UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.,

Defendants. CASE NO.: 8:09-cv-0087-T-26TBM

SCOOP REAL ESTATE, L.P.,
VALHALLA INVESTMENT PARTNERS, L.P.,
VALHALLA MANAGEMENT, INC.,
VICTORY IRA FUND, LTD,
VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT, LLC.

Relief Defendants.
_____/

RECEIVER'S MOTION TO (1) APPROVE DETERMINATIONS AND PRIORITY OF CLAIMS, (2) POOL RECEIVERSHIP ASSETS AND LIABILITIES, (3) APPROVE PLAN OF DISTRIBUTION AND (4) ESTABLISH OBJECTION PROCEDURE

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Burton W. Wiand, as Receiver (the "**Receiver**") for Quest Energy Management Group, Inc. ("**Quest**" or the "**Receivership Entity**"), respectfully moves this Court for an order:

- approving his determinations and priority of claims as set forth in this motion and in attached **Exhibits B** through **H**;
- pooling all assets and liabilities of Quest;
- approving a plan of distribution;
- establishing a procedure for objections to the Receiver's determinations of claims, claim priority, and plan of distribution; and
- barring and enjoining any further claims against or other efforts to enforce or otherwise collect on any lien, debt, or other asserted interest in or against the Receivership Entity, Receivership property, the Receivership estate, or the Receiver.

While it is necessary to resolve all submitted claims, it is important to note that the Receiver anticipates that any distribution of Receivership funds will be modest at best. Given the state of the oil and gas industry, coupled with lower than expected oil and gas production, the Receiver believes that after payment of Receivership fees and expenses, secured property tax liens, and other secured claims, there will be few, if any, funds remaining to distribute to Quest's investors.

The Receiver is endeavoring to conduct this claims process in a cost-effective manner given Quest's limited assets. This task has been complicated by Quest's failure to maintain adequate books and records or a customary accounting system. Given these limitations, the Receiver has made the claim determinations discussed in this motion and its exhibits based on the records available to him and did not undertake the very costly

expense of having a forensic accountant reconstruct the flow of funds through the Receivership Entity.

One prong of the relief sought by this motion should be emphasized: the Receiver seeks to establish an objection procedure. That procedure provides claimants the opportunity to object to their respective claim determinations, claim priority, and the plan of distribution through an orderly and fair process. If the Receiver and claimants are unable to resolve any objections, then the Receiver will submit any such objections to the Court for adjudication in an efficient manner, thus avoiding piecemeal adjudication of objections and conserving both the Court's and the Receivership's time and limited resources. The Court's approval of matters requested in this motion is necessary to begin this process. Any objection to claim determinations, claim priority, or the plan of distribution directly filed in Court in response to this motion should be denied without prejudice to its submission to the Receiver in accordance with the pertinent parameters set forth in Section IV of this motion.

BACKGROUND

On January 21, 2009, the Securities and Exchange Commission ("**SEC**") instituted this enforcement action following the collapse of a massive Ponzi scheme (the "**scheme**") perpetrated by Arthur Nadel ("**Nadel**") through various hedge funds (the "**Hedge Funds**") from 1999 until January 2009. That same day, the Court entered an order appointing Burton W. Wiand as Receiver for Defendants Scoop Capital and Scoop Management, Inc., and Relief Defendants Scoop Real Estate, L.P.; Valhalla Investment Partners, L.P.; Valhalla Management, Inc.; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; Viking IRA Fund,

LLC; Viking Fund, LLC; and Viking Management, LLC (Doc. 8) (the "**Order Appointing Receiver**"). As part of the scheme, Nadel and his purported business partners, Neil and Christopher Moody (collectively, the "**Moodys**"), paid themselves more than $90 million in bogus management and performance fees based on fabricated asset values and performance data. As a result of that conduct, Nadel was charged and pled guilty to securities, mail, and wire fraud, and died in prison while serving a 14-year sentence.

During the course of the ten-year scheme, Nadel and the Moodys used scheme proceeds – money stolen from the Hedge Funds' investors – to found or otherwise fund numerous businesses. Since the inception of this Receivership and in accordance with his mandate to marshal assets for the benefit of defrauded investors, the Receiver has successfully sought expansion of the Receivership to include those businesses.[1] Quest is one such entity that was funded in large part with scheme proceeds.

Quest is an oil and gas exploration and production company based in Albany, Texas. Paul Downey was its Chief Executive Officer, and his son Jeffry Downey was its Chief Operating Officer (collectively, the "**Downeys**"). The Moodys, through Receivership Entity Viking Oil & Gas, LLC ("**Viking Oil**"), used scheme proceeds of $4 million to fund Quest. Through Hedge Fund Valhalla Investment Partners, L.P. ("**Valhalla**"), the Moodys funneled an additional $1.1 million to Quest in exchange for a

[1] Those businesses include Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; Laurel Mountain Preserve Homeowners Association, Inc.; Marguerite J. Nadel Revocable Trust UAD 8/2/07; Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; A Victorian Garden Florist, LLC; Viking Oil & Gas, LLC; Home Front Homes, LLC; Traders Investment Club; Summer Place Development Corporation; Respiro, Inc.; and Quest.

promissory note from Quest and the Downeys to Valhalla. In February 2009, the Receiver began communications with the Downeys to recover the scheme proceeds transferred to Quest. After considerable time and effort, the Receiver reached a conditional agreement to resolve his claims against Quest dependent upon receipt of $2.3 million from Quest. Quest failed to make this payment and ignored the Receiver's repeated demands for payment. In February 2013, Quest informed the Receiver it was having cash flow problems. On March 21, 2013, the Receiver moved to expand the Receivership to include Quest. (Doc. 993.) On May 24, 2013, the Court granted the Receiver's motion and held that Quest is "specifically included within the ambit of the Court's previous orders appointing and reappointing Burton W. Wiand as Receiver in this case." (Doc. 1024.)

As demonstrated by an enforcement action filed against the Downeys by the SEC on November 20, 2014, the Downeys ran Quest as a fraudulent scheme from the beginning. The SEC filed this enforcement action in the U.S. District Court for the Northern District of Texas against the Downeys and John M. Leonard, an individual who helped the Downeys raise money. *See S.E.C. v. P. Downey et al.*, Case No. 1:14-cv-185 (N.D. Tex.) (the "**Downey Enforcement Action**"). The SEC asserted claims against the Downeys for their violations of the anti-fraud provisions of the federal securities laws in connection with their activities on behalf of Quest. On July 25, 2016, the court presiding over the Downey Enforcement Action entered an order granting summary judgment in favor of the SEC on its claims against the Downeys. On September 29, 2016, the court granted the SEC's motion for remedies and entered final judgments as to all defendants. In addition to entering final judgments, the court also made specific findings as to the defendants,

including that Jeffry and Paul Downey (1) "raised $4.9 million from 17 investors in a fraudulent offering of securities"; (2) "acted with a high level of scienter, knowingly deceiving investors about virtually every aspect of the investment"; (3) concealed the Receiver's appointment from Quest's investors; and (4) exhibited "misconduct [that] was extremely egregious." *S.E.C. v. P. Downey et al.*, Case No. 1:14-cv-185, Order granting SEC's motion for summary judgment, Doc. 117, at 2-3 (N.D. Tex. Sept. 29, 1996). The court ordered the Downeys to disgorge $4.9 million plus $1.1 million in interest and to pay a civil penalty of $178,156 each. The Downeys have not paid anything toward the disgorgement or penalty.

Pursuant to the Order Appointing Receiver, the Court empowered and authorized the Receiver to engage in certain activities, including to:

> 1. Take immediate possession of all property, assets and estates of every kind of the Defendants and Relief Defendants, whatsoever and wheresoever located belonging to or in the possession of the Defendants and Relief Defendants, including but not limited to all offices maintained by the Defendants and Relief Defendants (including all buildings, structures and other property), rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the Defendants and Relief Defendants wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court . . . .
>
> 3. Present to this Court a report reflecting the existence and value of the assets of the Defendants and Relief Defendants and of the extent of liabilities, both those claimed to exist by others and those the Receiver believes to be legal obligations of the Defendants and Relief Defendants.

In accordance with the terms of the Order Appointing Receiver, on April 20, 2010, the Receiver instituted a claims process for all claimants holding claims against the other entities in this Receivership arising in any way out of the activities of those entities (the "**Hedge Funds Claims Process**"). The Receiver has operated the Quest Receivership separately from the operations and activities of the Nadel Receivership. The Quest Receivership has not financially impacted the performance of the Nadel Receivership. Accordingly and as explained in detail below, the Receiver determined that a separate claims process was appropriate for Quest.

PROCEDURAL BACKGROUND

On June 15, 2016, the Receiver filed a motion to (1) Approve Procedure to Administer Claims and Proof of Claim Form, (2) Establish Deadline for Filing Proofs of Claim, and (3) Permit Notice by Mail and Publication (the "**Claims Motion**"). On June 17, 2016, the Court granted the Claims Motion in its entirety and established a Claim Bar Date (as defined in the Claims Motion) of 90 days from the mailing of Proof of Claim Forms (as also defined in the Claims Motion) to known possible claimants.

