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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
 13 COMMISSION,

14 Plaintiff,

15 v.

16 WORLD CAPITAL MARKET INC.;
 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;
 MANNA HOLDING GROUP, LLC;
 20 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
 AGREEMENT WITH
 GOVERNMENTAL IMPACT, INC.
 AND JAMES DANTONA

Date: June 1, 2015
 Time: 1:30 p.m.
 Ctrm: 16
 Judge: Hon. John F. Walter

26 **TO ALL INTERESTED PARTIES:**

27 **PLEASE TAKE NOTICE** that on June 1, 2015, 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.; WCM777 Inc.;
3 WCM777 Ltd. d/b/a WCM777 Enterprises, Inc.; and Relief Defendants Kingdom
4 Capital Market, LLC; Manna Holding Group, LLC; Manna Source
5 International, Inc.; WCM Resources, Inc.; ToPacific Inc.; To Pacific Inc.; and their
6 subsidiaries and affiliates (collectively, "Receivership Entities"), will and hereby
7 does move the Court for approval of a settlement agreement with Governmental
8 Impact, Inc. and James Dantona ("Motion").

9 The Motion is based on this Notice of Motion and Motion, the attached
10 Memorandum of Points and Authorities, the Declaration of Krista L. Freitag, the
11 documents and pleadings already on file in this action, and upon such further oral
12 and documentary evidence as may be presented at the time of the hearing.

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

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

20
21 Dated: April 23, 2015

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
MICHAEL R. FARRELL
TIM C. HSU

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23
24 By: /s/ Tim C. Hsu

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 During the 60 days preceding the filing of this action and the Receiver's
4 appointment on March 27, 2014, \$750,000 from the Receivership Entities was
5 transferred to Governmental Impact, Inc. ("GII") for purported consulting services
6 that were never provided. Of the funds received by GII, approximately \$266,500
7 was subsequently disbursed to GII's principal, James Dantona ("Dantona"), and
8 \$325,000 was disbursed to Zayda Aberin ("Aberin") and her company, ZHB
9 International Corp. ("ZHB"). After obtaining prior approval from this Court, the
10 Receiver filed a separate action seeking recovery of the transferred funds as against
11 GII, Dantona, Aberin and ZHB, entitled *Freitag v. Governmental Impact, Inc., et*
12 *al.*, Case No. 2:14-cv-07518-JFW-MRW (the "Disgorgement Action").

13 Since the Disgorgement Action was filed, the Receiver, GII and Dantona have
14 participated in mediation and discussed settlement. Through these discussions, GII
15 and Dantona represented to the Receiver that their net worth is severely limited.¹
16 Based on these representations and my review of GII and Dantona's financial
17 records, and subject to Court approval, the Receiver has agreed to accept a total of
18 \$135,000 in satisfaction of GII and Dantona's obligations to the receivership estate.
19 The Receiver will also seek default judgment against the defaulted defendants
20 Aberin and ZHB in the amount of \$325,000 that they received following approval of
21 this settlement. Thus the combined anticipated recovery for the receivership estate
22 is \$460,000, out of the total \$750,000 transferred to GII.

23 As part of the settlement, GII and Dantona have provided financial
24 disclosures which, to the Receiver's reasonable satisfaction, support the
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27 ¹ Due to privacy concerns, the amounts of GII and Dantona's net worth
28 representations have been redacted from the copy of the settlement agreement
filed with this Court. An unredacted courtesy copy is being delivered to this
Court's chambers in connection with this filing.

1 representations regarding GII and Dantona's net worth.² Dantona has also agreed to
2 a lien on his real property in order to secure the payments that he is required to make
3 pursuant to the terms of the settlement.

4 Subject to Court approval, the Receiver, GII and Dantona executed a
5 Settlement Agreement & Release ("Settlement Agreement"), the terms of which are
6 discussed in greater detail below. The Receiver believes that the receivership
7 estate's claims for disgorgement against GII and Dantona are meritorious but
8 continued litigation would be expensive and time consuming. If GII and Dantona
9 were financially capable of fully satisfying a judgment for disgorgement, the
10 additional expense and delay may be justified. However, GII and Dantona's
11 financial disclosures show that they would likely be able to pay only a fraction of a
12 full judgment of \$750,000.

13 Therefore, in all likelihood, continuing to incur litigation expenses (in the
14 Disgorgement Action and possibly on appeal) would only serve to reduce any net
15 recovery from GII and Dantona.³ The Receiver believes that the Settlement
16 Agreement will generate the highest net recovery for the receivership estate, and
17 therefore respectfully requests that it be approved.

