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9  
10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **WESTERN DIVISION**

13 SECURITIES AND EXCHANGE  
COMMISSION,

14 Plaintiff,

15 v.

16 WORLD CAPITAL MARKET INC.;  
17 WCM777 INC.; WCM777 LTD. d/b/a  
WCM777 ENTERPRISES, INC.; and  
18 MING XU a/k/a PHIL MING XU,

19 Defendants,

20 KINGDOM CAPITAL MARKET, LLC;  
MANNA HOLDING GROUP, LLC;  
21 MANNA SOURCE INTERNATIONAL,  
INC.; WCM RESOURCES, INC.;  
22 AEON OPERATING, INC.; PMX  
JEWELS, LTD.; TOPACIFIC INC.;  
23 TO PACIFIC INC.; VINCENT J.  
MESSINA; and INTERNATIONAL  
24 MARKET VENTURES,

25 Relief Defendants.  
26  
27  
28

Case No. CV-14-2334-JFW-MRW

**FIRST INTERIM FEE  
APPLICATION OF KRISTA L.  
FREITAG, COURT-APPOINTED  
RECEIVER, FOR PAYMENT OF  
FEES AND REIMBURSEMENT OF  
EXPENSES**

Date: November 10, 2014  
Time: 1:30 p.m.  
Ctm: 16  
Judge: Hon. John F. Walter

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1 Krista L. Freitag ("Receiver"), the Court-appointed permanent receiver for  
2 Defendants World Capital Market Inc., WCM777 Inc., WCM777 Ltd. d/b/a  
3 WCM777 Enterprises, Inc., and Relief Defendants Kingdom Capital Market, LLC,  
4 Manna Holding Group, LLC, Manna Source International, Inc., WCM  
5 Resources, Inc., ToPacific Inc., To Pacific Inc., and their subsidiaries and affiliates  
6 ("Receivership Entities"), hereby submits this first interim application for approval  
7 and payment of fees and reimbursement of expenses ("Application"). This  
8 Application covers the period from the Receiver's appointment on March 27, 2014  
9 through June 30, 2014 ("First Application Period"), and seeks interim approval of  
10 \$216,117.23 in fees and \$36,885.97 in expenses, and an order authorizing the  
11 Receiver to pay, on an interim basis, 80% of the fees incurred (\$172,893.78) and  
12 100% of expenses incurred.

13 **I. INTRODUCTION**

14 This equity receivership involves a large, complex, and wide ranging group of  
15 enterprises and assets associated with the alleged Ponzi scheme that is the subject of  
16 the Complaint filed by the Securities and Exchange Commission ("Commission").  
17 The Receiver was appointed on a temporary basis on March 27, 2014, and the  
18 Receiver's appointment was made permanent on April 10, 2014.

19 The appointment orders confer broad duties, responsibilities, and powers on  
20 the Receiver designed to allow her to secure, preserve, and protect the assets of  
21 Receivership Entities, investigate and recover sums transferred to third parties,  
22 conduct a forensic accounting and analysis of the Receivership Entities' financial  
23 transactions, review and analyze investor claims, and maximize the amount  
24 ultimately available for distribution to investors. The appointment orders also  
25 authorize the Receiver to "employ attorneys, accountants, and others" to assist her in  
26 the performance of her duties. Dkt. No. 33, Section VII.C. and G. The Receiver  
27 promptly determined that her experienced staff at E3 Realty Advisors, Inc. dba  
28 E3 Advisors ("E3"), as well as experienced, qualified counsel was critical due to the

1 size and complexity of the receivership estate. Accordingly, the Receiver has used  
 2 her team at E3 to assist in carrying out receivership duties and engaged Allen  
 3 Matkins Leck Gamble Mallory & Natsis LLP ("Allen Matkins") as her general  
 4 counsel for the receivership. On June 9, 2014, the Court approved the Receiver's  
 5 proposal to file reports and fee applications on a quarterly basis. Dkt. No. 86. This  
 6 fee application should be read in conjunction with the Receiver's Second Interim  
 7 Report ("Second Report") filed on August 19, 2014, which describes in detail the  
 8 Receiver's and her counsel's activities during the First Application Period. So as to  
 9 avoid repetition, references are made to relevant portions of the Second Report in the  
 10 below descriptions of the Receiver's work.