Pursuant to the Court's order, any person or entity who failed to submit a proof of claim to the Receiver so that it was received on or before the Claim Bar Date is forever barred and precluded from asserting any claim against the Receivership or Quest. That order further authorized the Receiver to provide sufficient and reasonable notice (1) by mail to the last known addresses of all known potential claimants; (2) by publication on one day in the national edition of The USA Today and in The Abilene Reporter-News; and (3) by publication on the Receiver's website (www.nadelreceivership.com).

In compliance with that order, on June 14, 2016, the Receiver mailed 501 claim packages to known investors and their attorneys, if any, and any other known potential creditors of the Receivership estate, thereby establishing **October 12, 2016, as the Claim Bar Date**. Each package included a cover letter, claims process instructions, and a Proof of Claim Form. The Receiver published notice of the claims process in the form approved by the Court in the national edition of The USA Today and in The Abilene Reporter-News on August 8, 2016. He also published and provided all pertinent documents for the claims process on his website.

As of the date of this motion, the Receiver has received 72 claims from investors (the "**Investor Claimants**" or "**Investor Claims**"). The Receiver has also received 21 claims from other purported creditors (the "**Non-Investor Claimants**" or "**Non-Investor Claims**") for a total of 92 submitted claims (the "**Claims**"). The Receiver has received Investor Claims totaling approximately $17,012,780.79 and Non-Investor Claims totaling approximately $1,351,629.14, for a total claim amount of approximately $18,364,409.93.[2] The Receiver has reviewed all submitted claims and finalized his determinations of those claims.

The claims process approved by the Court for Quest is substantially similar to the Hedge Funds Claims Process with the exception that the Receiver did not include the

[2] These amounts do not include claims for unspecified amounts of interest, fees, or penalties, which were sought by some claimants. Further, some claimants did not specify the claim amount they are seeking. These numbers reflect the amounts to which claimants assert they are entitled and not the amounts the Receiver has determined are appropriate under law and equity.

claimants' investment amounts, distributions received, or any other information on the Proof of Claim Forms sent to known Quest investors and other potential claimants. As a result, the claimants bore the burden of submitting documentation supporting their claims.[3]

The Receiver identified deficiencies in certain Proof of Claim Forms and communicated with those claimants to resolve the majority of those deficiencies. There are six claims that have outstanding deficiencies (*see* Claim Nos. 29, 32, 33, 34, 35, and 44). Specifically, five of these claimants indicated on their Proof of Claim Forms that they had reached settlements with other parties in connection with their Quest investment but failed to disclose the amount of that recovery (*see* Claim Nos. 29, 32, 33, 34, and 35). As stated in **Exhibit E**, the Receiver has recommended that these claims be allowed in part, contingent on the claimant providing an affidavit setting forth the amount he or she recovered from any third party in connection with their investment within twenty (20) days from the date of the Court's order on this motion. Any amounts recovered will be added to such claimant's total payments if not already included and will reduce the claimant's allowed amount accordingly. Should the claimants fail to provide this information within the allowed time, the Receiver has recommended that the pertinent claim be denied.

One of these six claims was submitted by an incorporated endowment (*see* Claim No. 44). The president and founder of the endowment is a purported Quest sales agent. As noted in **Exhibit E**, the Receiver recommends that this claim be allowed contingent upon the receipt of an affidavit from the claimant identifying all beneficiaries of this endowment

[3] For the Court's ease of reference, a copy of a blank Proof of Claim Form is attached as **Exhibit A**.

and stating whether the sales agent will receive any funds from a distribution to this claim within twenty (20) days from the date of the order on this motion. If the claimant fails to provide the affidavit within the prescribed twenty day period, the Receiver recommends that this claim be denied. Further, if the sales agent is a beneficiary of the endowment, this claim or the portion of the claim which may benefit the agent, should be denied.

After filing this motion, the Receiver promptly will mail a letter giving notice of this motion to all claimants at the mailing address provided on each of their respective Proof of Claim Forms and to their attorneys, if any were identified. The letter will explain that this motion is available on the Receiver's website or, upon request, from the Receiver's office, and it also will advise each claimant of his, her, or its respective claim number.[4]

THE RECEIVER'S DETERMINATIONS AND FURTHER PLANS FOR ADMINISTERING THE CLAIMS PROCESS

The Court's power over an equity receivership and to determine appropriate procedures for administering a receivership is "extremely broad." *S.E.C. v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986); *see Fugazy Travel Bureau, Inc. v. State by Dickinson*, 188 So. 2d 842, 844 (Fla. 4th DCA 1966) ("The right of a receiver to settle claims and

[4] To minimize public disclosure of claimants' personal information and the risk that they are targeted by additional scams, the Receiver has assigned each claim a number. By a separately filed motion, the Receiver requested that he be allowed to file under seal a list disclosing the identity of each claimant associated with each claim number listed in **Exhibits B** through **H** instead of identifying the claimants by name in a public filing (Doc. 1362). The Court granted this motion on September 28, 2018 (Doc. 1363). However, in instances where the claimant's identity is important to the determination of a claim, this motion discloses that information.

compromise actions with the approval and sanction of the court is well recognized ...."); *S.E.C. v. Basic Energy & Affiliated Res. Inc.*, 273 F.3d 657, 668 (6th Cir. 2001); *S.E.C. v. Elliot*, 953 F.2d 1556, 1566 (11th Cir. 1992). The primary purpose of an equity receivership is to promote the orderly and efficient administration of the estate for the benefit of creditors. *Hardy*, 803 F.2d at 1038. The relief requested by the Receiver in this motion best serves this purpose.

I. THE RECEIVER'S DETERMINATION OF CLAIMS AND CLAIM PRIORITY

As discussed in the Claims Motion, a claim should be allowed if the claimant properly completed and timely filed a Proof of Claim Form, and (1) the claim arises out of Quest's activities; (2) losses recognized by law resulted from such activities; (3) any alleged claim and losses are consistent with the books and records available to the Receiver; and (4) no other ground exists for denying the claim. The Receiver has carefully reviewed all submitted claims and determined that each claim falls within one of five categories:

a) Property tax lien claims, which should be allowed in part and receive the highest priority among claims;

b) Secured claims, which should be allowed in part and receive the second highest priority but which also should be paid only from the proceeds of the sale of the collateral securing the claims, less fees and costs for maintaining and selling the assets;

c) Investor Claims, which should be allowed (in whole or in part) and should receive the highest priority among unsecured claims;

d) Unsecured Non-Investor Claims, which should be allowed but should be paid only after tax lien claims, secured claims, and Investor Claims have been paid in full; and

e) Claims that should be denied.

As detailed in **Exhibits B** through **H**, the Receiver has proposed an allowed amount for each claim which will be used to determine the claimant's share of distributions of Receivership assets (the "**Allowed Amount**"). The Receiver's determination of a claimant's Allowed Amount is not indicative of the amount the claimant actually will receive through distributions of Receivership assets. Rather, each claimant holding an allowed claim with an Allowed Amount greater than zero will be eligible for distributions on a *pro rata* basis depending on the priority of the claim (unless otherwise discussed in this motion), and ultimately may only receive a percentage of the claimant's Allowed Amount. For example, claims submitted by unsecured Investor Claimants and Non-Investor Claimants may receive no distributions despite having a positive Allowed Amount because, as discussed below in Section I.H., those claims have a lower priority than other claims.

As of February 26, 2019, the Receiver had approximately $87,092.33 in Quest's bank accounts. The Receiver does not have sufficient funds to warrant a distribution at this time, but will petition the Court for authority to conduct a distribution when funds are available. The Receiver anticipates that he will seek the Court's relief to close the Receivership and conduct a distribution of funds once a sale of Quest has been completed. The Receiver expects that he will conduct only one distribution of funds to claimants.

The Receiver considered each submitted claim to determine its claim category, with the goal that distribution of the Receivership's assets be equitable and fair among all claimants. Various types of claimants submitted claims, including but not limited to individual investors, sales agents, taxing authorities, royalty interest holders, and a financial

institution. The majority of claimants had no reason to know of the scheme underlying this case. Others were involved in the scheme or, at a minimum, should have recognized at least some of the numerous "red flags." To ensure fair and equitable treatment, the Receiver established the categories of claimants discussed in this motion through the review of (1) information each claimant provided, (2) the Receivership Entity's books and records, and (3) information obtained from non-parties.

The Receiver asks the Court to approve his recommended claim determinations as set forth in **Exhibits B** through **H**. Further, as the Claim Bar Date has passed and all claimants and other potential creditors have had appropriate notice of the claims process and an opportunity to file claims and to seek enforcement of any liens or other purported rights or interests in Receivership property, the Receiver asks the Court to issue an order (1) confirming that no further claims will be considered and (2) barring and enjoining any future claims against the Receivership Entity, Receivership property, the Receivership estate, or the Receiver, and any proceedings or other efforts to enforce or otherwise collect on any lien, debt, or other asserted interest in or against the Receivership Entity, Receivership property, or the Receivership estate. Such an order is critical to bring finality and is warranted in light of the ample time that has been available to address such matters.

