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

11 SECURITIES AND EXCHANGE  
COMMISSION,

12 Plaintiff,

13 v.

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

17 Defendants.

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

23 Relief Defendants.  
24  
25  
26  
27  
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Case No. 14-CV-2334-JFW-MRW

**NOTICE OF MOTION AND  
MOTION FOR ORDER:**

- 1) SETTING CLAIMS BAR DATE;
- 2) APPROVING CLAIM FORMS;  
AND
- 3) APPROVING ENGAGEMENT OF  
THIRD PARTY CLAIMS  
ADMINISTRATOR;

**MEMORANDUM OF POINTS AND  
AUTHORITIES**

Date: July 13, 2015  
Time: 1:30 p.m.  
Ctrm: 16 - Spring Street Floor  
Judge: Hon. John F. Walter

1           **TO ALL INTERESTED PARTIES:**

2           **PLEASE TAKE NOTICE** that on July 13, 2015, at 1:30 p.m. in  
3 Courtroom 16 of the above-entitled Court, located at 312 North Spring Street,  
4 Los Angeles, California 90012, Krista L. Freitag ("Receiver"), the Court-appointed  
5 permanent receiver for Defendants World Capital Market Inc.; WCM777 Inc.;  
6 WCM777 Ltd. d/b/a WCM777 Enterprises, Inc.; and Relief Defendants Kingdom  
7 Capital Market, LLC; Manna Holding Group, LLC; Manna Source  
8 International, Inc.; WCM Resources, Inc.; ToPacific Inc.; To Pacific Inc.; and their  
9 subsidiaries and affiliates (collectively, "Receivership Entities"), will and hereby  
10 does move the Court for an order (a) setting a claims bar date, (b) approving claim  
11 forms, and (c) approving the engagement of a third party claims administrator.

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

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

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

23

24 Dated: June 3, 2015

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

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26

By:           /s/ Ted Fates          

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TED FATES  
Attorneys for Receiver  
KRISTA L. FREITAG

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Since her appointment, the Receiver has recovered and accumulated  
4 approximately \$20 million in cash. That amount is increasing as real property and  
5 additional assets are recovered and/or sold. The Receiver has completed her  
6 forensic accounting and analysis with regard to the Receivership Entities' records.  
7 Accordingly, she is now in a position to recommend a claims process designed  
8 efficiently to verify investors and others' claims in anticipation of making  
9 distributions upon Court approval of a distribution plan.

10 The Receiver estimates there may be as many as 96,000 or as few as 24,000  
11 potential investor claimants. The reasons for the uncertainty with regard to the  
12 estimated number of potential investor claimants are many, but primarily stem from  
13 the lack of a complete or trustworthy company database, the location of many  
14 investors outside the United States, the fact that a significant number of investors  
15 gave their money to other individuals who pooled the funds with those of other  
16 investors before investing with the Receivership Entities, and the issuance and  
17 trading of "points." These issues, the Receiver's concerns with regard to the  
18 potential for fraudulent claims, and the extraordinary cost of manually reviewing  
19 thousands of claims has lead the Receiver to propose a three phase claims process  
20 using a third party claims administrator capable of automating the intake and  
21 review of claims and ultimately assisting in any distribution.

22 The first phase of the claims process will involve developing the web-based  
23 claim portal such that investors can directly input claims data, developing  
24 algorithms such that claims data can be automatically verified against company  
25 records, providing notice of the claims process, setting the claims bar date, and  
26 gathering all claim information from investors and other claimants. This first phase  
27 will largely be an automated process and is expected to result in an identifiable  
28

1 group of investors and other claimants, leaving the manual claims review and  
2 determination of the amount of allowed claims to phase two.

3 If a verifiable set of claimants can be established in phase one, the claimants  
4 supply the requested back-up information to support their claims, and the costs are  
5 in line with those outlined below, then the Receiver proposes to proceed to phase  
6 two of the claims process. Phase two will be partially automated and partially  
7 manual. Using the information gathered from claimants as well as data the  
8 Receiver has obtained and verified from the Receivership Entities' records and third  
9 party sources (e.g., bank records), the Receiver and the claims administrator will  
10 work to establish proposed allowed claim amounts for each claimant, which  
11 amounts can then be used as the basis for a proposed distribution plan.

12 If the quality or quantity of information received in phase one of the process  
13 is such that the Receiver believes phase two is not feasible (either because there is a  
14 lack of verifiable information or the cost of reviewing the claims requiring manual  
15 review exceeds expectations), then the Receiver will return to Court with an  
16 alternative proposed approach to handling claims.

17 As detailed below, the Receiver has researched and interviewed multiple  
18 claims administrators and identified epiq Systems – Class Action & Mass Tort  
19 Solutions, Inc. ("EPIQ") as the one best suited to handle the claims processing and  
20 administration. EPIQ's fees for phase one of the claims administration process are  
21 estimated to be \$144,367 and will not exceed \$166,023. EPIQ's fees for phase two  
22 are estimated to be \$153,960 and will not exceed \$177,054, based upon specific  
23 assumptions discussed below. EPIQ's fees for phase three (distributions to those  
24 with allowed claims pursuant to a Court-approved distribution plan) are estimated  
25 to be \$67,177 and will not exceed \$2.00 per claim. Additional actual out-of-pocket  
26 expenses are estimated to be approximately \$1,000 for the entire engagement,  
27 including the distribution phase.