11 This Application seeks interim approval of \$216,117.23 in fees for a total of  
 12 1,060.3 hours worked, and payment on an interim basis of 80% of that amount, or  
 13 \$172,893.78. The work performed is described task-by-task on Exhibit A and is  
 14 broken down into the following categories:

15	General Receivership	\$50,314.95
16	Asset Investigation & Recovery	\$40,113.90
17	Reporting	\$5,049.90
18	Operations & Asset Sales	\$80,753.85
19	Claims & Distributions	\$9,527.18
20	Third Party Recoveries	\$6,849.90
21	Forensic Accounting	<u>\$23,507.55</u>
22	<b>Total Fees</b>	<b>\$216,117.23</b>

23 The initial phase of a complex equity receivership always involves substantial  
 24 work by the Receiver and the Receiver's professionals to a) identify and secure cash,  
 25 real property, and other assets, b) preserve their value, c) investigate and pursue  
 26 recovery of funds disbursed from the Receivership Entities' bank accounts,  
 27 d) address operational and employee issues, e) gather and review key documents, and  
 28 f) advise the Court on the status of the Receiver's activities. As this type of

1 receivership progresses, fees and costs generally decline as the assets are secured and  
2 protected, and procedures for the efficient administration of receivership are put in  
3 place. There is substantial work still to be done, however, including the forensic  
4 accounting, management of the two golf courses, asset sales, and the investor claims  
5 process.

6 In this instance, the receivership estate includes a large number of affiliated  
7 entities with substantial cash, real property assets, and investments/loans. In  
8 addition, there are both (a) a large number of transfers to third parties that occurred in  
9 the months leading up to the Receiver's appointment, and (b) two fully operating golf  
10 courses, with significant operational, management, employment, membership, real  
11 property, environmental, and water rights issues. The largest category of work –  
12 Operations & Asset Sales – represents 37% of the fees incurred in the First  
13 Application period. This category has required extensive time associated with the  
14 complicated stabilization and oversight of two golf courses and the ongoing  
15 oversight of the various other real property assets. Two categories of work – General  
16 Receivership (23%) and Asset Investigation & Recovery (19%) – represent  
17 approximately 42% of the fees incurred in the First Application Period. While the  
18 Receiver will continue to secure and investigate potential assets, these two categories  
19 are substantially non-recurring and pertain primarily to a) the intensive takeover,  
20 which involved securing several office locations, securing numerous real property  
21 assets, and taking over dozens of bank accounts, and b) the extensive asset  
22 investigation, which involved review of voluminous documentation obtained in the  
23 takeover as well as preparing for and conducting interviews with numerous  
24 witnesses. Accordingly, although the fees for the First Application Period are  
25 significant, a material amount of the work was on non-recurring tasks associated with  
26 implementing the Court's orders, investigating and securing assets, and initially  
27 stabilizing golf course operations.

28

1           Going forward, the Receiver expects that the fees will primarily shift to the  
2 Forensic Accounting and Claims & Distributions categories. The Operations &  
3 Asset Sales category will remain a significant component of the Receiver's fees due  
4 to preparing and selling the real property assets and ongoing work to stabilize and  
5 improve operations at the golf courses (in preparing for eventual sale thereof).

6           The Receiver has worked diligently and efficiently with urgent issues facing  
7 the receivership estate through the turbulent transition from a large, active enterprise  
8 to a Court-ordered receivership. Through these diligent and efficient efforts and with  
9 the assistance of Allen Matkins, the Receiver was able to initially identify and  
10 account for the specific disbursement of over \$55 million of receivership estate  
11 funds, and in doing so was able to (a) recover, preserve and protect approximately  
12 \$15.67 million in cash and real estate purchased for approximately \$13.78 million,  
13 and (b) identify, investigate and commence pursuit of third-party transfers,  
14 investments and loans of more than \$21 million. These efforts have already resulted  
15 in recovery of significant sums, including \$113,000 recovered to date and  
16 \$2.92 million being held in escrow pending further order of the Court.<sup>1</sup> The Receiver  
17 has worked diligently in carrying out her Court-ordered duties and should be  
18 compensated on an interim basis for her work.