18 **II. FACTS**

19 **A. The Commencement of the Enforcement Action and the Receiver's** 20 **Appointment.**

21 This action commenced on March 27, 2014, when the Commission filed its
22 Complaint. (*See* Dkt. No. 1.) The Complaint alleges that Defendants Ming Xu,
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24 ² Under the proposed settlement agreement, the Receiver is required to keep
25 confidential the financial disclosures provided by GII and Dantona. If the Court
26 wishes to review the disclosures, the Receiver will seek permission to file these
27 records under seal for *in camera* review.

28 ³ The Receiver has filed a motion seeking summary judgment against GII and
Dantona. To avoid incurring unnecessary costs in light of the settlement, the
Receiver has stipulated to a continuance of the hearing on the summary judgment
motion and all related briefing deadlines. That stipulation seeking a continuance
is being filed concurrently with the Receiver's filing of this motion.

1 WCM, WCM777, and WCM777 Enterprises operated a Ponzi scheme and
2 misappropriated investor funds through an unregistered securities offering that
3 targeted members of the Asian-American and Hispanic-American communities, as
4 well as foreign investors. (*Id.*) As a result, the Commission brought claims against
5 Ming Xu and the Receivership Entities for violations of Section 10(b) of the
6 Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5; Section 17(a) of
7 the Securities Act of 1933 ("Securities Act"); Sections 5(a) and 5(c) of the Securities
8 Act; and Section 20(a) of the Exchange Act. (*Id.*)

9 On March 27, 2014, the Court granted the Commission's *Ex Parte*
10 Application and appointed the Receiver as temporary receiver of the Receivership
11 Entities. (*See* Dkt. No. 14.) On April 10, 2014, the Receiver's appointment was
12 made permanent pursuant to the Court's Preliminary Injunction Order. (*See* Dkt.
13 No. 33.) Thereafter, on May 21, 2014, the District Court entered an Order: (1)
14 Freezing Assets; (2) Requiring Accountings; (3) Prohibiting the Destruction of
15 Documents; (4) Granting Expedited Discovery; (5) Repatriating Assets; and (6)
16 Appointing a Receiver Over Relief Defendants ToPacific Inc., a Delaware
17 Corporation and To Pacific Inc., a California Corporation, which appointed the
18 Receiver as permanent receiver over ToPacific Inc., To Pacific Inc. and their
19 subsidiaries and affiliates. (*See* Dkt. No. 75.)

20 **B. The Transfers of Funds from ToPacific to GII and Subsequent**
21 **Transfers Made by GII to Dantona, Aberin and ZHB or for their**
22 **benefit.**

23 Pursuant to the terms of her appointment, the Receiver promptly assumed
24 authority and control over the Receivership Entities, including ToPacific, and
25 commenced her investigation to locate, secure, and preserve the value of all assets
26 of the Receivership Entities. (*See* Declaration of Krista L. Freitag ("Freitag Decl."),
27 ¶ 3.) Through her investigation and review of the records of the Receivership
28 Entities, the Receiver discovered that between January and March 2014, ToPacific

1 transferred funds to GII in the aggregate amount of \$750,000.⁴ (*Id.* at ¶ 4.) These
2 transfers were purportedly made in connection with a Consulting Agreement dated
3 January 30, 2014, pursuant to which GII agreed to provide purported consulting and
4 governmental advocacy services for Ming Xu (the "Consulting Agreement"). (*Id.*)

5 In particular, the Consulting Agreement states that GII would provide specific
6 advocacy services on Xu's behalf, including but not limited to, assistance with
7 locating and securing legislators, obtaining access to such legislative leaders in
8 California and Washington D.C., and communicating and recommending advocacy
9 strategies and effective public relations programs with the government. (*Id.* at ¶ 5.)
10 These services were to be provided in exchange for \$750,000, with \$500,000
11 payable upon signing of the Agreement and another \$250,000 due on April 30. (*Id.*)
12 Ming Xu made the \$500,000 payment to GII by check disbursed from ToPacific's
13 bank account dated January 30, 2014. (*Id.* at ¶ 6.) The \$250,000 payment, although
14 not due until April 30, 2014, was made on March 1, 2014, also by check from the
15 ToPacific account. (*Id.*)

16 Of the funds transferred to GII, approximately \$266,500 was subsequently
17 transferred by GII to Dantona or paid for his personal benefit through a series of
18 transfers and payments. (*Id.* at ¶ 7.) Aberin and her company ZHB also received
19 \$325,000, or nearly half of the funds paid to GII by ToPacific. (*Id.*)

20 **C. The Receiver's Demands for Return of the \$750,000 and Filing of**
21 **the Disgorgement Action.**

