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7 Attorneys for Court-appointed Receiver  
8 KRISTA L. FREITAG

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

12 SECURITIES AND EXCHANGE  
COMMISSION,

13 Plaintiff,

14 v.

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

18 Defendants,

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

24 Relief Defendants.

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

NOTICE OF MOTION AND MOTION  
FOR APPROVAL OF SETTLEMENT  
WITH DANIEL JOHN LAZARUS

Date: September 22, 2014  
Time: 1:30 p.m.  
Ctm: 16  
Judge: Hon. John F. Walters

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26 TO ALL INTERESTED PARTIES:

27 PLEASE TAKE NOTICE that on September 22, 2014, at 1:30 p.m. in  
28 Courtroom 16 of the above-entitled Court, located at 312 North Spring Street, Los

1 Angeles, California 90012, Krista L. Freitag (the "Receiver"), the Court-appointed  
2 permanent receiver for Defendants World Capital Market Inc. ("WCM"), WCM777  
3 Inc. ("WCM777"), WCM777 Ltd. d/b/a WCM777 Enterprises, Inc. ("WCM777  
4 Enterprises"), and Relief Defendants Kingdom Capital Market, LLC; Manna  
5 Holding Group, LLC; Manna Source International, Inc.; WCM Resources, Inc.;  
6 ToPacific Inc.; To Pacific Inc.; and their subsidiaries and affiliates (collectively,  
7 "Receivership Entities"), will and hereby does move the Court for approval of a  
8 settlement agreement with Daniel John Lazarus ("Lazarus").

9 This Motion for Approval of Settlement with Daniel John Lazarus (the  
10 "Motion") is based on this Notice of Motion and Motion, the attached Memorandum  
11 of Points and Authorities, the Declaration of Krista L. Freitag, the documents and  
12 pleadings already on file in this action, and upon such further oral and documentary  
13 evidence as may be presented at the time of the hearing.

14 **Procedural Requirements:** If you oppose this Motion, you are required to  
15 file your written opposition with the Office of the Clerk, United States District  
16 Court, 312 North Spring Street, Los Angeles, California 90012 and serve the same  
17 on the undersigned not later than twenty-one (21) calendar days prior to the hearing.

18 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the  
19 above date, the Court may grant the requested relief without further notice. This  
20 Motion is made following the conference of counsel pursuant to L.R. 7-3.

21  
22 Dated: August 19, 2014

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
DAVID R. ZARO  
TED FATES  
TIM C. HSU

23  
24  
25 By:           /s/ Tim C. Hsu

26 TIM C. HSU  
27 Attorneys for Court-appointed  
Receiver  
28 KRISTA L. FREITAG

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

12 SECURITIES AND EXCHANGE  
COMMISSION,  
13 Plaintiff,  
14 v.  
15 WORLD CAPITAL MARKET INC.;  
16 WCM777 INC.; WCM777 LTD. d/b/a  
WCM777 ENTERPRISES, INC.; and  
17 MING XU a/k/a PHIL MING XU,  
18 Defendants,  
19 KINGDOM CAPITAL MARKET, LLC;  
20 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  
MARKET VENTURES,  
24 Relief Defendants.

Case No. CV-14-2334-JFW-MRW  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR APPROVAL OF  
SETTLEMENT WITH DANIEL JOHN  
LAZARUS  
  
Date: September 22, 2014  
Time: 1:30 p.m.  
Ctrm: 16  
Judge: Hon. John F. Walters

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In the 38 days preceding the Receiver's appointment on March 27, 2014, the  
4 Receivership Entities transferred \$1,165,000 to a German bank account maintained  
5 by Lazarus. The stated purpose of the transfers is for Lazarus and/or his company,  
6 RCG Redevelopment Bank, to make investments and/or charitable contributions to  
7 humanitarian causes – specifically, a healthcare facility in Montenegro and a shelter  
8 for victims of domestic violence in Peru. The true purpose of the transfers and  
9 whether such purpose is legitimate remains unclear.

10 The Receiver issued a subpoena to Lazarus, who then produced documents  
11 showing that approximately \$917,000 remained in his German bank accounts and  
12 that the remainder of the funds had been spent or disbursed to several different  
13 parties located in Europe. The Receiver and Lazarus then negotiated the proposed  
14 settlement, under which Lazarus will make a one-time payment to the Receiver of  
15 \$750,000 in exchange for a release of claims arising from the transfers of  
16 \$1,165,000 to Lazarus. The Securities and Exchange Commission, through its  
17 counsel ("Commission"), participated in the settlement discussions and supports the  
18 Motion. The funds to be remitted to the Receiver have been placed into escrow with  
19 Lazarus' counsel pending Court approval of the Motion.