19 **II. SUMMARY OF TASKS PERFORMED AND COSTS INCURRED**

20 **A. Categories and Descriptions of Work**

21 **1. General Receivership**

22           The Receiver's work in the General Receivership category initially focused on  
23 review and analysis of key orders and pleadings, the takeover and review of  
24 documentation obtained in the takeover, as well as interaction with attorneys for the  
25 Commission, other government agencies, and the Defendants and Relief Defendants.  
26 This work was necessary to effect of the key provisions of the Court's orders, and to

27 \_\_\_\_\_  
28 <sup>1</sup> The amount escrowed includes \$750,000 that is the subject of a settlement with Daniel John Lazarus for which approval has been sought. Dkt. No. 132.

1 effectively takeover and secure the receivership estate assets, which included two  
2 facilities out of which the Receivership Entities were operating,<sup>2</sup> two operating golf  
3 courses, three single-family homes, one warehouse, raw land, a significant amount of  
4 personal property found at several different locations and dozens of bank accounts  
5 located at numerous different banks. This work also included coordinating and  
6 retrieving images and back-ups of the Receivership Estate's electronic devices and  
7 mail. This work also included investigative research for investor database  
8 information, and setup of a designated website to provide salient case documents and  
9 contact information for investors.

10 This very large undertaking comprises the second largest part of the Receiver's  
11 work during the First Application Period. The reasonable and necessary fees for  
12 work in this category during the First Application Period total \$50,314.95.

13 2. Asset Investigation and Recovery

14 The Second Report, at Section III(C), discusses the numerous investments,  
15 loans, and other transfers to third parties made by the Receivership Entities. In  
16 addition to securing the real estate assets and the \$2.26 million in the bank accounts  
17 included in the TRO, with the assistance of counsel and the Commission, the  
18 Receiver's diligence at takeover enabled her to identify and recover an additional  
19 \$13.41 million of cash. The Receiver's initial investigation also revealed nearly  
20 \$21 million of investments, loans and other third-party transfers. These transfers  
21 include, but are not limited to, oil and gas investments in Texas, diamonds purchased  
22 with Receivership Entities' funds located in New York, live concerts and film  
23 productions, merchant account service providers, a social media company, a food  
24 technology company and not-for-profit donations.

25

26

27 <sup>2</sup> The Receiver also efficiently facilitated vacating the office location which was  
28 leased, thus ceasing leasehold related expenses and materially recovering the  
security deposit.



1 Many of these transfers totaling more than \$21 million were transferred from  
2 the Receivership Entities in the first quarter of 2014. The following brief summary  
3 highlights a few of the transfers:

- 4 • Vincent J. Messina - \$5 million was transferred to Mr. Messina's  
5 IOLTA account on February 26, 2014.
- 6 • PMX Holdings - \$1.3 million was transferred to PMX related entities  
7 for purported diamond mining operations in Sierra Leone. The funds  
8 were apparently used to fund a diamond mining operation and for the  
9 purchase of various diamonds. Receivership Entities' records notably  
10 contained almost no documentation relating to these purported loans or  
11 the diamond mining operation.
- 12 • WCM Resources ("WCMR") and Aeon Operating - \$4.1 million was  
13 transferred to WCMR to fund oil and gas investments in Texas and  
14 Louisiana, which were apparently operated by Aeon Operating located  
15 in Texas. Of this, the Receiver recovered \$1.2 million from the WCMR  
16 bank account, however, \$2.9 million apparently was been spent on oil  
17 and gas investments and operations.
- 18 • Frequency Networks, Inc. - \$3 million was transferred to this company,  
19 which is apparently engaged in providing for the sharing of video via  
20 social media.
- 21 • Daniel John Lazarus/Robert Sensi - a total of \$1.45 million was  
22 transferred to these two individuals, including to foreign accounts held  
23 in Germany, for unspecified investments/services. Mr. Lazarus received  
24 \$1.165 million while \$285,000 was paid to Mr. Sensi. Both promptly  
25 retained criminal defense counsel upon being contacted by the Receiver.
- 26 • Governmental Impact/Baseballers Against Drugs - \$750,000 was paid  
27 for advocacy services that were never provided and another \$100,000  
28

1 transferred as a purported donation. A significant amount of the funds  
2 were then transferred to two individuals.

- 3 • MaNa Fashion/JJ Sparkles, Inc/YuanHao - \$2.0 million was transferred  
4 to these companies for the purported purchase of various clothing  
5 products with virtually no documentation to support the transactions.  
6 An individual involved with these transfers is apparently a sibling of  
7 Mr. Xu.
- 8 • MycoTechnology - \$1.05 million was transferred to this company for  
9 the purchase of three convertible promissory notes with face values of  
10 \$750,000, \$250,000, and \$50,000 and which mature on December 31,  
11 2015.