22 Upon learning of the transfers to GII, the Receiver, through her counsel,
23 contacted GII and Dantona and demanded that they return the full \$750,000. (*Id.* at
24 ¶ 8-11.) The Receiver also contacted Aberin and demanded that Aberin return the

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27 ⁴ In addition to the \$750,000, Ming Xu also separately transferred another
28 \$100,000 to Baseballers Against Drugs ("BAD"), a charity run by Dantona.
(Freitag Decl., ¶¶ 7-9.) Through discussions with the Receiver and her counsel,
BAD agreed to and has returned the \$100,000 it received prior to the filing of the
Disgorgement Action. (*Id.*)

1 funds that were subsequently transferred to her and ZHB. (*Id.*) Both initially
2 refused the Receiver's demands without providing any factual basis for the refusal or
3 any evidence to show the funds were received in good faith or that any value was
4 provided in exchange to the Receivership Entities. (*Id.*) Ultimately, GII placed
5 \$40,466.18 in escrow (the "Escrowed Funds") pending a resolution of the dispute
6 although it continued to contest the Receiver's demand for a full return of the funds
7 it received. (*Id.*) Aberin did not agree to a return of the \$325,000 transferred to her
8 and ZHB. (*Id.*)

9 Accordingly, after requesting and receiving approval from this Court, the
10 Receiver filed the Disgorgement Action on September 26, 2015, seeking recovery of
11 the transferred funds as against GII, Dantona, Aberin and ZHB. (*Id.* at ¶ 12.)
12 Aberin and ZHB failed to respond or otherwise appear to defend the Disgorgement
13 Action despite proper service of the summons and complaint, and their defaults have
14 since been entered. (*See* Disgorgement Action, Dkt. Nos. 25-26.) The Receiver will
15 seek default judgment against Aberin and ZHB for the \$325,000 that they received.
16 (Freitag Dec., ¶ 12.)

17 Through correspondences with GII and Dantona's counsel, and discovery
18 conducted in the Disgorgement Action⁵, the Receiver obtained records and
19 information relating to the above-payments which indicate the following:

- 20 • There are no contemporaneous documents in the Receivership Entities'
21 records to show that any services were performed, or value provided,
22 under the Consulting Agreement.
- 23 • GII subsequently paid Dantona, or made payments for his benefit, the
24 approximate amount of \$266,500;

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27 ⁵ Although Aberin and ZHB failed to appear and defend the Disgorgement Action,
28 Aberin appeared for her noticed deposition on March 23, 2015. Notwithstanding
her appearance for her deposition, she has not made any indication that she
intends to defend the Disgorgement Action or oppose the entry of any default
judgment as against her or ZHB.

- 1 • GII paid Aberin and her company ZHB a combined total of \$325,000
- 2 of the funds, purportedly as a referral fee; and
- 3 • There are no documents or records produced to show that any work
- 4 was performed under the Consulting Agreement, or that any value was
- 5 provided to the Receivership Entities in exchange for the funds
- 6 transferred.

7 (Freitag Decl., ¶¶ 7, 13.)

8 On March 6, 2015, the Receiver, GII and Dantona participated in mediation
9 as ordered by this Court. (*Id.* at ¶ 14.) Through the mediation and subsequent
10 discussions regarding settlement, the Receiver, GII and Dantona agreed to settle the
11 receivership estate's claims against GII and Dantona on the terms specified below,
12 subject to Court approval. (*Id.* at ¶ 14.)

13 **III. THE SETTLEMENT AGREEMENT**

14 Subject to Court Approval, the Receiver, GII and Dantona have executed the
15 Settlement Agreement, the basic terms of which are summarized as follows (*see*
16 Freitag Decl., Ex. A):

17 1. GII and Dantona will pay \$135,000 in the aggregate to the Receiver.
18 The payments will be made through one initial payment of \$75,000 due upon Court
19 approval of the Settlement Agreement ("Initial Payment"), and 60 consecutive
20 monthly payments of \$1,000 each ("Monthly Payments"). The Initial Payment will
21 be made through GII and Dantona's release of the Escrowed Funds, plus delivery of
22 a cashier's check for the remaining balance.

23 2. To secure the Monthly Payments, Dantona consents to having a lien
24 recorded against his real property and has provided a fully executed and notarized
25 deed of trust to be recorded by the Receiver upon this Court's approval of the
26 Settlement Agreement.

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1 3. GII and Dantona will release all claims against the Receiver, the
2 Receiver's company E3 Realty Advisors, the receivership estate, and the
3 Receivership Entities.

4 4. The Receiver will release all claims against GII and Dantona.