20 **II. FACTS**

21 In accordance with the TRO and Preliminary Injunction Order issued by this  
22 Court, and the law governing federal equity receiverships, immediately upon her  
23 appointment on March 27, 2014, the Receiver moved to investigate and secure the  
24 assets of the Receivership Entities. (Declaration of Krista L. Freitag ("Freitag  
25 Decl."), ¶ 3.) Pursuant to her investigation, the Receiver discovered that a total of  
26 \$1,165,000 was transferred to Lazarus during the 38 days preceding her  
27 appointment. (Freitag Decl., ¶ 4.) These funds were transferred from accounts held  
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1 by ToPacific Inc. and World Capital Market Inc. by way of three wire transfers to  
2 Lazarus's bank account at Deutsche Bank in Germany as follows:

- 3 • \$500,000.00 on February 18, 2014;
- 4 • \$500,000.00 on February 24, 2014; and
- 5 • \$165,000.00 on March 7, 2014.

6 (Freitag Decl., ¶ 4.)

7 Notably, there are no contemporaneous documentation in the Receivership  
8 Entities' records to explain the purpose of these transfers or any evidence showing  
9 the transfers were for a legitimate purpose or that any value was provided by  
10 Lazarus to the Receivership Entities in exchange. (Freitag Decl., ¶ 5.)

11 The Receiver issued a subpoena to Lazarus for documents pertaining to the  
12 transfer of funds. (Freitag Decl., ¶ 6.) The Receiver also sent subpoenas and letters  
13 to both Deutsche Bank's parent company in Germany as well as its domestic  
14 subsidiary here in the United States for records pertaining to the transfers from the  
15 Receivership Entities and to request that the funds be frozen pending the Receiver's  
16 investigation. (*Id.*) Deutsche Bank in Germany did not respond and its United  
17 States subsidiary responded that it has no control over the German account. (*Id.*)  
18 However, the bank statements produced by Lazarus show that of the funds  
19 transferred, approximately \$917,000 remained in the Deutsche Bank accounts as of  
20 May 8, 2014.<sup>1</sup> (*Id.*) Lazarus contends the funds were transferred to him for  
21 legitimate humanitarian causes and/or business ventures, and that the balance of the  
22 funds transferred (approximately \$248,000) had already been spent in connection  
23 therewith. (Freitag Decl., ¶ 7.)

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<sup>1</sup> The funds transferred to Lazarus were held in two accounts at Deutsche Bank, one in U.S. dollars and the other in Euros. As of May 8, 2014, these accounts held approximately \$845,000 USD and \$52,000 EUR. Given the USD to EUR exchange rate on May 8, 2014 of \$1 to €0.7188, the total funds held in USD equivalent was approximately \$917,000 on May 8, 2014. (Freitag Decl., ¶ 6.)

1 The Receiver and Lazarus then agreed, subject to Court approval, that  
2 Lazarus would return \$750,000 of the remaining funds to the Receiver and that such  
3 funds would be placed into escrow pending Court approval of the proposed  
4 settlement. (Freitag Decl., ¶ 8, Ex. A.) Considering (a) the amount remaining in  
5 Lazarus' German bank accounts when the agreement was reached (\$917,000),  
6 (b) the costs the Receiver would incur to litigate claims against Lazarus, obtain a  
7 judgment, domesticate the judgment in Germany, and obtain orders from a German  
8 court for turnover of the funds, and (c) the risk the funds would be moved or spent  
9 between now and the time the Receiver could enforce the German court order, the  
10 Receiver believes approval of the settlement, which will produce an immediate cash  
11 recovery of \$750,000, is in the best interests of the receivership estate. (Freitag  
12 Decl., ¶ 9.) Thus, the Receiver recommends the settlement agreement be approved.

13 **III. PROPOSED SETTLEMENT**

14 Subject to Court approval, the Receiver and Lazarus have agreed to settle the  
15 claims arising from the transfers of \$1,165,000 to Lazarus with each side paying  
16 their own costs and attorneys' fees. Under the proposed settlement, Lazarus will  
17 make a one-time payment to the receivership estate in the amount of \$750,000. A  
18 settlement agreement has been reviewed and approved by the Receiver and Lazarus  
19 and their respective counsel, and is attached as **Exhibit A** to the Declaration of  
20 Krista L. Freitag, filed concurrently herewith. The \$750,000 is being held in escrow  
21 by Lazarus' counsel pending Court approval of the settlement.