12 These are just a few of the many investments, loans, and transfers discussed in  
13 the Second Report. As noted above, a primary objective has been to recover and  
14 secure as much of this vast sum as possible for the benefit of receivership estate.  
15 This very large project comprises the third largest part of the Receiver's work during  
16 the First Application Period and includes the following tasks performed in  
17 conjunction with Allen Matkins, as necessary:

- 18 • Reviewing documents found at Receivership Entities' locations;
- 19 • Reviewing Receivership Entity email records obtained;
- 20 • An in-person meeting and numerous calls with Defendant Ming Xu and  
21 his counsel;
- 22 • Preparing for and attending meetings with employees, transferees, and  
23 other witnesses;
- 24 • Analyzing the potential value and recoverability of hard assets,  
25 including personal property as well as various diamonds located both  
26 domestically and abroad;
- 27 • Through counsel, negotiating and corresponding with various  
28 transferees and their counsel;

- 1           • Reviewing escrow agreements for funds to be secured pending further
- 2           order of the Court; and
- 3           • Analyzing proposed settlements and negotiating and reviewing
- 4           settlement agreements with transferees.

5           The investigation was particularly challenging and time consuming because

6 documents and information had to be gathered by piecing documentation together,

7 searching through thousands of e-mails, reviewing volumes of subpoenaed

8 information and preparing analysis thereof upon receipt.

9           The investigation and recovery efforts were further complicated by the fact

10 that many transferees, upon being contacted, hired (notably criminal) defense

11 counsel rather than agreeing to provide documents or to be interviewed.

12 Accordingly, subpoenas had to be issued and communications routed through

13 counsel, adding expense and delay. In many instances, transferees demanded more

14 time, and produced volumes of documents in piece-meal fashion.

15           Language barriers also presented a challenge in investigating certain

16 investments and transfers, many of which went to Chinese-Americans located in the

17 United States. Another transferee (Marcus Almeida of Asia Wallet) speaks only

18 Portuguese, however, requiring English translation by his employees and counsel.

19           To date, in addition to the recovery of the cash and real property assets, the

20 combined efforts of the Receiver and Allen Matkins to recover on these purported

21 investments, loans, and other transfers have generated \$113,000 in direct recoveries

22 and \$2.92 million held in escrow, including a \$750,000 settlement, subject to Court

23 approval. The Receiver, through Allen Matkins, is currently negotiating a repayment

24 plan with certain borrowers, and continues efforts to investigate and maximize the

25 recovery from the Receivership Entities' other investments, loans, and transfers to

26 third parties. The reasonable and necessary fees for work in this category during the

27 First Application Period total \$40,113.90.

28

1                   3.     Reporting

2                   The Receiver's work in this category during the First Application Period  
3 focused on preparing the Initial Report (Dkt. No. 28) and commencement of the  
4 Receiver's Second Report (Dkt. No. 129). The Initial Report, filed on April 8, 2014,  
5 provided the Receiver's initial assessment of the receivership and activities to date,  
6 including the Receiver's a) efforts to recover receivership assets, documents and  
7 records, b) initial interviews with employees of Receivership Entities, and  
8 c) assessment of the Receivership Entities' operations. The Initial Report also  
9 provided a summary of the difficulties encountered in seeking recovery from Vincent  
10 Messina, the recipient of \$5.2 million in Receivership Entities' assets, and the  
11 Receiver's intention to move, *ex parte*, for an order freezing accounts held by  
12 Messina. The reasonable and necessary fees for work in this category during the  
13 First Application Period total \$5,049.90.

14                   4.     Operations and Asset Sales

15                   The Receiver's time in this category reflects the volume and complexity of  
16 issues that arose during the Application Period in connection with the maintenance  
17 and operation of the various real properties and businesses owned and operated by  
18 receivership Entities. These include the two fully operating golf courses, three high-  
19 end residential properties, a warehouse, raw land and health-care facilities and  
20 operations run as Super Care Medical Group ("SuperCare"). These properties and  
21 businesses each presented unique challenges.

22                   In particular, the two golf courses, Glen Ivy Golf Course and the Links at  
23 Summerly, had little to no management oversight and failed to keep bank  
24 reconciliations, business plans, or operating budgets. Thus, the Receiver spent  
25 significant time interviewing and engaging an independent third-party management  
26 company to manage the golf courses. This required not only working with counsel to  
27 seek express approval from the Court, but also to negotiate and to prepare

28

1 agreements for the engagement of the management company and a golf consultant to  
2 handle the daily operations and improve the performance of the golf courses.