A. Allowed In Part Tax Lien Claims Should Receive Highest Priority

Under the procedures set forth in the Claims Motion, the Receiver sent claims packages to several taxing authorities, advising them of their opportunity to submit a claim. The Receiver selected these recipients based on information in his possession indicating ties between the Receivership and those jurisdictions. Specifically, the Receiver sent

claims packages to the Internal Revenue Service ("**IRS**") and to state and certain county taxing authorities in Texas. The Receiver received claims from five taxing authorities: (1) Brown County Appraisal District, Brown County, Texas ("**Brown County**"); (2) The County of Callahan, Texas ("**Callahan County**"); (3) The County of Guadalupe, Texas ("**Guadalupe County**"); (4) Shackelford County Appraisal District, Texas ("**Shackelford County**"); and (5) The County of Denton, Texas ("**Denton County**"). (*See* Claim Nos. 1, 2, 3, 4, and 73, respectively, on **Exhibits B** and **G**.) With the exception of Denton County, these claims stem from taxes incurred from 2012 through 2016 on property and other assets owned or leased by Quest. The Denton County claim appears to be for taxes on vehicles and inventory for Quest Energy Services, Inc. This entity is not related to the Receivership Entity, and the claim should thus be denied. As specified in **Exhibit B**, the remaining four tax claims should be allowed in part as secured tax claims for only the amount of actual tax owed – not for any claimed penalties, interest, or other fees. Because the Claim Bar Date has long passed, the Court should order that the above taxing authorities are barred and precluded from asserting any further claims against the Receiver, the Receivership estate, or any Receivership Entity. *See Callahan v. Moneta Capital Corp.*, 415 F.3d 114, 117-18 (1st Cir. 2005) (potential claimants that did not submit claims by bar date lacked "standing to object to the adjudication of a pending claim in the Claims Disposition Order"); *S.E.C. v. Princeton Econ. Int'l Ltd.*, 2008 WL 7826694, *4 (S.D.N.Y. 2008) ("All persons or entities with a claim that failed to file a proof of claim prior to the Bar Date and were not excused from filing a proof of claim under the Plan are forever barred, estopped, and permanently enjoined."); *C.F.T.C. v. Wall St. Underground, Inc.*, 2007 WL 1531856, *4 (D. Kan. 2007)

(same). Enforcement of the Claim Bar Date against any future claim is necessary to allow the Receiver to proceed with his plan of distribution as discussed in Section III below.

B. Allowed In Part Secured Claims Should Receive The Second Highest Priority

The Receiver received secured claims that should be allowed in part from two entities that loaned money to Quest: (1) Van Operating Ltd. ("**Van Operating**") and (2) First National Bank of Albany ("**Bank of Albany**"). (*See* **Exhibit C**, Claim Nos. 5 and 6.) Van Operating submitted a claim for $795,201.59 based on a loan Quest assumed in 2007. (*See* Claim No. 6.) Specifically, Van Operating loaned Musselman Petroleum and Land Company and John. E. Musselman (collectively, "**Musselman**") $832,000 in 1998, which loan was secured by certain oil and gas leases and related equipment (the "**Musselman Loan**"). On January 1, 2007, Quest assumed the Musselman Loan along with Musselman's interests in the secured property. As part of that transaction, Quest entered into an "assumption, modification and renewal agreement" with Van Operating (the "**Renewal Note**"), pursuant to which the parties stipulated that, as of January 1, 2007, the outstanding principal balance of the Renewal Note was $832,000, which amount "shall bear interest at ten percent (10%) per annum."

Due to the Downeys' misappropriation of funds, Quest continually and repeatedly struggled to make payments required by the Renewal Note. For example, on August 24, 2010, Van Operating's Chief Financial Officer, Don Fitzgibbons, responded to an email in which Paul Downey suggested various repayment options: "Paul, as we discussed, we do not want to continue to be the payee of last resort. This issue has been outstanding much

longer than was ever contemplated." The Receiver and his professionals have identified numerous similar communications.

On December 29, 2011, Quest and Van Operating entered into a modification and renewal agreement, pursuant to which the parties stipulated that the outstanding principal balance of the Renewal Note was $652,005.86. The parties also extended the maturity date of the Renewal Note to March 31, 2012, and provided that Quest would cause the companies that purchased its oil and gas production to pay 50% of any future purchase amounts directly to Van Operating. Paul Downey personally guaranteed all indebtedness under the Renewal Note.

Between the issuance of the Renewal Note on January 1, 2007, and Quest's inclusion in this Receivership on May 24, 2013, Quest paid Van Operating $719,072.60, which includes total principal payments of $335,385.48 and total interest payments of $383,687.12. Van Operating thus has already received nearly 87% of the original loan amount. The Renewal Note's outstanding principal balance on or shortly before Quest's inclusion in this Receivership was $496,614.52. Van Operating arrives at its claim amount by adding $89,011.85 in legal fees and $207,157.50 in interest, the recovery of which would not be equitable under these circumstances. As set forth in **Exhibit C**, Van Operating's claim should be allowed but only in the amount of the outstanding principal balance of the Renewal Note at the time of the Receiver's appointment – *i.e.*, $496,614.52.

Bank of Albany submitted a claim for $198,250.14 plus unspecified "interest from 9/12/2013" based on two loans it made to Quest and the Downeys. First, on April 17, 2006, Bank of Albany loaned $76,000 to Quest, "by and through Jeff Downey, Vice-

President," for the purchase of certain real property in Shackelford County, Texas, from which the Downeys operated Quest (the "**Office**" and the "**Office Loan**"). (*See* Claim No. 5.)[5] On April 17, 2012, Bank of Albany and Quest entered into a "modification, renewal and extension" of the Office Loan, pursuant to which the parties acknowledged that the outstanding balance at the time of the modification was $52,463.74 and agreed to extend the loan's maturity date to April 17, 2015. Bank of Albany does not appear to have provided any new funds to Quest in connection with this modification and extension. As such and as set forth in **Exhibit C**, Bank of Albany's claim with respect to the Office Loan should be allowed in the amount of $46,522.00, which is the approximate outstanding principal balance of that loan at the time of the Receiver's appointment. But that amount should only be paid from the proceeds of the eventual sale of the Office, less fees and costs incurred by the Receivership to maintain and sell the property. Because the Receiver is entitled to compensation for these fees and costs, they should be deducted from the proceeds of the sale of the property first and then the remaining proceeds should be distributed to Bank of Albany up to the Allowed Amount.

Second, on October 13, 2010, Bank of Albany loaned Quest $700,000 (the "**2010 Loan**"), which was secured by certain oil and gas leases, personal property, and equipment.[6] The Downeys also personally guaranteed the 2010 Loan. On February 26,

[5] Bank of Albany loaned additional money to Quest (the balance of which it also seeks to recover through Claim No. 5), but as explained below, the portion of the bank's claim relating to that loan should be denied.

[6] The 2010 Loan succeeded a similar $600,000 loan Bank of Albany made to Quest in 2008 (the "**2008 Loan**") and a $500,000 loan it made to Quest in 2007 (the "**2007 Loan**"). (footnote cont'd)

2013, Bank of Albany and Quest entered into a "modification, renewal and extension" of the 2010 Loan, pursuant to which the parties acknowledged that the outstanding principal balance of the loan at the time of the modification was $213,057.30. The Court expanded this Receivership to include Quest shortly thereafter – on May 24, 2013, at which time the outstanding principal balance of the 2010 Loan was approximately $151,728. During the life of the 2010 Loan, Quest paid Bank of Albany approximately $555,739, which includes total principal payments of approximately $492,247 and total interest payments of approximately $63,492. Bank of Albany has thus already received nearly 80% of the original loan amount.

For the reasons summarized below, Bank of Albany knew or should have known that Quest was insolvent, at minimum, when it issued the 2010 Loan.

- Quest's financial viability was based, in substantial part, on the Moodys' (misappropriated) assets and purported creditworthiness, but Nadel's scheme collapsed in January 2009 – almost two years before the bank made the 2010 Loan.

- The Court expanded this Receivership to include Viking Oil & Gas, LLC on July 15, 2009.

- The SEC sued the Moodys on January 11, 2010, and this Court entered injunctive judgments against them on April 7, 2010. *See S.E.C. v. Neil V. Moody and Christopher D. Moody,* Case No. 8:10-cv-0053-T-26TBM (Docs. 1, 9, 9-1).

- Van Operating knew that Quest could not pay its debts as they became due, and that knowledge is chargeable to the bank because numerous individuals

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Quest repaid the 2007 Loan in full, and Bank of Albany received $43,683.99 of interest in connection with that loan. On October 13, 2010, a balance of $110,626.47 remained on the 2008 Loan, which appears to have been refinanced or otherwise combined with the 2010 Loan. Bank of Albany received $79,312.03 of interest from the 2008 Loan.

work for or are otherwise affiliated with both entities. For example, the Receiver has reviewed numerous emails between Don Fitzgibbons and the Downeys alternately asking them to make payments due under the Renewal Note and threatening legal action. As noted above, Mr. Fitzgibbons is Van Operating's CFO, but he is also Bank of Albany's "advisory director" for the oil and gas industry. Other individuals have similar dual roles.

- Bank of Albany never obtained complete records from Quest and the Downeys. The Receiver has reviewed numerous letters from 2008 through 2013 requesting missing financial statements and tax returns. Indeed, the bank's own "Criticized Asset Action Plan" faults the "lack of reliable financial information received" from Quest and the Downeys.

- And finally, Bank of Albany knew or at least suspected that the Downeys were operating Quest in a fraudulent manner. In one email the Receiver reviewed, a petroleum engineer the bank hired to evaluate Quest wrote that the company's oil and gas recovery estimates were "a little ambitious, IMO, about 30X!" In another email, the engineer wrote that Quest's monthly "overhead and supervision" costs "may be totally bogus…." Bank of Albany nevertheless issued the 2010 Loan.

