 The Receiver and her staff have worked diligently to implement the tasks set forth in
20 the Claims Motion and the Claims Motion Order, and such tasks are now complete.

21 On or before April 21, 2025, the Receiver sent out the Claims Bar Date
22 Notices, Proof of Claim Forms, and W9 forms to all known Claimants of the
23 receivership estate, informing them of the June 20, 2025 deadline to submit claims
24 “**Claims Bar Date**” (the documents were mailed and emailed on or before April 21,
25 2025, or 60 days prior to the Claims Bar Date). The Receiver then sent notices to
26 Claimants of deficiencies or specific claim disputes (“**Deficiency Notifications**”), as
27 applicable, by September 18, 2025 (within 90 days of the Claims Bar Date).
28

1 The Receiver's forensic accounting, conducted pursuant to the Court's orders,
2 preliminarily determined the amount of money-in, money-out ("**MIMO**") net loss
3 suffered by each prospective Investor Claimant in the Scheme. With no legitimate
4 operations, the Receiver identified prospective vendors and other third-party
5 claimants ("**Trade Creditors**" or "**Tax Creditors**", as applicable), who provided
6 goods or services to or may have incurred tax liabilities associated with the
7 Receivership Entities. The Receiver has now completed her analysis of all claims
8 submitted, makes recommendations herein regarding the allowed amount for each
9 claim, and also recommends approval of a plan for distributing receivership estate
10 funds ("**Distribution Plan**").

11 Pursuant to the proposed Distribution Plan, which is attached as **Exhibit A** to
12 the Declaration of Krista L. Freitag filed herewith ("**Freitag Decl.**"), holders of
13 Allowed Claims will receive distributions from funds on-hand, based on application
14 of the Rising Tide method of distribution, which is discussed further below.¹

15 By this Motion, the Receiver seeks confirmation of the holders of Allowed
16 Claims, the amount of each Allowed Claim, as well as approval of the Distribution
17 Plan by which the funds will be paid. As discussed below, the Receiver also
18 proposes a streamlined process for making an interim distribution pursuant to the
19 Distribution Plan.

20 **II. FACTUAL BACKGROUND**

21 On May 16, 2023, the United States Securities and Exchange Commission
22 ("Commission" or "SEC") filed a Complaint which alleges Defendants Integrated
23 National Resources, Inc. dba Weedgenics, Rolf Max Hirschmann aka "Max
24 Bergmann" and Patrick Earl Williams perpetrated a large-scale fraud, raising over
25 \$61 million from approximately 350 investors from June 2019 to April 2023
26

27 ¹ Initial capitalized words that are not specifically defined herein shall have the
28 meaning or definition set forth in the Distribution Plan.

(including over \$22 million in the six-month period from November 2022 to April 2023). As alleged in the Complaint, Defendants claimed that investor funds would be used to develop and expand a cannabis cultivation facility in Adelanto, California and that the development and expansion would generate regular interest payments to the investors, that the cultivation facilities in both California and Nevada were profitable and making millions in revenue each year, and that the investments were both stable and guaranteed. Defendants also represented that they had the requisite licenses and permits necessary to operate such facilities. In truth, all of this was a sham (also referred to herein as the “Scheme”).

On May 19, 2023, this Court entered the Temporary Restraining Order and Orders: (1) Freezing Assets; (2) Appointing a Temporary Receiver; (3) Requiring Accountings; (4) Prohibiting the Destruction of Documents; and (5) Granting Expedited Discovery; and Order to Show Cause why a Preliminary Injunction should not be Granted and a Permanent Receiver should not be Appointed. (the “Temporary Restraining Order” or “TRO”). (Dkt. 17).