3 In addition to placing and/or ensuring proper insurance coverage, as  
4 applicable, performing research on and paying property taxes, generally overseeing  
5 operations, which includes various day-to-day correspondence, and at a minimum  
6 bi-monthly review of accounts payable and payroll, the Receiver has also had to  
7 spend significant time on various operational issues on the golf courses including:  
8 (i) dealing with a related homeowner's association and maintenance matters;  
9 (ii) negotiating a renewed lease agreement for a third-party food and beverage/event  
10 operator; (iii) handling urgent issues relating to water affordability and shortage  
11 caused, in part, by the severe drought conditions in Southern California;  
12 (iv) negotiating water rights and rates with a local water district; (v) dealing with a  
13 conditional use permit for the operation of a tent structure on site for various  
14 contracted events; (vi) handling and submitting insurance claims for incidents on the  
15 golf course properties; (vii) overseeing the contracting of AQMD adherence at both  
16 courses, and (viii) meeting with the original developer of Glen Ivy Golf Course  
17 regarding prospective conservative easements.

18 The Receiver has worked diligently to maintain two of the three residential  
19 properties, as well as to initiate and pursue an unlawful detainer action on the third  
20 residential property to regain possession thereof and to prepare the property for sale.  
21 The non-paying occupants (who did not maintain this property well) have since left  
22 the property and the Receiver has commenced preparations for sale thereof.

23 As explained in the Second Report, the Receivership Entities had also entered  
24 into agreements relating to a start-up healthcare facility in San Gabriel, California  
25 known as SuperCare, which had been funded entirely by WCM. The Receiver  
26 moved quickly to secure personal property (medical equipment) and investigate the  
27 business, gathering and reviewing the relevant agreements, and addressing personnel  
28 issues. Once it was determined this start-up venture was operating at a continuing

1 loss, the Receiver ceased funding operations, secured equipment and other personal  
2 property, and took steps to ensure that patients and patient records were transferred  
3 to other healthcare facilities.

4 This category was the single largest category, and considering the importance  
5 of preservation and protection of real estate purchased for approximately  
6 \$13.78 million, the reasonable and necessary fees for work during the First  
7 Application Period in this category total \$80,753.85.

8 5. Claims and Distributions

9 During the First Application Period, the Receiver worked to respond to  
10 voluminous direct inquiries from investors regarding the receivership appointment,  
11 the impact of the receivership, the investors' investments and the investor claims  
12 process. In light of hundreds of thousands of investor accounts, and various other  
13 challenges presented as a result of the Receivership Entities' enterprise, the Receiver  
14 also commenced research on a claims administration entity to help minimize the cost  
15 of the claims process and ultimate distribution of funds to investors.

16 The reasonable and necessary fees for work during the First Application  
17 Period in this category total \$9,527.18.

18 6. Third Party Recoveries

19 This category focuses primarily on efforts to recover the \$5.2 million  
20 transferred to attorney Vincent J. Messina ("Messina") from the Receivership  
21 Entities.<sup>3</sup> The Second Report, at pages 15-17, as well as the Receiver's original  
22 *Ex Parte* Application (Dkt. No. 29) and Reply brief (Dkt. No. 37) discuss her  
23 investigation of the transfers and efforts to recover from Messina.

24  
25  
26 <sup>3</sup> Although this work is similar to work in the Asset Investigation & Recovery  
27 category, the work relating to Messina quickly required relief from the Court to  
28 prevent further dissipation of funds transferred to Messina. Accordingly, the  
Messina-related work is contained in the Third Party Recoveries category, which  
is generally used for litigation with third parties.