Given these factors, Bank of Albany knew or should have known that Quest was insolvent and that the Downeys were operating Quest fraudulently. As such and as set forth in **Exhibit C**, Bank of Albany's claim with respect to the 2010 Loan should be denied. Bank of Albany should only recover the portion of its claim related to the Office and the Office Loan and only from the proceeds of the sale of that property after deducting the Receivership's fees and costs.

Courts regularly require that claims of secured creditors, like Bank of Albany and Van Operating, be satisfied only from the proceeds of the secured collateral. *See Petters*, 2011 WL 281031 at *3 (establishing separate group of creditors, which included banks holding secured loans, each of which received the specific assets assigned to it). If the value of the collateral is insufficient to satisfy the secured creditor's claim, that creditor may not recover the deficiency from the receivership's other assets. *See* Clark on

Receivers § 660(a) at 1155; *Byers*, 637 F. Supp. 2d at 183 (adopting distribution plan which "only permit[ted] secured creditors to recover out of their collateral" and "prohibit[ed] them from recovering under the [p]lan for their deficiency claims"). This rule exists because secured creditors typically enjoy a greater recovery, on a percentage basis, than defrauded investors and general creditors. *Id*. at 183 (quoting Official Comm. of Unsecured Creditors of WorldCom, Inc., 467 F.3d 73. Indeed, secured creditors have an advantage because they have an identifiable asset over which they enjoy priority in relation to other creditors, including defrauded investors. Accordingly, Bank of Albany's and Van Operating's claims should be paid only from the proceeds of the sale of their collateral (*i.e.*, the Office and the oil and gas leases, respectively).

The Receiver is entitled to compensation for fees and expenses related to managing the properties underlying the secured creditors' claims. In that regard, "an equity receiver does not merely inherit an owner's rights; the receiver is an officer of the court entrusted with administration of the property." *Gaskill v. Gordon*, 27 F.3d 248, 251 (7th Cir. 1994). As a result, "[t]he district court appointing the receiver has discretion over who will pay the costs of the receiver." *Elliott*, 953 F.2d at 1576; *Gaskill*, 27 F.3d at 251 (noting "the district court may, in its discretion, determine who shall be charged with the costs of the receivership"). "The court in equity may award the receiver fees from property securing a claim if the receiver's acts have benefitted that property." *Elliott*, 953 F.2d at 1576; *Gaskill*, 27 F.3d at 251 ("As a general rule, the expenses and fees of a receivership are a charge upon the property administered."). To have "benefitted" a property, the Receiver's acts need not have increased the property's monetary value. *See Elliott*, 953 F.2d at 1577.

"Even though a receiver may not have increased, or prevented a decrease in, the value of the collateral, if a receiver reasonably and diligently discharges his duties, he is entitled to compensation." *Id*. (citing *Donovan v. Robbins*, 588 F. Supp. 1268, 1273 (N.D. Ill. 1984) (district court awarded receiver a fee simply for determining how much money to release to creditor)). Here, the Receiver has reasonably and diligently discharged his duties with respect to the properties underlying the secured creditors' claims. *See Elliott*, 953 F.2d at 1576 ("The district court found that it would be inequitable for the burden of the receivership to fall solely on the unsecured investors since the secured investors had substantially benefitted from the Receiver's work."); *Gaskill*, 27 F.3d at 251 ("Courts in equity have allowed liens for receivership expenses to take priority over secured creditors' interests in the property when the receiver's acts have benefited the property.").

Like investors who may not recover false profits, interest, or, more broadly, lost opportunity costs on their "investment," it is not fair or equitable to allow Bank of Albany or Van Operating to recover post-Receivership interest on their loans, legal fees, or other similar costs. *Cf*. *Warfield*, 2007 WL 1112591 at *13 (defendants "could have no reasonable expectation of profiting from an illegal Ponzi scheme"); *S.E.C. v. Forte*, 2010 WL 939042, *5 (E.D. Pa. 2010) ("A receiver's legal entitlement to recover a winning investor's false profits is thus well-settled"). In other words, they should not be entitled to any interest accrued on their loans since inception of this Receivership. This is particularly true here where Bank of Albany knew that Quest was insolvent and had overvalued its oil and gas interests by thirty times. Further, Bank of Albany and Van Operating had to be aware that Quest was only managing to stay afloat from the influx of money raised from

investors. Payment of interest also would unfairly diminish funds available to pay the claims of innocent defrauded investors. As discussed above Bank of Albany loaned approximately $1,765,373.53 to Quest and has already received payments totaling approximately $1,712,432.22 representing a recovery to date of approximately 91% of the principal loan amount. Van Operating loaned $832,000 and has already received $719,072.60, representing a recovery to date of nearly 87% of the principal loan amount. Considering (i) the amounts these secured creditors have already received – all of which consisted of scheme proceeds; (ii) their ability to absorb losses as compared to a typical investor in this Receivership; and (iii) that the scheme was not directed at them, Claim Numbers 5 and 6 should be allowed only in part and subjected to the limitations set forth in this subsection and also reflected in **Exhibit C**.

C. Allowed Investor Claims That Should Receive The Highest Priority Among Unsecured Creditors

The highest priority among unsecured claims should be given to investors who were victimized by the scheme and who did not have reason to recognize "red flags" (the "**Investor Claims**"). Specifically, these investors invested a principal amount in the scheme that exceeded any payments they received from the scheme. The Receiver has determined that ten (10) Investor Claims should be allowed in full. These claims are identified in **Exhibit D** and are consistent with the Receivership Entity's books and records and other documents recovered by the Receiver (collectively, the "**Receivership Records**"). Accordingly, the Court should allow each of these claims as set forth in **Exhibit D**.

D. Allowed In Part Investor Claims That Also Should Receive The Highest Priority Among Unsecured Creditors

The Receiver received 52 Investor Claims which, because of various factors, should not be allowed in full. These claims are set forth in **Exhibit E**.

1. Investor Claims Should Be Allowed Only For The Net Investment Amount

As a general matter, an Investor Claimant is not entitled to an Allowed Amount that exceeds the claimant's "**Net Investment Amount**." The Net Investment Amount for an investor is calculated by adding all amounts invested by that investor and subtracting all payments made to that investor and/or in connection with that investment, regardless of whether those payments were characterized as interest, returns of principal, or any other terminology. The Court previously approved the Net Investment Method in the Hedge Funds Claims Process.

The Court should also approve the Net Investment Method as the proper method for determining Allowed Amounts for Investor Claims in the Quest Claims Process. Using the Net Investment Method, the Allowed Amount only takes into account the actual dollars the claimant "invested" less any amounts the claimant already received. This method of calculating a claimant's loss is regularly adopted by receivership courts, which consistently hold that a defrauded investor's claim should be limited to the total dollar amount of its investment reduced by any funds it received. *See, e.g., In re Old Naples Sec., Inc.*, 311 B.R. 607, 616 (Bankr. M.D. Fla. 2002); *Warfield v. Carnie*, 2007 WL 1112591, *12-13 (N.D. Tex. 2007); *S.E.C. v. Homeland Commc'ns Corp.*, 2010 WL 2035326, *3 (S.D. Fla. 2010); *S.E.C. v. Credit Bancorp, Ltd.*, 2000 WL 1752979, *40 (S.D.N.Y. 2000); *In re*

Bernard L. Madoff Inv. Sec. LLC, 654 F.3d 229, 233-35 (2d Cir. 2011). These cases establish that the Net Investment Method represents the most equitable and practical approach for determining investor claim amounts and a common approach for handling investor claims in a receivership involving a fraudulent investment scheme. *See Madoff*, 654 F.3d at 233-35.

The Net Investment Method appropriately does not give claimants credit for scheme misrepresentations, such as that investors had earned interest ("**False Interest**"). For instance, it was falsely represented to many investors that they would receive 10% annual interest paid quarterly and 125% redemption of the face value of the investment at maturity. Any "interest payments," "dividends," "returns on investment," or money received by any other name other than principal redemptions, made or promised to investors are collectively referred to as "**False Interest Payments**." These False Interest Payments were fictitious because Quest was operated as a Ponzi scheme, and the False Interest Payments promised or paid were or would have been paid with investors' commingled principal investment funds.

A Ponzi scheme is an illegal endeavor and thus creates no legal entitlement to profits or interest for its investors. *See Warfield*, 2007 WL 1112591 at *12-13; *In re Pearlman*, 484 B.R. 241, 244 (Bankr. M.D. Fla. 2012) (applying "Net Investment Method to the investors' claims, which will reduce the proofs of claim of those investors who received interest or dividend payments, because those payments were, by their very nature, illegal and fictitious"); *Janvey v. Brown*, 767 F.3d 430, 442 (5th Cir. 2014) (investors have no claim for contractual interest from Ponzi scheme); *see also Donell v. Kowell*, 533 F.3d

762, 774-775 (9th Cir. 2008) (Ponzi investors "were not actually investors, but rather tort creditors with a fraud claim for restitution equal to the amount [lost]"); *Scholes v. Lehmann*, 56 F.3d 750, 755 (7th Cir. 1995) (defrauded Ponzi scheme investors have a claim because they are tort creditors).