Subsequently, the Court entered Preliminary Injunction Orders as follows:

1. June 2, 2023 - as to Defendants Integrated National Resources Inc. dba WeedGenics (“INR”), Rolf Max Hirschmann aka “Max Bergmann” (“Hirschmann”), and Patrick Earl Williams (“Williams”), and various Relief Defendants, including West Coast Development LLC (“WCD”), INR Consulting LLC (Wyoming Entity) (“INR Consulting/Williams”), Oceans 19 Inc. (“Oceans 19”), Autobahn Performance LLC (“Autobahn”), One Click General Media Inc. (“One Click”), and Opus Collective (“Opus”). Dkt. 33. This order made the receivership permanent as to the listed entities.

2. June 9, 2023 – as to Relief Defendants Michael Delgado, Total Solution Construction LLC (“TSC”), Bagpipe Holdings LLC (“Bagpipe Holdings”) and Bagpipe Multimedia LLC (“Bagpipe MM”). Dkt. 48. This order made the receivership permanent as to TSC, Bagpipe Holdings, and Bagpipe MM.

1 3. June 9, 2023 – as to Relief Defendants Tyler Campbell, INR
2 Consulting LLC (California Entity) (“INRC”), and Hidden Springs Holdings Group
3 LLC (“Hidden Springs”). (Dkt. 49). This order made the receivership permanent as
4 to INRC and Hidden Springs.

5 4. June 29, 2023 - as to Relief Defendants John Eric Francom and INR-
6 CA Investment Holdings, LLC’s (“INR-CA”) (Dkt. 95). This order made the
7 receivership permanent as to INR-CA.

8 5. July 13, 2023 – as to Relief Defendant Alexandria Porter Bovee AKA
9 “Aia Montgomery.”

10 The appointment orders directed the Receiver to make an accounting, as soon
11 as practicable. Accordingly, the Receiver completed her (a) review and analysis of
12 the bank records, and books and records of the numerous Receivership Entities,
13 (b) evaluation of the Scheme’s sources of funds, and (c) evaluation of the Scheme’s
14 use of funds. The “**Forensic Accounting Report**”, filed on October 31, 2024
15 (Dkt. No. 289), summarizes the voluminous transactional history of the
16 Receivership Entities’ bank accounts for the period from June 20, 2019 through
17 May 19, 2023. Freitag Decl. ¶ 2.

18 **III. IMPLEMENTATION OF THE CLAIMS PROCESS**

19 As noted above, the Court approved the Receiver’s Claims Motion on
20 March 13, 2025. The Claims Motion Order directed the Receiver to send Claims
21 Bar Date Notices, Proof of Claim Forms, and W9 forms to Claimants no later than
22 April 21, 2025. In the Proof of Claim Forms sent to all known prospective Investor
23 Claimants, the Receiver embedded a Unique Identifier and a schedule showing the
24 Receiver’s MIMO Net Loss calculation, which included transaction level detail, as
25 well as each Investor Claimant’s total Money In (all payments into the Scheme from
26 Investor Claimants), total Money Out (total payments made to Investor Claimants
27 from the Scheme) and Prior Recovery Rate (calculated as Total Money Out divided
28 by Total Money In). Prospective Investor Claimants were also invited to provide

1 additional documentation for review and evaluation in the event they disputed the
2 Receiver's calculation of their MIMO Net Loss and all Prospective Investor
3 Claimants were provided with a secure method of and instructions for transmitting
4 the documents via an electronic portal such that any personal financial information
5 contained in the documents is protected. All known prospective Investor Claimants
6 for whom an email address was known were sent an email regarding the Proof of
7 Claim Forms; an additional 39 hard copies were mailed via USPS priority. A total of
8 38 Proof of Claim Forms were also mailed via USPS priority to known and potential
9 trade and tax creditors. Freitag Decl. ¶ 3.