22 **IV. ARGUMENT**

23 A federal equity receiver's power to compromise claims is subject to court  
24 approval. As noted by the Ninth Circuit Court of Appeals, "[a] district court's power  
25 to supervise an equity receivership and to determine the appropriate action to be  
26 taken in the administration of the receivership is extremely broad." *SEC v. Hardy*,  
27 803 F.2d 1034, 1037 (9th Cir. 1986). With regard to settlements entered into by a  
28 federal equity receiver, the Court's supervisory role includes reviewing and

1 approving those settlements in light of federal court policy to promote settlements  
2 before trial. *See* Fed. R. Civ. P. 16(c), Advisory Committee Notes.

3 Federal courts of equity often look to bankruptcy law for guidance in the  
4 administration of receivership estates. *See SEC v. Capital Consultants, LLC*,  
5 397 F.3d 733, 745 (9th Cir. 2005); *SEC v. American Capital Investments, Inc.*,  
6 98 F.3d 1133, 1140 (9th Cir. 1996); *SEC v. Basic Energy & Affiliated Resources*,  
7 273 F.3d 657, 665 (6th Cir. 2001); *see also* Central District of California, Civil  
8 Local Rule 66-8 ("a receiver shall administer the estate as nearly as possible in  
9 accordance with the practice in the administration of estates in bankruptcy"). A  
10 bankruptcy court may approve a compromise of claims asserted by or against the  
11 estate if the compromise is "fair and equitable." *Woodson v. Fireman's Fund*  
12 *Insurance Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988). The approval of  
13 a proposed compromise negotiated by a court-appointed fiduciary "is an exercise of  
14 discretion that should not be overturned except in cases of abuse leading to a result  
15 that is neither in the best interest of the estate nor fair and equitable for the  
16 creditors." *In re MGS Marketing*, 111 B.R. 264, 266-67 (B.A.P. 9th Cir. 1990).

17 The Court has great latitude in approving compromises. In passing on the  
18 proposed compromise, the Court should consider the following:

- 19 a. The probability of success in litigation;  
20 b. The difficulties, if any, to be encountered in the matter  
of collection;  
21 c. The complexity of the litigation involved and the  
expense, inconvenience, and delay necessarily  
attending; and  
22 d. The paramount interest of the creditors and a proper  
deference to their reasonable views in the premises.

23 *Woodson*, 839 F.2d at 620.

24 Here, after consultation with counsel, the Receiver believes the costs of  
25 litigation and judgment enforcement, including the likelihood of having to enforce a  
26 judgment in Germany, would be significant. There is also considerable risk the  
27 funds, which, being in Germany are outside the Court's jurisdiction, would be  
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1 moved, spent, or otherwise further dissipated pending the Receiver's ability to  
2 secure their recovery. Although Lazarus has not presented credible evidence  
3 showing the transfers were for legitimate purposes or that any actual value was  
4 provided to the Receivership Entities, he contests the Receiver's recovery efforts  
5 based on his contention the funds were transferred for legitimate humanitarian  
6 causes and/or business ventures and has engaged counsel in California to represent  
7 him. If the proposed settlement is not approved, the Receiver's claims and Lazarus'  
8 defenses will have to be resolved through litigation, which would necessarily entail  
9 considerable expense and delay. In addition, because the funds transferred to  
10 Lazarus are in Germany, the Receiver may be required to domesticate any judgment  
11 obtained against Lazarus there and seek recovery pursuant to German law and  
12 procedures. Thus, even if the Receiver were to prevail in obtaining a judgment for  
13 the full \$1,165,000 transferred to Lazarus, it would involve considerable time and  
14 expense and there is risk of further dissipation of the funds, making the likelihood of  
15 a net recovery in excess of \$750,000 somewhat low. Accordingly, the Receiver  
16 believes the proposed settlement is in the best interests of the receivership estate and  
17 respectfully requests that it be approved.

18 **V. CONCLUSION**

19 Based on the foregoing, the Receiver respectfully requests approval of this  
20 Motion and the proposed settlement.

21  
22 Dated: August 19, 2014

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23  
24  
25 By:           /s/ Tim C. Hsu          

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Receiver  
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