A Ponzi scheme generates no legitimate investment interest, and "recognizing profits or other earnings in claims for distribution would be to the detriment of later investors and would therefore be inequitable." *Commodity Futures Trading Com'n v. Equity Fin'l Group, LLC*, 2005 WL 2143975, *23 (D.N.J. 2005). Because early investors would have the benefit of many more months of receiving False Interest Payments than later investors who invested the same amount of actual dollars, the later investors would ultimately recover less because they had less time to recover part of their principal through such fictitious False Interest Payments. Early investors should not benefit at the expense of later ones. *See Cunningham v. Brown*, 265 U.S. 1, 13 (1924); *Abrams v. Eby*, 294 F. 1, 4 (4th Cir. 1923); *Madoff*, 654 F.3d at 235 (if Net Investment Method is not adopted "those claimants who have withdrawn funds from their ... accounts that exceed their initial investments 'would receive more favorable treatment by profiting from the principal investments of those claimants who have withdrawn less money than they deposited, yielding an inequitable result'") (citations omitted). As such, promised future False Interest Payments should not factor into the determination of an Allowed Amount because they do not reflect actual interest, while any False Interest Payments received by a claimant must be factored into the claimant's Allowed Amount.

Accordingly, the Court should (1) find that the Net Investment Method as proposed above and as reflected in the Exhibits is the appropriate and equitable method for determining Allowed Amounts for Investor Claims and (2) allow the claims set forth in **Exhibit E** for the specified Allowed Amounts, which reflect the claimants' Net Investment Amounts.

E. Allowed In Part Investor Claim That Should Be Equitably Subordinated

The Receiver submitted a claim in the Quest Claims Process on behalf of Nadel Receivership Entity Viking Oil & Gas, LLC and Nadel Receivership Entity Valhalla Investment Partners, L.P. (*see* Claim No. 65). The Viking Oil and Valhalla investments in Quest were directed by Neil and Christopher Moody. The Moodys played a significant role in the fraud perpetrated through the Hedge Funds, and together, they received approximately $42 million in fees from certain Nadel Receivership Entities.[7] The Moodys formed Viking Oil to make investments in oil and gas ventures. Between February 2006 and April 2007, through Viking Oil, the Moodys invested $4 million in Quest. The

[7] On January 11, 2010, the Commission instituted an enforcement action against the Moodys alleging that they violated antifraud provisions of the federal securities laws in connection with their involvement in Nadel's scheme. *See* generally SEC v. Neil V. Moody, et al., Case No. 8:10-cv-00053-T-33TBM (M.D. Fla.) (the "**Moody SEC Action**"), Compl. (attached as Exhibit A to Doc. 325). On the same day, the Moodys, without admitting or denying the allegations of the complaint, consented to entry of a permanent injunction and agreed to disgorge all ill-gotten gains upon the Commission's request. (Moody SEC Action, Consent of Def. Neil V. Moody ¶ 3, Doc. 2, Ex. 2) (also attached as Ex. B to Doc. 325.); (Moody SEC Action, Consent of Def. Christopher D. Moody ¶ 3, Doc. 2, Ex. 1). On April 7, 2010, Judgments of Permanent Injunction and Other Relief were entered against Neil and Chris Moody. (Moody SEC Action, Docs. 9 (Neil Moody) and 9-1 (Chris Moody)). The Judgments permanently enjoin Neil and Chris Moody from further violations of the antifraud provisions of the federal securities laws.

Moodys also invested $1,100,000 through Valhalla, which was a purported hedge fund created by Neil Moody in 1999 to invest and trade in securities.

As noted above, the Downeys inflated and misrepresented Quest's viable assets. As such, Quest's investors are not likely to recover a substantial or even material portion of their Allowed Amounts. This is especially true given the need to pay taxing authorities and secured creditors first, as described above in Sections I.A. and I.B. In contrast, the Receiver has already distributed approximately $67 million to Nadel's victims – *i.e.*, defrauded investors in the Hedge Funds and other related creditors. That amount represents a 51.99% recovery, and the Receiver is likely to make at least one more distribution in that claims process. Affording the Viking Oil and Valhalla claim the same level of priority as claims from Quest's other investors would only further dilute the minimal value of those claims. As such and as set forth on **Exhibit E**, the Receiver recommends that the Viking Oil and Valhalla claim be approved but equitably subordinated to the Quest Investor Claims. In other words, the Viking Oil and Valhalla claim will not be paid unless and until the Allowed Amounts of the Quest Investors Claims are paid in full.

"Equitable subordination does not deal with the existence or non-existence of the debt, but rather involves the question of order of payment." *In re Lockwood*, 14 B.R. 374, 380–81 (Bankr. E.D.N.Y. 1981). "The fundamental aim of equitable subordination is 'to undo or offset any inequality in the claim position of a creditor that will produce injustice or unfairness to other creditors....'" *Id.* (quoting *In re Westgate Cal. Corp.*, 642 F.2d 1174, 1177 (9th Cir. 1981)). "Subordination is an equitable power and is therefore governed by

equitable principles." *Westgate Cal. Corp.*, 642 F.2d at 1177. As explained above, the Viking Oil and Valhalla claim should be subordinated to the Quest Investor Claims because Nadel and Moody-related creditors have already recovered approximately 51.99% of their allowed amounts while Quest's creditors will recover a much smaller percentage, if anything.

F. Allowed Non-Investor Claims That Should Receive The Lowest Priority Among Allowed And Allowed In Part Claims

Two unsecured, non-investor creditors submitted claims for amounts owed in connection with their provision of services to Quest ("**Unsecured Non-Investor Claimants**"). The total amount of those two claims is $6,431.10, and they are itemized in **Exhibit F.** As discussed in Section I.H. below and in **Exhibit F**, these Unsecured Non-Investor Claims should be allowed but receive the lowest priority among allowed and allowed in part unsecured claims, such that these claims are paid only after the Allowed Amounts of all Investor Claims have been paid in full.

G. Denied Claims

Twenty-five claims should be denied.[8] These claims are identified in **Exhibits G** and **H** and are briefly summarized below.[9]

[8] One of these claims was submitted by the County of Denton, Texas for taxes on an entity unrelated to Quest (*see* Claim No. 74). This claim is discussed in Section I.A. above.

[9] One claim should be denied because it appears that the claimant submitted two separate claims for one investment (*See* Claim Nos. 9 and 80). The Receivership Records reflect that only one $50,000 investment was made by this claimant. Therefore, the Receiver recommends that Claim Number 80 be denied as duplicative.

1. Claims That Should Be Denied Because the Claimants Were on Inquiry or Actual Notice of Fraud, and/or Conspired, Aided and Abetted, or Otherwise Participated in the Fraud

As set forth in **Exhibit G**, six claims should be denied because the claimants had either actual or inquiry notice of fraud, and/or conspired, aided and abetted, or otherwise participated in the fraud, and thus it would be inequitable to share Receivership assets with these claimants. These six claims were submitted by Quest "sales agents," the spouse of a sales agent, and an individual who actively sought to raise capital for the benefit of Quest (*see* Claim Nos. 68, 69, 70, 71, 72, and 73). Specifically, these claims were submitted by (1) Ernest Cozzi, (2) Kristi Cain (the spouse of sales agent Sean Cain) on behalf of Caromil Farm, LLC and Cain-Griffin Group, Inc.;[10] (3) Randy Birkinbine;[11] and Stephen Chastain[12] (collectively, the "**Sales Agents**"). The Sales Agents were directly responsible for soliciting victims for Quest's fraudulent scheme. As detailed below, these claims should be denied because these agents and the respective spouse cannot satisfy their good faith

[10] Kristi Cain filed three claims relating to two investments. Claim Number 69 and Claim Number 71 appear to seek relief for the same $100,000 investment. The Receiver recommends that this claim be denied for the reasons set forth herein and also as duplicative.

[11] Birkinbine submitted a claim for an investment made by a husband and wife which he solicited on behalf of Quest and received $7,000 in commission (*See* Claim No. 68). Birkinbine claims he received an assignment of the investment through a settlement of litigation brought by the victim investors against him. This purported assignment does not negate or diminish the inequity of allowing Birkinbine to participate in Receivership distributions given his role in the scheme.

[12] Chastain was not a traditional "sales agent" for Quest. However, he worked on behalf of Quest to obtain capital to allow it to continue its fraudulent scheme. By seeking capital for Quest, he acted as an agent of Quest, and as such, it would be inequitable to allow him to share in distributions from the Receivership.

obligations and because it would be inequitable to allow them to receive Receivership distributions in light of their roles in the scheme.

Courts sit as courts of equity over securities fraud receiverships. *See, e.g.*, *Elliott*, 953 F.2d at 1566. As such, the Court has "broad powers and wide discretion" to fashion appropriate relief, including to devise a plan for distributing receivership assets. *See, e.g.*, *id.* In resolving claims submitted in a claims process, courts consider a wide variety of factors, with the ultimate goal of fashioning an equitable system that treats similarly situated claimants equally. *See, e.g.*, *Homeland Commc'ns Corp.*, 2010 WL 2035326 at *2 ("[I]n deciding what claims should be recognized and in what amounts, the fundamental principle which emerges from case law is that any distribution should be done equitably and fairly, with similarly situated investors or customers treated alike....") (quotation omitted); *Cunningham*, 265 U.S. at 13 (as among "equally innocent victims, equality is equity"); *Elliott*, 953 F.2d at 1570 (same).