1 Messina was not a relief defendant until approximately six (6) weeks into the  
2 case when the Commission filed its First Amended Complaint, naming him and  
3 affiliated entity International Market Ventures ("IMV"). Within the first few days of  
4 the receivership, the Receiver discovered the \$5 million transfer to Messina and  
5 contacted him to demand return of the funds. Messina promptly hired Thompson  
6 Hine LLP to defend him and later to defend IMV. The Receiver's work included  
7 performing accounting analysis of the ultimate recipients of the \$5 million transfer  
8 based upon subpoenaed records, and supporting Allen Matkins with work necessary  
9 to secure and pursue recovery thereof. Certain of this work includes but is not  
10 limited to:

- 11 • Communications with Bank of America regarding the TRO and the need  
12 to place a hold on Messina's accounts;
- 13 • Review of the *Ex Parte* Application and Reply brief, along with  
14 supporting declarations and exhibits;
- 15 • Attendance at the April 24, 2014 hearing on the Receiver's *Ex Parte*  
16 Application;
- 17 • Review and analysis of accounting declarations and exhibits filed by  
18 and received from Messina;
- 19 • Review and analysis of Messina account records received from banks  
20 pursuant to subpoenas; and
- 21 • Attendance at the May 14, 2014 hearing on the Commission's *Ex Parte*  
22 Application.

23 The efforts to recover the \$5.2 million transferred to Messina, which are now  
24 being lead by the Commission pursuant to its First Amended Complaint, are  
25 ongoing. However, more than \$2.1 million is escrowed at Thompson Hine, which  
26 ensures those funds will be available to satisfy a judgment. Considering that the  
27 remaining funds appear to have been transferred primarily to third parties located  
28 abroad, securing the \$2.1 million was a critical step in the recovery process.

1 The reasonable and necessary fees for work during the First Application  
2 Period in this category total \$6,849.90.

3 7. Forensic Accounting

4 This category focuses on the early stages of the Receiver's forensic accounting  
5 analysis; it primarily reflects the preparations for the global forensic analysis,  
6 including the organization of Quickbooks, bank statements and detailed items  
7 received and the initial preparation and analysis of two ToPacific, Inc. bank accounts  
8 (which captured over \$19 million of receipts and disbursements).

9 As discussed in the Second Report, the Receivership Entities did not keep  
10 accurate or complete books and records of all their financial activities. Further, the  
11 Receivership Entities books and records do not thoroughly reflect investor monies  
12 paid into and out of the enterprise. Therefore, a forensic accounting is necessary to  
13 determine where the money raised by the Receivership Entities came from, how it  
14 was transferred between and among the Receivership Entities, and to whom it was  
15 disbursed. This is an integral step necessary to be able to confirm investor claims.  
16 And although the Court's orders authorize the Receiver to conduct an accounting, the  
17 Receiver has specifically requested authority to proceed with such an accounting via  
18 the Second Report. Due to the complexity and scope of the alleged scheme, the  
19 number of affiliated entities and bank accounts used, the high volume of transfers to,  
20 from, and between Receivership Entities, and the lack of a thorough and centralized  
21 accounting system, the forensic accounting project will take time to complete.

22 The reasonable and necessary fees for work during the First Application  
23 Period in this category total \$23,507.55.

24 8. Summary of Expenses Requested for Reimbursement

25 The Receiver requests the Court approve reimbursement of \$36,885.97 in out-  
26 of-pocket costs. The itemization of such expenses is summarized below by category.  
27 The majority of the expenses incurred relate to the forensic computer, email and SQL  
28 database recovery. As discussed on pages 28-29 of the Second Report, the Receiver



1 engaged an outside forensic computer specialist, SETEC Investigations, to image and  
2 preserve all electronic records and data on computer hard drives and devices of the  
3 Receivership Entities. The cost for this work totaled \$17,253.12. In addition, the  
4 Receiver engaged an outside computer specialist, AMA Networks, to gather all  
5 emails from the Google-based email accounts used by the Receivership Entities and  
6 analyze the SQL database recovered from the website hosting company, Liquid Web  
7 (see pages 32-33 of the Second Report). The total incurred for this work was  
8 \$10,995.00. The SQL database recovery process is an ongoing project so additional  
9 expenses are expected to be incurred.

10 The Receiver also incurred expenses associated with securing the real estate  
11 properties, setting up new EIN's for the Receivership Entities, noticing golf course  
12 vendors, setting up a designated website for investor access to information, and other  
13 transportation and operational costs.