10 The Forensic Accounting Report reflected that there were approximately 380
11 unique losing investors, with an aggregate net loss of approximately \$44.7 million
12 (approximately \$62.8 million put into the Scheme and approximately \$18.2 million
13 paid out from the Scheme). Having now completed the claims process, the final
14 accounting reflects that 307 unique investors, 303 of whom were losing Investor
15 Claimants,² paid approximately \$61 million into the Scheme and received
16 approximately \$16 million from the Scheme. After adjusting for the "Net
17 **Winners**" - Investor Claimants with Prior Recovery Rates of more than 100% - the
18 aggregate pre-receivership MIMO Net Loss is approximately \$45 million. Freitag
19 Decl. ¶ 4.

21 ² There are several reasons why the Forensic Accounting Report and investor-
22 specific numbers presented herein differ. For example, certain investors invested
23 through aggregators (among others, there were two primary groups with dozens
24 of investors who invested through aggregators), through different (but affiliated)
25 entities, through personal accounts, and retirement custodial accounts, or joint
26 accounts. When the Forensic Accounting Report was filed, it generally reflected
27 each of these as a unique investor; however, as anticipated, during the claims
28 process, many affiliated investments (*i.e.* multiple investments with the same
beneficial owner) and individuals who invested through aggregators have been
recategorized.

1 With respect to Trade Claims and Tax Claims, the total non-investor claims
2 filed (which were all Trade Claims) is approximately \$26,000.

3 **IV. THE RISING TIDE DISTRIBUTION METHOD**

4 Unlike a pro-rata distribution approach in which each claimant receives a set
5 percentage of their net loss, the Rising Tide distribution method brings all claimants
6 up to the same level of recovery. Rising Tide is the most equitable and appropriate
7 distribution method in this case primarily because Prior Recovery Rates vary widely
8 from investor to investor. Prior to the receivership, as further discussed below,
9 certain Investor Claimants received payments from the Scheme reflecting a return of
10 more than 100% of their actual payments made to Scheme, while others received no
11 payments from the Scheme at all. Accordingly, the Receiver determined the Rising
12 Tide distribution method to be the approach best suited for the equitable treatment
13 of all holders of Allowed Claims. Freitag Decl. ¶ 5.

14 The Rising Tide distribution method enables the Receiver to bring all holders
15 of Allowed Claims, to the greatest extent possible, up to an equivalent rate of
16 recovery of their net losses, thereby minimizing instances in which one claimant is
17 proportionally better off or worse off than others. Attached to the Freitag Decl. as
18 **Exhibit B** is a narrative description of the Rising Tide method, along with an
19 illustrative example. Freitag Decl. ¶ 6.

20 **V. RESULTS OF THE CLAIMS PROCESS**

21 As a result of the Receiver and her team's forensic accounting work and
22 diligent efforts executing a streamlined claims process, the vast majority of Investor
23 Claimants (296 investors or just under 98% of the 303 losing investors) accepted the
24 Receiver's calculations. Only two (2) investors ultimately are disputing their
25 MIMO Net Loss calculations. Another five (5) investors either failed to respond or
26 failed to file a claim (despite repeated attempts to contact them). Freitag Decl. ¶ 7.

27
28

Attached as **Exhibit C** to the Freitag Decl. is a table reflecting all recommended Allowed Claims of Investor Claimants; this table includes 298 Unique Identifiers (303 losing investors less the five (5) who failed to file a claim), and each associated Investor Claimant's claim details. Freitag Decl. ¶ 8. The following table summarizes the Investor Claimant claims process results:

Final Number of Unique Pre-Receivership Losing Investors	Unique Investor Claimant (pre-receivership) Net Winners (not included in the 304 number)	Receiver's Recommended Number of Investor Claimants with Allowed Claims	Receiver's Recommended Number of Investor Claimants with Disallowed Claims
303	4	298	9 ³

A. Disputed Investor Claims Recommended For Allowance At Receiver's MIMO Net Loss Amount.

1. Disputes Concerning MIMO And Net Loss Calculations

Two (2) Investor Claimants disputed the Receiver's MIMO Net Loss calculation or the applicability of MIMO to their claims, each of which is discussed below. In each case where the Receiver identified a dispute with regard to the amount of a claim, the Receiver attempted to resolve the dispute through various communications requesting proof of a payment into the Scheme and/or describing how the Courts typically treat these types of disputes.⁴ Attached as **Exhibit D** to the Freitag Decl. is a table reflecting these disputes. The Receiver recommends that all of these claims be allowed at the Receiver's MIMO Net Loss amounts, as reflected

³ This number reflects the four (4) Net Winners and the five (5) prospective Investors Claimants who did not file a claim.