A Sales Agent's (or their spouse's) receipt of any Receivership assets is inequitable because they lacked "good faith" or, put differently, they knew or should have known of fraud. *See, e.g.*, *S.E.C. v. Megafund Corp.*, 2007 WL 1099640, *2 (N.D. Tex. 2007) (claims disallowed because claimants did not show they acted in good faith); *S.E.C. v. Nadel*, Case No. 8:09-cv-0087-RAL-TBM (M.D. Fla. 2013) (Doc. 1061 at *11-13). The concept of good faith derives from fraudulent conveyance statutes, including the Florida Uniform Fraudulent Transfer Act, Fla. Stats. §§ 726.101 *et seq*. ("**FUFTA**"). Under FUFTA, the Receiver may recover transfers for the benefit of the Receivership estate that were made with "actual intent to hinder, delay, or defraud" creditors (Fla. Stats.

§ 726.105(1)(a)), which intent is established as a matter of law when a transfer is made during a Ponzi scheme. *See, e.g., Wiand v. Lee*, 753 F.3d 1194, 1201 (11th Cir. 2014) ("[U]nder FUFTA's actual fraud provision, proof that a transfer was made in furtherance of a Ponzi scheme establishes actual intent to defraud under § 726.105(1)(a) without the need to consider the badges of fraud …."); *In re Christou*, 2010 WL 4008191, *3 (Bankr. N.D. Ga. 2010) ("Any transfers made during the course of a Ponzi scheme are presumptively made with intent to defraud."); *Wing v. Horn*, 2009 WL 2843342, *4-5 (D. Utah 2009) ("[I]nference of fraudulent intent applies to all transfers from a Ponzi scheme"; categorizing transactions "is inconsistent with fraudulent transfer law's focus on the transferor"). FUFTA provides an affirmative defense, however, under which the Receiver may not recover a transfer if, among other prerequisites, the transferee can demonstrate that it received the transfer in "good faith." *See* Fla. Stats. §§ 726.109(1), (2)(b).

Good faith is an objective standard. *See Terry v. June*, 432 F. Supp. 2d 635, 641 (W.D. Va. 2006). "The relevant inquiry is what the transferee objectively knew or should have known instead of examining the transferee's actual knowledge from a subjective standpoint." *See Quilling v. Stark*, 2007 WL 415351, *3 (N.D. Tex. 2007). "[I]f the circumstances would place a reasonable person on inquiry notice of a debtor's fraudulent purpose, and *diligent* inquiry would have discovered the fraudulent purpose, then the transfer is fraudulent." *In re World Vision Entm't, Inc.*, 275 B.R. 641, 659 (Bankr. M.D. Fla. 2002). "Importantly, a transferee may not remain willfully ignorant of facts which would cause it to be on notice of a debtor's fraudulent purpose, and then put on 'blinders' prior to entering into transactions with the debtor and claim the benefit of [the good faith

defense]." *Id.* (internal citations and quotations omitted). In turn, a diligent inquiry "must ameliorate the issues that placed the transferee on inquiry notice in the first place" and cannot consist of merely inquiring with the transferor about the suspicious circumstances. *In re Bayou Group*, 396 B.R. 810, 846 (Bankr. S.D.N.Y. 2008).

In short, if a claimant's reasonable inquiry would have revealed any questions or concerns about the Receivership Entity or anyone associated with it, that claimant could not have acted in good faith unless it subsequently conducted a diligent and reasonable inquiry which ameliorated those questions or concerns. Without satisfying these obligations, the claimant was, at a minimum, on inquiry notice of fraud.

Courts have specifically addressed whether a securities broker – like the Sales Agents – acted in good faith when receiving commissions for selling interests in a fraudulent investment scheme. "[A]ny broker selling short-term promissory notes, even unregistered promissory notes such as the debtor's notes, has a minimal duty of care owed to investors." *World Vision Entm't, Inc.*, 275 B.R. at 654. At a minimum, this includes reviewing audited financial statements, company-provided literature on sales history, and key employees. *Id.* at 659; s*ee also In re Evergreen Sec., Ltd.*, 319 B.R. 245, 255 (Bankr. M.D. Fla. 2003). Thus, each of the Sales Agents had a legal duty to: (i) investigate the financial, performance, and personnel background of the investment manager or the offering company; (ii) ensure the associated risk factors and costs surrounding the investment strategy or product were disclosed and evaluated; and (iii) not rely solely on a sponsor's or issuer's word about an investment product. Nor could they "refrain from asking hard questions about the legitimacy of the product, and then assume a proper

investigation was completed." *World Vision Entm't, Inc.*, 275 B.R. at 660. In short, "circumstances putting the transferee on inquiry notice as to a debtor's insolvency, an underlying fraud, or the improper nature of a transaction, will preclude a transferee from asserting a good faith defense." *Evergreen Sec., Ltd.*, 319 B.R. at 255.

The Sales Agents ignored numerous red flags indicative of "insolvency, an underlying fraud, or the improper nature of the transaction" and failed to satisfy the minimum due diligence requirements discussed in *Evergreen* and *World Vision Entertainment*. Had the Sales Agents conducted a reasonable investigation, they would have quickly learned of the fraudulent nature of Quest investments. Because the Sales Agents cannot demonstrate good faith, they are not entitled to receive any distribution of Receivership Assets also for this reason.

While the Receiver has not yet uncovered evidence that Cain's spouse was directly involved in the sale of Quest investments, their familial relationship to the scheme warrants imputing Cain's lack of good faith to her and entities controlled by her.[13] *See In re IFS Fin'l Corp.*, 417 B.R. 419, 444-45 (Bankr. S.D. Tex. 2009); *In re Bernard Madoff Inv. Sec., LLC*, 440 B.R. 243, 259-60 (Bankr. S.D.N.Y. 2010); *In re Manzanres*, 345 B.R. 773, 792 (Bankr. S.D. Fla. 2006); *In re Maxwell Newspapers*, 164 B.R. 858, 866-869 (Bankr. S.D.N.Y. 1994). Further, the money used for one of these investments came from a joint

[13] Kristi Cain indicated on the Proof of Claim Forms for Caromil Farms that she is the president, only officer and director, and sole member. On the Proof of Claim Form for Cain-Griffin Group, Kristi Cain indicated that she is the president. The Receiver also discovered an indication that Cain was the CEO, CFO, and secretary for the Cain Griffin Group before it was administratively closed and then reinstated by Kristi Cain.

account shared by Cain with his wife. Simply put, it would be inequitable and unjust to allow any Sales Agent, directly or indirectly with his spouse, to receive assets from the Receivership estate because (a) they assisted with fraudulently obtaining those assets and (b) those assets should be paid to the very investors they defrauded. *See In re Bernard L. Madoff Inv. Sec. LLC*, 458 B.R. 87, 121 (Bankr. S.D.N.Y. 2011) (holding that in SIPA liquidation, claims of Madoff family members should be subordinated).

2. Claims That Should Be Denied Because They Do Not Involve A Receivership Entity

Five claims were received from claimants who invested in Callahan Energy Partners ("**Callahan**"), an entity distinct from Quest. (*See* Claim Nos. 75, 76, 77, 78, and 79).[14] The Receiver has not been able to identify any transfer of funds from Callahan to Quest for these claimants. Consistent with the Net Investment Method discussed in Section I.D.1 above, an investor is only entitled to a claim for the amount of funds actually deposited into the scheme less dollars the investor received from the scheme. Because the Receiver has been unable to find any evidence of actual dollars deposited into Quest in connection with these Callahan investments, the claimants do not have a claim to Receivership assets. Accordingly, the Receiver recommends that these claims be denied.

3. Claims For Royalties Should Be Denied

The Receiver received twelve claims from individuals who own a royalty interest percentage in certain wells. (*See* Claim Nos. 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, and

[14] One of these claims also was received after the Claim Bar Date, which serves as an additional basis for denial of the claim (*see* Claim No. 78).

92). The Receiver has been making royalty interest payments for the months in which revenue was received from the sale of natural gas and intends to continue making royalty payments if such revenue is received.[15] Accordingly, the claimants' interests are protected, and these claims should be denied.

H. Priority Of Claims

As discussed above, the Receiver has established the following categories of claims: (a) property tax lien claims which should be allowed in part; (b) secured claims which should be allowed in part; (c) Investor Claims which should be allowed (in whole, in part, or subrogated); (d) Unsecured Non-Investor Claims which should be allowed; and (e) claims which should be denied. From these categories, the Receiver has determined the fair and equitable priority for each of these claims' participation in distributions of Receivership assets. The highest priority ("**Class 1**") should be afforded to the property tax lien claims which are allowed in part (**Exhibit B**).

Second highest priority ("**Class 2**") should be afforded to allowed in part secured claims (**Exhibit C**). Claimants holding Class 2 claims will only participate in a distribution of Receivership assets after all Allowed Amounts for Class 1 claims have been satisfied in full. However, as discussed in Section I.B. above, these claimants should be allowed to recover only from proceeds of the sale of the asset securing their respective interest up to

[15] With respect to the Musselman Caddo Unit lease ("**MCU**"), when the Receiver produces and sells gas, the Receiver pays the gas royalties. When MCU produces oil, the gatherer, TransOil, handles the payment of the royalties.

the outstanding principal amount of the debt at the time of the Receiver's appointment less fees and costs incurred by the Receivership to maintain and sell the asset.