5 The Settlement Agreement is also contingent on full financial disclosures,
6 which disclosures have since been made by GII and Dantona pursuant to the terms
7 of the Settlement Agreement. (*Id.* at ¶ 15.) The Receiver has reviewed and
8 accepted the disclosures as supportive of the representation concerning GII and
9 Dantona's severely limited net worth. (*Id.*) Accordingly, this contingency has been
10 satisfied. Under the Agreement, the Receiver is required to file a motion to approve
11 the settlement which obligation is satisfied by the filing of this Motion. The
12 Receiver is also required to and will seek a dismissal of the claims in the
13 Disgorgement Action as alleged against GII and Dantona as soon as practicable
14 upon this Court's granting of this Motion and approval of the Settlement Agreement.

15 **IV. ARGUMENT**

16 A federal equity receiver's power to compromise claims is subject to court
17 approval. As noted by the Ninth Circuit Court of Appeals in *S.E.C. v. Hardy*, 803
18 F.2d 1034, 1037 (9th Cir. 1986), "[a] district court's power to supervise an equity
19 receivership and to determine the appropriate action to be taken in the
20 administration of the receivership is extremely broad." With regard to settlements
21 entered into by a federal equity receiver, the Court's supervisory role includes
22 reviewing and approving those settlements in light of federal court policy to
23 promote settlements before trial. *See* Fed. R. Civ. P. 16(c), Advisory Committee
24 Notes.

25 Federal courts of equity often look to bankruptcy law for guidance in the
26 administration of receivership estates. *See SEC v. Capital Consultants, LLC*, 397
27 F.3d 733, 745 (9th Cir. 2005); *SEC v. American Capital Investments, Inc.*, 98 F.3d
28 1133, 1140 (9th Cir. 1996); *SEC v. Basic Energy & Affiliated Resources*, 273 F.3d

1 657, 665 (6th Cir. 2001); *see also* Local Civil Rule 66-8 ("a receiver shall
2 administer the estate as nearly as possible in accordance with the practice in the
3 administration of estates in bankruptcy"). A bankruptcy court may approve a
4 compromise of claims asserted by or against the estate if the compromise is "fair
5 and equitable." *Woodson v. Fireman's Fund Insurance Co. (In re Woodson)*, 839
6 F.2d 610, 620 (9th Cir. 1988). The approval of a proposed compromise negotiated
7 by a court-appointed fiduciary "is an exercise of discretion that should not be
8 overturned except in cases of abuse leading to a result that is neither in the best
9 interest of the estate nor fair and equitable for the creditors." *In re MGS Marketing*,
10 111 B.R. 264, 266-67 (B.A.P. 9th Cir. 1990).

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

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

17 *In re Woodson*, 839 F.2d at 620.

18 Here, the Receiver believes that the receivership estate's claims for
19 disgorgement against GII and Dantona are meritorious. (Freitag Decl., ¶¶ 15-16.)
20 The Receiver is also aware, however, that additional litigation would be expensive
21 and time consuming. (*Id.*) If GII and Dantona were financially capable of fully
22 satisfying a judgment for disgorgement, the additional expense and delay would be
23 less of a concern. (*Id.*) GII and Dantona's financial disclosures show, however, that
24 they would likely be able to pay only a fraction of the full \$750,000, and that any
25 such judgment will not be fully recoverable in collection. (*Id.*) Therefore, in all
26 likelihood, continuing to incur litigation expenses (in this Court and possibly on
27 appeal) would simply reduce the receivership estate's net recovery from GII and
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PROOF OF SERVICE

Securities and Exchange Commission v. World Capital Market Inc.; WCM777 Inc, et al.
USDC, Central District of California – Western Division (Los Angeles) – Case No. 2:14-cv-02334-CAS-MRW

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 515 S. Figueroa Street, 9th Floor, Los Angeles, California 90071-3398.

A true and correct copy of the foregoing document(s) described as: **NOTICE OF MOTION AND MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT WITH GOVERNMENTAL IMPACT, INC. AND JAMES DANTONA** will be served in the manner indicated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – the above-described document will be served by the Court via NEF. On **April 23, 2015**, I reviewed the CM/ECF Mailing Info For A Case for this case and the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- **Robert E. Barnes** robertbarnes@barnesllp.com, brettollefson@yahoo.com
- **John W Berry** berryj@sec.gov, irwinma@sec.gov
- **John B. Bulgozdy** bulgozdyj@sec.gov, LAROFiling@sec.gov, berryj@sec.gov, irwinma@sec.gov, cavallones@sec.gov
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2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served)**: On _____, I served the following person(s) and/or entity(ies) in this case by placing a true and correct copy thereof in a sealed envelope U.S. Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U.S. postal service on that same day in the ordinary course of business.

No Manual Recipients (as of April 23, 2015)

Executed on **April 23, 2015**. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Kimberly Bardales
Kimberly Bardales