⁴ The Receiver and her staff worked diligently with Investor Claimants to address all questions or disputes to the transactional details making up the net loss calculation; all but these three were resolved/ultimately agreed upon. These two unresolved disputes are not recommended as Disallowed Claims but rather are recommended at the Receiver's net loss amount.

1 on Exhibit C to the Freitag Decl. Freitag Decl. ¶ . The following is a description of
2 these disputes:

3 One Investor Claimant [Unique Identifier 110] disputes the Receiver's
4 calculation, arguing that amounts above and beyond his MIMO net loss should be
5 added to his claim. However, in the Claims Motion, the Receiver proposed and the
6 Court approved the use of the MIMO net loss formula as the appropriate means of
7 calculating all Investor claims. Dkt. 307, 335. The MIMO formula has been
8 endorsed by the Ninth Circuit Court of Appeals and other courts in fraud cases
9 where, like here, the assets of the estate may well be insufficient to pay all claims in
10 full. *See Capital Consultants*, 397 F.3d at 738 (describing a net claim calculation as
11 "an administratively workable and equitable method of allocating the limited assets
12 of the receivership"); *Topworth*, 205 F.3d at 1116; *In re Tedlock Cattle Company*
13 *Inc.*, 552 F.2d 1351, 1354 (9th Cir. 1977); *In re Taubman*, 160 B.R. 964, 980-82
14 (Bankr. S.D. Ohio 1993). Thus, at least initially, only the amounts deposited into
15 the Receivership Entities by investors (directly or indirectly) and distributed from
16 the Receivership Entities to investors (directly or indirectly) should be used to
17 determine allowed claim amounts. Unless and until there are sufficient amounts in
18 the receivership to pay all MIMO claims in full (which presently there are not), all
19 additional amounts claimed by investors (such as interest, lost profits, attorney fees,
20 etc.) should be disallowed.. As such, the Receiver recommends this claim be
21 allowed as calculated by the Receiver. Freitag Decl. ¶ 9.

22 One Investor Claimant [Unique Identifier 26] disputes the Receiver's use of
23 MIMO. In this case, the Investor Claimant seeks exceptions or special treatment of
24 his investment. He is primarily arguing that because the Scheme was a fraud, that
25 his Money Out (the money he received from the Scheme) should not be netted
26 against his Money In. In other words, under his view, the total money he put into
27 the Scheme should be his claim amount. Despite repeated attempts to help this
28 investor understand how MIMO works and how it is supported by case law, the

1 investor communicated that he will not agree to his MIMO Net Loss amount.
2 Freitag Decl. ¶ 10. His arguments are contrary to the use of the MIMO and Rising
3 Tide methods. One of the primary benefits of the MIMO formula is that it is simple
4 and efficient, treats all investors' transactions the same way. and the Court is not
5 required to make time-consuming, fact-specific judgments about whether one
6 similarly situated investor is more deserving than another, or other subjective factors
7 relating to transactions that occurred many years ago. As noted above, at least
8 initially, the amounts deposited into the Receivership Entities by investors (directly
9 or indirectly) and distributed from the Receivership Entities to investors (directly or
10 indirectly) should be used to determine all allowed claim amounts. Unless and until
11 there are sufficient amounts in the receivership to pay all MIMO claims in full
12 (which presently there are not), any variance to the MIMO calculation should be
13 disallowed. Efficiency is critical in this claims process due to the need to conserve
14 receivership estate funds for distribution. Accordingly, the Receiver recommends
15 that the claim of this Investor Claimant be allowed as calculated by the Receiver,
16 according to the approved MIMO formula. As noted above, this dispute is included
17 on **Exhibit D** to the Freitag Decl. Freitag Decl. ¶ 11.