All Investor Claims which are Allowed (**Exhibit D**) and Investor Claims which are Allowed In Part (**Exhibit E**) should receive third priority ("**Class 3**"), which is the highest among unsecured claims. Each claimant holding a Class 3 claim would receive a distribution on a *pro rata* basis as detailed below in Section III only after all Allowed Amounts for Class 1 and Class 2 claims have been satisfied in full. The Viking Oil and Valhalla claim is a Class 3 claim, but because it should be equitably subordinated, this claim will not initially participate in the *pro rata* distribution. This claim will only receive a distribution once the Allowed Amounts of the other Class 3 claims have been paid in full.

Unsecured Non-Investor Claims (**Exhibit F**) receive fourth priority ("**Class 4**"). These claims only will participate in a distribution of Receivership assets if all preceding classes are paid in full. The remaining claims ("**Class 5**") are those which should be denied (**Exhibit G** and **Exhibit H**). Claimants holding Class 5 claims will not receive any Receivership assets.

The Receiver's proposed priority for claim categories is fair and equitable. The Court's broad power to approve the Receiver's claim determinations and priority of claims is settled. *See Elliott*, 953 F. 2d at 1566 (court has "broad powers and wide discretion" to assure equitable distributions). Further, courts routinely hold that treating similarly-situated parties alike in claims processes is fair and equitable. *Id.* at 1570*; United States v. Petters*, 2011 WL 281031, *7 (D. Minn. 2011). There is no requirement, however, that all claimants be treated in the same manner; rather, fairness only requires that similarly

situated claimants should be treated alike. *See, e.g.*, *Trade Partners, Inc.*, 2006 WL 3694629 at *1 (distinguishing between fraud victims and general creditors); *Byers*, 637 F. Supp. 2d at 184 ("The Receiver's proposal to treat differently those involved in the fraudulent scheme when distributions are being made is eminently reasonable and is supported by caselaw."). Further, no specific method of distribution is required; the method of distribution should simply be "fair and equitable." *S.E.C. v. P.B. Ventures*, 1991 WL 269982, *2 (E.D. Pa. 1991). In the end, "[a]n equitable plan is not necessarily a plan that everyone will like." *Credit Bancorp*, 2000 WL 1752979 at *29. Indeed, "when funds are limited, hard choices must be made." *Byers*, 637 F. Supp. 2d at 176 (quoting *Official Comm. of Unsecured Creditors of WorldCom, Inc. v. S.E.C.*, 467 F.3d 73, 84 (2d Cir. 2006)).

II. ALL OF QUEST'S ASSETS AND LIABILITIES SHOULD BE POOLED TO FORM A SINGLE RECEIVERSHIP ESTATE

Despite the complete disarray of Quest's financial records, the Receiver was able to determine that Quest was insolvent almost since its inception in 2006 and expenses were outpacing revenue by more than two to one. At the time of the Receiver's appointment, Quest owed investors and others millions of dollars but had virtually no revenue with which to repay this debt. One way the Downeys had raised money on behalf of Quest from investors was through promises to repay the principal amount plus periodic interest. The company had ceased making interest payments to those investors more than one year before the Receiver's appointment. Quest's minimal income was insufficient even to satisfy its operating expenses, let alone its debt obligations. As a result, there was no potential for the Downeys to satisfy Quest's obligations other than by using money

received from new investors to pay existing investors. As such, pooling all of Quest's assets is appropriate because it was operated as part of a single, continuous Ponzi scheme.

Treating all Receivership assets as a single fund to pay all collective liabilities of Quest is consistent with the manner in which Quest was operated. This requested relief is well within the Court's broad power to administer this Receivership. *See HKW Trading*, 2009 WL 2499146 at *2; *see also Hardy*, 803 F.2d at 1040. The primary purpose of an equity receivership is to promote the orderly and efficient administration of the estate for the benefit of the creditors. *See Hardy*, 803 F.2d at 1038. Consolidating all of the assets and liabilities of Quest best serves this purpose.

Courts routinely permit equity receivers to pool assets. *See, e.g.*, *HKW Trading*, 2009 WL 2499146 at *6 ("The Court directs that all assets and liabilities of the Receivership Entities be consolidated for all purposes."); *S.E.C. v. Credit Bancorp, Ltd.*, 290 F.3d 80, 91 (2d Cir. 2002) (affirming district court's equitable authority to treat all fraud victims alike and order *pro rata* distribution of assets); *Basic Energy*, 273 F.3d at 663 (adopting receiver's plan to create single pool of assets for all investors); *Elliott*, 953 F.2d at 1584 (approving district court's decision to reject tracing and treat three companies as single entity); *S.E.C. v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 332 (5th Cir. 2001) (affirming district court's order approving receiver's plan to distribute funds to all claimants on *pro rata* basis even though funds invested by two claimants were segregated by fraudster and traced to separate account); *Quilling v. Trade Partners, Inc.*, 2008 WL 4283359, *4 (W.D. Mich. 2008) ("In [r]eceivership cases where the fraud has features that are similar or common to all victims, and at least some commingling of funds occurred, pro

rata distribution of pooled assets has been the standard.... "); *U.S. v. Durham*, 86 F.3d 70, 72-73 (5th Cir. 1996) (approving receiver's plan to distribute money to claimants on *pro rata* basis even though majority of money could be traced to one claimant); *see also U.S. v. Real Property Located at 13328 & 13324 State Hwy.*, 89 F.3d 551, 553 (9th Cir. 1996) (approving district court's finding that "[i]nstead of engaging in a tracing fiction, the equities demand that all [defrauded] customers share equally in the fund of pooled assets in accordance with the SEC plan").

Indeed, courts have held that "*any* comingling is enough to warrant treating all the funds as tainted." *Byers*, 637 F. Supp. 2d at 177. Because "money is fungible" it is "impossible to differentiate between 'tainted' and 'untainted' dollars...." *Lauer*, 2009 WL 812719 at *4-5. "Once proceeds become tainted, they cannot become untainted." *Ward*, 197 F.3d at 1083. In addition, "when tainted funds are used to pay costs associated with maintaining ownership of [a] property, the property itself and its proceeds are tainted by the fraud." *Lauer*, 2009 WL 812719 at *3 (citing *United States v. One Single Family Residence Located at 15603 85th Ave. North, Lake Park, Palm Beach County, Fla.*, 933 F.2d 976, 982 (11th Cir. 1991)).

In short, the most equitable and efficient approach is to pool all assets and liabilities of Quest into one consolidated estate. *See S.E.C. v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010) ("[I]n a case involving a Ponzi scheme, the interests of the [r]eceiver are very broad and include not only protection of the receivership *res*, but also protection of defrauded investors and considerations of judicial economy"). To handle the estate in any

other manner would be very expensive and unworkable, especially given the limited value of Quest's assets.

III. THE RECEIVER'S PROPOSED PLAN OF DISTRIBUTION

As of February 26, 2019, total funds in all Quest Receivership accounts is $87,092.33. The Receiver does not have sufficient funds to warrant a distribution at this time. The Receiver anticipates that he will seek to distribute funds once a sale of Quest has been completed. The Receiver will file a motion for the Court's approval of a distribution along with the close of the Receivership. To streamline this process, the Receiver has set forth a proposed plan of distribution below, which will be followed should sufficient funds be received from the sale of Quest. The Receiver's Proposed Plan of Distribution is in the best interest of the Receivership and the claimants as a whole; is fair, reasonable, and equitable; and satisfies due process. The Court has wide latitude when it exercises its inherent equitable power in approving a plan of distribution of receivership funds. *Forex*, 242 F.3d at 331 (affirming district court's approval of plan of distribution because court used its discretion in "a logical way to divide the money"); *Quilling v. Trade Partners, Inc.*, 2007 WL 107669, *1 (W.D. Mich. 2007) ("In ruling on a plan of distribution, the standard is simply that the district court must use its discretion in a logical way to divide the money" (internal quotations omitted)). In approving a plan of distribution in a receivership, "the district court, acting as a court of equity, is afforded the discretion to determine the most equitable remedy." *Forex*, 242 F.3d at 332. The Court may adopt any plan of distribution that is fair and reasonable. *S.E.C. v. Wang*, 944 F.2d 80, 83-84 (2d Cir. 1991); *Basic Energy*, 273 F.3d at 671.

The Receiver proposes that the distribution be made on a *pro rata* basis subject to applicable exceptions, priorities, and other parameters discussed in this motion. The Receiver will pay outstanding Receivership fees and expenses and will seek a reserve for anticipated expenses to complete the distribution and the close of the Receivership. The Receiver will distribute the remaining funds to each class by priority. Should the Receiver not have sufficient funds to pay Class 1 claims in full, he will distribute the funds on a *pro rata basis*. If there are sufficient funds to pay all Class 1 claims, the Receiver will distribute funds to Class 2 claims as specified herein. Once the Allowed Amounts for Class 2 claims are paid in full, the Receiver will distribute the remaining funds to Class 3 Investor Claimants entitled to participate in the distribution on a *pro rata* basis, subject to the equitable subordination of the Viking Oil and Valhalla claim, as discussed above.