14 The total reasonable and necessary costs incurred by the Receiver during the  
15 First Application Period is \$36,885.97 and is broken out by category as follows:

Category	Total
Forensic Computer Imaging	\$17,253.12
Email and SQL Database Recovery	\$10,995.00
Locksmith	\$1,728.48
Transportation/Parking	\$1,487.25
Duplication	\$1,465.03
Postage	\$1,123.43
Receivership Website Set-Up	\$1,063.34
EIN's	\$935.00
Other Miscellaneous	\$835.32
<b>TOTAL</b>	<b>\$36,885.97</b>

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1 **III. THE FEES AND COSTS ARE REASONABLE AND SHOULD BE**  
2 **ALLOWED**

3 "As a general rule, the expenses and fees of a receivership are a charge upon  
4 the property administered." *Gaskill v. Gordon*, 27 F.3d 248, 251 (7th Cir. 1994).  
5 These expenses include the fees and expenses of this Receiver and his professionals,  
6 including Allen Matkins. Decisions regarding the timing and amount of an award of  
7 fees and costs to me and his Professionals are committed to the sound discretion of  
8 the Court. *See SEC v. Elliot*, 953 F.2d 1560, 1577 (11th Cir. 1992) (rev'd in part on  
9 other grounds, 998 F.2d 922 (11th Cir. 1993)).

10 In allowing fees, a court should consider "the time, labor and skill required,  
11 but not necessarily that actually expended, in the proper performance of the duties  
12 imposed by the court upon the Receiver, the fair value of such time, labor and skill  
13 measured by conservative business standards, the degree of activity, integrity and  
14 dispatch with which the work is conducted and the result obtained." *United States v.*  
15 *Code Prods. Corp.*, 362 F. 2d 669, 673 (3d Cir. 1966) (internal quotation marks  
16 omitted). In practical terms, receiver and professional compensation thus ultimately  
17 rests upon the result of an equitable, multi-factor balancing test involving the  
18 "economy of administration, the burden that the estate may be able to bear, the  
19 amount of time required, although not necessarily expended, and the overall value of  
20 the services to the estate." *In re Imperial 400 Nat'l, Inc.*, 432 F.2d 232, 237 (3d Cir.  
21 1970). Regardless of how this balancing test is formulated, no single factor is  
22 determinative and "a reasonable fee is based [upon] all circumstances surrounding  
23 receivership." *SEC v. W.L. Moody & Co., Bankers (Unincorporated)*, 374 F. Supp.  
24 465, 480 (S.D. Tex. 1974).

25 As a preliminary matter, the TRO and Preliminary Injunction Order confer on  
26 the Receiver substantial duties and powers, including to conduct such investigation  
27 and discovery as is necessary to locate and account for all receivership assets, take  
28 such action as is necessary and appropriate to assume control over and preserve

1 receivership assets, and employ attorneys and others to investigate and, where  
2 appropriate, institute, pursue, and prosecute all claims and causes of action of  
3 whatever kind and nature. *See* TRO, Part VII; Preliminary Injunction Order,  
4 Part VII. The Court also approved the Receiver's proposal to file interim reports and  
5 fee applications on a quarterly basis. *Id.*

6 The Receiver has submitted a detailed fee application which describes the  
7 nature of the services rendered, and the identity and billing rate of each individual  
8 performing each task. *See* Exhibit A. The Receiver has endeavored to staff matters  
9 as efficiently as possible while remaining cognizant of the complexity of issues  
10 presented. The request for fees is based on the Receiver's customary billing rates  
11 charged for comparable services provided in other matters, less a 10% discount.

12 The work performed by the Receiver was essential to carrying out the Court-  
13 ordered duties. The Receiver and Allen Matkins have worked diligently since the  
14 Receiver's appointment to preserve and protect the assets of receivership estate, to  
15 investigate and recover sums transferred to third parties, and to maximize the funds  
16 available for ultimate distribution to investors. Moreover, the Receiver seeks  
17 payment of only 80% of fees incurred on an interim basis in recognition of the fact  
18 that her work is ongoing. Payment of the proposed 20% holdback will be sought at  
19 the conclusion of receivership. The Receiver's fees are fair and reasonable and  
20 should be approved and paid on an interim basis.

21 **IV. CONCLUSION**

22 The Receiver therefore respectfully requests this Court enter an Order:

- 23 1. Approving the Receiver's fees, on an interim basis, of \$216,117.23;
- 24 2. Authorizing and directing the Receiver to pay 80% of approved fees, or  
25 \$172,893.78, from the assets of receivership Entities;
- 26 3. Approving the Receiver's costs in the amount of \$36,885.97, and  
27 authorizing and directing me to reimburse such costs in full; and

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4. For such other and further relief as the Court deems appropriate.

Dated: October 3, 2014

By:



KRISTAL L. FREITAG  
Court-appointed Receiver