18 **B. Recommendations Regarding Trade And Tax Claims.**

19 Attached as **Exhibit E** to the Freitag Decl. is a table reflecting all Trade
20 Creditor Claims submitted, and the Receiver's recommended treatment thereof.
21 Freitag Decl. ¶ 12. The following table summarizes the Trade Creditor and Tax
22 Creditor claims process results:

Trade * Tax Creditor Notices Sent	Trade Creditor Claims Received	Trade Creditor Claims Recommended as Allowed
38	2	2

1 **VI. PROPOSED DISTRIBUTION PLAN**

2 As noted above, the proposed Distribution Plan is attached as **Exhibit A** to
3 the Freitag Decl. The sources of funds to be distributed, net of unpaid and
4 anticipated Administrative Expenses, are the General Receivership Funds - all funds
5 recovered by the Receiver during the course of the receivership.

6 The key provisions of the Distribution Plan include that (a) the General
7 Receivership Funds will be distributed to all holders of Allowed Claims (investors
8 and trade creditors) and (b) distributions will be made using the Rising Tide
9 Distribution methodology.

10 At this point, in light of pending and anticipated third-party recovery
11 litigation and the remaining assets to be monetized, it is not feasible for the Receiver
12 to determine or propose a *final* amount of General Receivership Funds for
13 distribution. That said, the Receiver does hereby propose to make an interim
14 distribution of General Receivership Funds.

15 **VII. INTERIM DISTRIBUTION**

16 The Receiver has carefully considered the receivership estate's potential
17 obligations, along with the work remaining to be done in administering the
18 receivership estate, pending litigation matters (including the unknowns associated
19 with prospective third-party recovery litigation), outstanding and projected
20 administrative and operating expenses of the receivership, and other factors, and has
21 determined, in her business judgment and pursuant to the Distribution Plan, that
22 \$9 million of General Receivership Funds (as defined in the Distribution Plan's
23 Rising Tide Distribution Method) can safely be distributed to investors and trade
24 and tax creditors with Allowed Claims *at this time*. A schedule showing the interim
25 distribution amount to each holder of an Allowed Claim (identified using the same
26 unique identifiers assigned to claims during the receivership claims administration
27 process) is attached to the as Exhibit C to the Freitag Decl. Freitag Decl., ¶ 13.

28

1 The remaining approximately \$4 million in receivership funds (along with
2 future recoveries by the Receiver) will be held in reserve for the time being. The
3 remainder of the cash reserve represents a conservative contingency reserve given
4 the various unknowns and potential unforeseen expenses remaining in this case and
5 will cover outstanding and projected administrative and operating expenses to
6 complete the Receiver's remaining work (including pending litigation matters).
7 Freitag Decl., ¶ 14.

8 This interim distribution of \$9 million will take investor and trade creditor
9 claimants with Allowed Claims' first interim Distribution Recovery Rate to
10 approximately 35.188% and will provide distribution payments to approximately
11 78% of (or 232 of the 298) investors with allowed claims. A total of 66 investor
12 claimants with Allowed Claims have prior recovery rates of greater than 35.188%⁵
13 and thus, will not receive a payment as part of this first interim distribution. The
14 proposed interim distribution will take the average recovery rate to 40.039%.
15 Freitag Decl., ¶ 15.

16 Once the Receiver's work is close to completion, the Receiver will seek final
17 approval of all outstanding fees and costs of the receivership, as well as authority to
18 make a final distribution of General Receivership Funds. In the event it becomes
19 appropriate to distribute additional General Receivership Funds on an interim basis
20 prior to the substantial completion of the Receiver's work, the Receiver would
21 propose and seek authority to make a second interim distribution via noticed motion.
22 Freitag Decl., ¶ 16.