The Receiver will mail distribution checks by regular U.S. Mail, and he requests that the claimants be allowed 120 days to negotiate the distribution checks. If a check is not negotiated within 120 days, the money will be deposited into the unclaimed funds division for the state of the pertinent claimant's last known address. A deadline for negotiating distribution checks is necessary for the orderly administration of the Receivership.

The Receiver has proposed a procedure in Section IV below for claimants to object to the Receiver's determination of a claim, claim priority, or plan of distribution as approved by the Court. The procedure provides, in relevant part, that each claimant will have thirty (30) days from the date the Receiver mails each claimant notice of the Court's order on this motion to serve the Receiver with an objection.

The Proposed Plan of Distribution detailed above is fair and reasonable. Consistent with the features of this scheme, "[c]ourts have favored pro rata distribution of assets where, as here, the funds of defrauded victims were commingled and where victims were similarly situated with respect to their relationship to the defrauders." *Credit Bancorp*, 290 F.3d at 88; *see Trade Partners*, 2007 WL 107669 at *2 ("The use of a *pro rata* distribution plan is especially appropriate for fraud victims of a Ponzi scheme, in which earlier investors' returns are generated by the influx of fresh capital from unwitting newcomers rather than through legitimate investment activity."); *U.S. S.E.C. v. Infinity Grp. Co.*, 226 Fed. App'x 217, 218 (3d Cir. 2007) ("the Courts of Appeals repeatedly have recognized that *pro rata* distribution of a defrauder's assets to multiple victims of the fraud is appropriate and that District Courts act within their discretion in approving such distributions."). A fair and reasonable distribution plan may provide for reimbursement to certain claimants, while excluding others. *See Wang*, 944 F.2d at 84 (citations omitted); *Basic Energy*, 273 F.3d at 660-61.

IV. THE PROPOSED OBJECTION PROCEDURE

For efficiency, the Court should adopt a formal procedure to address instances where a claimant does not agree with the Receiver's recommended determination of the claimant's claim or objects to claim priority or the plan of distribution as approved by the Court. The procedure recommended below allows the Receiver to (1) address any disputed matters in a fair and efficient manner and (2) present any unresolved objections to the Court in an organized and, if appropriate, consolidated manner, which will be efficient and, to the extent possible, avoid the Court's receipt of objections on a piecemeal basis. The

procedure also provides each claimant with notice and an opportunity to be heard in accordance with applicable due process obligations.

The Receiver respectfully requests the Court adopt the following objection procedure (the "**Proposed Objection Procedure**"):

a) Within three (3) business days after the date of the order on this motion, the Receiver will post the order on his website, www.nadelreceivership.com. A copy of this motion will be posted soon after it is filed.

b) Within ten business (10) days after the date of the Order on this motion, the Receiver will mail each claimant by U.S. First Class Mail at the address provided on the Proof of Claim Form a letter setting forth the procedure for objecting to the Receiver's determination of a claim (the "**Receiver's Claim Determination**"), claim priority, or plan of distribution as approved by the Court. The letter will provide notice that the Court's order on this motion is available on the Receiver's website. The letter will further provide that a claimant may contact the Receiver's office for a copy of the motion and/or order if a claimant does not have access to the internet or cannot otherwise access the motion and/or order.

c) Any claimant that is dissatisfied with the Receiver's Claim Determination, claim priority, or plan of distribution must serve the Receiver in accordance with the service requirements of Rule 5 of the Federal Rules of Civil Procedure with a written objection no later than thirty (30) days after the date of mailing of the Receiver's letter advising the claimant of the order on this motion. All objections must be served on the Receiver at Burton W. Wiand c/o Maya M. Lockwood, Esq., Wiand Guerra King P.A., 5505 West Gray Street, Tampa, Florida 33609, and should not be filed with the Court. Such objections shall clearly state the nature and basis of the objection, and provide all supporting statements and documentation the claimant wishes the Receiver and the Court to consider.

d) Failure to properly and timely serve an objection to the Receiver's Claim Determination, claim priority, or plan of distribution shall permanently waive the claimant's right to object to or contest the Receiver's Claim Determination, claim

priority, and plan of distribution and the final claim amount shall be set as the Allowed Amount determined by the Receiver as set forth in the Exhibits attached to this motion as approved by the Court.

e) If a claimant timely serves an objection, the Receiver will notify the objecting claimant of his ruling on the pertinent objection no later than forty-five (45) days after the end of the objection period (the "**Notification**"). The claimant will then have thirty (30) days from the date of the Notification to serve the Receiver with a written response to the Notification which must clearly state whether the claimant maintains the objection or accepts the Receiver's further determination of the claim as set forth in the Notification. Failure to properly and timely serve this written response will be deemed as an acceptance of the Receiver's ruling as set forth in the Notification.

f) Although each objecting claimant previously submitted to this Court's jurisdiction by filing a claim with the Receiver, by serving an objection the objecting claimant shall be deemed to have confirmed submission to the exclusive jurisdiction of this Court. A person serving an objection to the Receiver's Claim Determination, claim priority, or plan of distribution, shall be entitled to notice, but only as it relates to adjudication of the particular objection and the claim to which the objection is directed.

g) The Receiver may attempt to settle and compromise any claim or objection subject to the Court's final approval.

h) At such times as the Receiver deems appropriate, he will file with the Court any settlements or compromises that the Receiver wishes the Court to rule upon.

i) If the Receiver and an objecting claimant are unable to resolve an objection, no later than forty-five (45) days from the date of the claimant's written response to the Receiver's Notification, the Receiver with file with the Court: (1) the Receiver's further determination of the claim with any supporting documents or statements he considers are appropriate, if any; and (2) the unresolved objection, with supporting statements and documentation, as served on the Receiver by the claimant;

j) The Court may make a final determination based on the submissions identified in the previous paragraph or may set the

> matter for hearing and, following the hearing, make a final determination. The claimant shall have the burden of proof. The Receiver will provide notice of such hearing as provided in paragraph (f) above.

The Proposed Objection Procedure satisfies due process and is similar to the procedure approved by this Court in the Hedge Funds Claims Process. Due process essentially requires that the proceeding be fair and that affected parties be given notice and an opportunity to be heard. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Elliott*, 953 F.2d at 1566. The use of summary proceedings to implement claims procedures is customary in receiverships and satisfies due process requirements when claimants receive an opportunity to be heard, to object to their claim determination, and to have their claims considered by a court. *See id; Basic Energy*, 273 F.3d at 668-671. The Proposed Objection Procedure achieves each of these requirements.

F.D.I.C. v. Bernstein explains,

> One common thread keeps emerging out of the cases involving equity receiverships – that is, a district court has extremely broad discretion in supervising an equity receivership and in determining the appropriate procedures to be used in its administration.
>
> In keeping with this broad discretion, "the use of summary proceedings in equity receiverships as opposed to plenary proceedings under the Federal Rules of [Civil Procedure] is within the jurisdictional authority of a district court." Such procedures "avoid formalities that would slow down the resolution of disputes. This promotes judicial efficiency and reduces litigation costs to the receivership," thereby preserving receivership assets for the benefit of creditors.

786 F. Supp. 170, 177-78 (E.D.N.Y. 1992) (citations omitted). This Court should approve the Proposed Objection Procedure because it satisfies due process and is logical, fair, and

reasonable. *See Elliott*, 953 F.2d at 1567 (summary proceedings are appropriate where party has full and fair opportunity to present claims and defenses). Specifically, the Proposed Objection Procedure provides for (1) notice to claimants of the Receiver's determination of their claims, claim priority, and plan of distribution; (2) the opportunity for claimants to object to these matters; and (3) the review of unresolved objections by the Court.

Importantly, the Proposed Objection Procedure eliminates the need for any objections to be filed with the Court in direct response to this motion. In turn, that will preclude inefficient piecemeal presentation and adjudication of objections by the Court. Such a piecemeal process would result in an inefficient claims process for both the Court and the Receivership. As such, the Proposed Objection Procedure promotes judicial efficiency and reduces litigation costs.

CONCLUSION

For these reasons, the Receiver respectfully requests the Court enter an order:

(1) Approving the Receiver's treatment and determination of claims as set forth in this motion and in attached **Exhibits B** through **H**;

(2) Authorizing the Receiver to pool and consolidate all of Quest's assets and liabilities for all purposes, including for payment of administrative costs, receipt of third-party recoveries, and making distributions to holders of allowed claims;

(3) Approving the Net Investment Method as set forth above and in the attached Exhibits as the proper method for calculating Allowed Amounts for Investor Claimants;

(4) Approving the Proposed Plan of Distribution as set forth above in Section III;

(5) Approving the Proposed Objection Procedure as set forth above in Section IV for objections to the plan of distribution and the Receiver's claim

determinations and claim priorities as set forth in this motion and attached **Exhibits B** through **H**; and

(6) Precluding and forever barring and enjoining further claims against the Receivership Entity, Receivership property, the Receivership estate, or the Receiver by any claimant, taxing authority, or any other public or private person or entity and precluding and forever barring and enjoining any other efforts to enforce or otherwise collect on any lien, debt, or other asserted interest in or against the Receivership Entity, Receivership property, or the Receivership estate.

LOCAL RULE 3.01(G) CERTIFICATION

The undersigned counsel for the Receiver has conferred with counsel for the Commission and is authorized to represent to the Court that the Commission has no objection to the relief sought herein.

s/Jared J. Perez
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of March, 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

s/Jared J. Perez
Jared J. Perez, FBN 0085192