27 ⁵ 38 of whom have a Prior Recovery Rate of over 50% and the max Prior
28 Recovery Rate for losing investors is 95.14%.

VIII. ARGUMENT

**A. This Court Has Broad Discretion In the Administration Of Claims
Against Receivership Estates.**

“The power of a district court to impose a receivership or grant other forms of ancillary relief does not in the first instance depend on a statutory grant of power from the securities laws. Rather, the authority derives from the inherent power of a court of equity to fashion effective relief.” *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). The “primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors.” *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment of a receiver is authorized by the broad equitable powers of the court, any distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*, 953 F.2d 1560, 1569 (11th Cir. 1992).

District courts have the broad power of a court of equity to determine the appropriate action in the administration and supervision of an equity receivership. *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth Circuit explained:

A district court’s power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. The district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership. The basis for this broad deference to the district court’s supervisory role in equity receiverships arises out of the fact that most receiverships involve multiple parties and complex transactions. A district court’s decision concerning the supervision of an equitable receivership is reviewed for abuse of discretion.

Id. (citations omitted); *see also CFTC v. Topworth Int’l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) (“This court affords ‘broad deference’ to the court’s supervisory role, and ‘we generally uphold reasonable procedures instituted by the district court that serve th[e] purpose’ of orderly and efficient administration of the receivership for the benefit of creditors.”).

1 **B. The Court Has The Authority And Should Approve The Receiver's**
2 **Proposed Allowed Amount Of Claims.**

3 District courts overseeing receiverships have the general power to employ
4 summary procedures in allowing, disallowing, and subordinating the claims of
5 creditors. *United States v. Arizona Fuels Corp.*, 739 F.2d 455, 458 (9th Cir. 1984);
6 *Hardy*, 803 F.2d at 1040 (summary proceeding to approve categorization scheme for
7 investors' claims was reasonable; fair notice and a reasonable opportunity to
8 respond was given); *Elliot*, 953 F.2d at 1571 (summary claim determinations upheld
9 where claimants cannot demonstrate their rights would have been better protected
10 by an extended proceeding). As part of its oversight, the District Court may "make
11 rules which are practicable as well as equitable." *Hardy*, 803 F.2d at 1039, (quoting
12 *First Empire Bank-New York v. FDIC*, 572 F.2d 1361, 1368 (9th Cir. 1978)).

13 Here, all claims of Investor Claimants were calculated using the simple
14 MIMO formula that limits claims to each investor's net loss from the Scheme. As
15 discussed above, the MIMO formula has been endorsed by the Ninth Circuit and
16 other courts in fraud cases where, like here, the assets of the estate are insufficient to
17 satisfy all claims in full. *See Capital Consultants*, 397 F.3d at 738 (describing a net
18 claim calculation as "an administratively workable and equitable method of
19 allocating the limited assets of the receivership"); *Topworth*, 205 F.3d at 1116; *In re*
20 *Tedlock Cattle Company Inc.*, 552 F.2d 1351, 1354 (9th Cir. 1977); *In re Taubman*,
21 160 B.R. 964, 980-82 (Bankr. S.D. Ohio 1993).

22 As to Trade Creditor Claimants, the Receiver proposed in the Claims Motion
23 that all claims for accrued or unpaid interest, late fees, attorney fees, consequential
24 damages or lost profits arising from non-payment, and punitive or tort damages be
25 disallowed. This proposal was approved in the Claims Motion Order. This
26 treatment places Investor Claimants and non-investors on similar footing, limiting
27 all claims to losses of principal (or out-of-pocket losses) as opposed to consequential
28 damages.

1 **C. The Receiver’s Recommendations Regarding Disputed Claims**
2 **Should be Approved.**

3 The applicable law and analysis supporting the Receiver’s objections to
4 specific claims is laid out above. As noted above, in the context of receiverships, in
5 which conserving receivership resources is critically important, it is appropriate for
6 the Court to determine the allowed amount of claims, and relative priority of claims,
7 via summary proceedings. *Arizona Fuels*, 739 F.2d at 458. Claimants who wish to
8 file oppositions and present their arguments should be afforded the opportunity to do
9 so, consistent with due process. The Court should then make determinations as to
10 Allowed Claims such that the receivership can progress and an interim distribution
11 of receivership funds can be made in the near term.

12 **D. The Application Of Rising Tide To Anticipated Distributions Is**
13 **Appropriate Here.**

14 The Receiver believes the Rising Tide Distribution methodology, which
15 levels the playing field and takes into account the disparate amounts already
16 recovered by investors, is the most equitable distribution method in this case. This
17 method has been endorsed by courts as a fair and equitable method of distributing
18 receivership assets in fraud cases, especially where it results in only a small
19 percentage of investors not sharing in the distribution. *See SEC v. Huber*, 702 F.3d
20 903 (7th Cir. 2012); *United States v. Cabe*, 311 F. Supp. 2d 501, 509 (D.S.C. 2003);
21 *CFTC v. Wilson*, 2013 WL 3776902, *7 (S.D. Cal. July 17, 2013).

22 In *Huber*, the Seventh Circuit Court of Appeals compared the rising tide
23 method to the net loss method and found that rising tide “appears to be the method
24 most commonly used (and judicially approved) for apportioning receivership
25 assets.” *Huber*, 702 F.3d at 906; *see also Wilson*, 2013 WL 3776902, at 7 (“the
26 Court concludes the Rising Tide Method is the most equitable remedy available”).
27 The Seventh Circuit went on to say:
28

1 The more investors in a Ponzi scheme there are who
2 would receive nothing under rising tide and might
3 therefore have difficulty paying their future expenses, the
4 more likely the net loss method is to maximize the overall
5 utility of the investors. But only 18 percent of the
6 investors in Huber's scheme receive nothing under rising
7 tide, and so in this case that method is an acceptable
8 alternative to net loss.

9 *Huber*, 702 F.3d at 907.

10 Here, the amounts, on a percentage of funds invested basis, that Investor
11 Claimants received back vary widely (from 0% to over 100%). In order to ensure
12 that Investor Claimants are treated as equally as possible, Investor Claimants should
13 be brought to an equitable recovery rate "base line" before additional distributions,
14 over and above that "base line" are made. The only means of accomplishing this is
15 to apply the Rising Tide methodology to the Receiver's contemplated distributions
16 on allowed investor claims. Moreover, many investors (50) had less than a 5% Prior
17 Recovery Rate (many of those with 0%) while, as previously noted, more than 38
18 had Prior Recovery Rates above 50%, with some over 90%. With the proposed
19 interim distribution, 232 of the 298 Investor Claimants will receive a first interim
20 distribution payment.

21 The other distribution method sometimes used in federal equity receiverships
22 – the pro-rata distribution method – does not take into account the fact that some
23 investors received little or no recovery from the Scheme, whereas other investors
24 had already recovered a significant amount of their net losses from the Scheme prior
25 to the receivership. Accordingly, the Rising Tide method is the most fair and
26 equitable distribution method in this case.

27 **IX. CONCLUSION**

28 For the foregoing reasons, the Receiver respectfully requests that this Court
enter an order:

1. Granting the Motion in its entirety;
2. Allowing claims as set forth on Exhibits "C and E" to the Freitag Decl.;

3. Disallowing or reducing claims as set forth on Exhibits “D” to the Freitag Decl.;

4. Approving the Distribution Plan attached as Exhibit “A” to the Freitag Decl.; and

5. Authorizing the Receiver to issue an interim distribution as provided for in the Distribution Plan and Exhibit C to the Freitag Decl.

Dated: November 17, 2025

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