28

1 The Receiver requests the Court (1) approve the proof of claim process and  
2 forms presented herein, (2) set a claims bar date by which all investor and creditor  
3 proofs of claim must be submitted to the Receiver, and (3) authorize the Receiver  
4 to retain EPIQ as claims administrator.

5 **II. FACTUAL BACKGROUND**

6 On March 27, 2014, the Court appointed Krista L. Freitag ("Receiver")  
7 temporary receiver for Defendants World Capital Market Inc. ("WCM"),  
8 WCM777 Inc. ("WCM777"), and WCM777 Ltd. d/b/a WCM777 Enterprises, Inc.  
9 ("WCM777 Enterprises"), and Relief Defendants Kingdom Capital Market, LLC  
10 ("KCM"), Manna Holding Group, LLC ("MHG"), Manna Source International, Inc.  
11 ("MSI"), WCM Resources, Inc. ("WCM Resources"); and their subsidiaries and  
12 affiliates. On April 10, 2014, the Court entered a Preliminary Injunction Order,  
13 which included appointment of the Receiver on a permanent basis. Dkt. No. 33.  
14 On May 21, 2014, the Court entered a Preliminary Injunction Order against  
15 additional Relief Defendants Vincent Messina ("Messina"), International Market  
16 Ventures ("IMV"), ToPacific, Inc. and To Pacific, Inc. and expressly appointed the  
17 Receiver for WCM affiliates ToPacific, Inc. and To Pacific, Inc. ("ToPacific  
18 Order").<sup>1</sup> Dkt. No. 75.

19 **A. The Receiver's Work to Develop the Claims Process**

20 As with any claims process, the Receiver's goal is to find an efficient and  
21 cost effective means to verify and validate investor and creditor claims. In a best  
22 case scenario, a receiver transmits the receivership entity's estimated claim amounts  
23 to claimants as part of the proof of claim form and simply seeks confirmation of the  
24 claim information. In other cases, a receiver requests claim information and  
25

26 <sup>1</sup> Hereinafter, the Defendants, Relief Defendants (including To Pacific, Inc. and  
27 ToPacific, Inc. (collectively "ToPacific"), and their subsidiaries and affiliates,  
28 are referred to collectively as the "Receivership Entities" or individually as a  
"Receivership Entity." When used in this Motion, "Receivership Entities" does  
not include Relief Defendants Aeon Operating, Inc., International Market  
Ventures, PMX Jewels, Ltd. or Vincent J. Messina.

1 matches the information received from claimants with information found in the  
2 records of the receivership entities or backup information provided by investors.  
3 Here, these approaches are simply not feasible because there are not reliable,  
4 detailed records reflecting who invested and how much was invested. Declaration  
5 of Krista Freitag ("Freitag Declaration"), ¶ 3.

6 Three additional factors impact the claims review process in this case. First,  
7 a significant number of investors did not invest directly with the Receivership  
8 Entities, but rather invested through other individuals and entities. That is, many  
9 investors gave their money to another individual who pooled the money from  
10 multiple investors for a lump sum deposit with the Receivership Entities. This  
11 makes the process of matching claims to deposits far more complicated as the  
12 Receivership Entities' records do not accurately reflect each individual investor's  
13 payment. Freitag Declaration, ¶ 4.

14 Second, there are many thousands of investors from many countries around  
15 the world and the records indicate that the majority of these investors speak at a  
16 minimum six different languages. This makes the cost of all phases of the claims  
17 process, including manually reviewing claims, extremely expensive. Freitag  
18 Declaration, ¶ 5.

19 Third, there is the issue of "points." As the Court will recall from the  
20 Commission's filings, WCM, the third parties involved in pooling, and some  
21 insiders issued or sold points to investors. These points were not formally ascribed  
22 any particular value. However, the records show that an extensive marketplace for  
23 points developed that was independent of the WCM enterprise. While there was no  
24 value ascribed to such points by the Receivership Entities, investors and others  
25 purchased, sold, traded and valued the points as if they could be exchanged for cash  
26 or goods. As such, the expectation is that many investors will provide claim  
27 information based on misconceptions related to the value of their points as well as  
28 their cash investment in the Receivership Entities. This issue may also

1 dramatically impact the estimated number of 'known' investors as those who traded  
2 or otherwise sold points may not have 'registered' themselves in the company  
3 databases. Freitag Declaration, ¶ 6.

4 From the outset of the case, the Receiver has tried to locate accurate  
5 information concerning the identity of investors as well as the amount of claims.  
6 Initially, the Receiver was provided a database containing what appeared to be  
7 investors, however, this database proved worthless as it simply contained a vast  
8 number of member accounts but had incomplete individual contact or account  
9 information. Moreover, it was only current as of January 6, 2014, it did not reflect  
10 detailed investment activity (*e.g.*, investor deposits and disbursements) and it did  
11 not indicate unique investors (*i.e.*, an individual investor could have many accounts  
12 based on multiple investments). Freitag Declaration, ¶ 7.

13 The Receiver then discovered an account hosted by a third party website  
14 hosting company, Liquid Web, which appeared to contain various Receivership  
15 Entity-related Structured Query Language (SQL) databases. In an effort to further  
16 understand and make use of the data contained in these SQL databases, the  
17 Receiver had AMA Networks review the databases and prepare queries so the  
18 Receiver could study whether these SQL databases could be used as the basis for a  
19 web-based investor claims process. Based on the combination of information  
20 obtained, the Receiver determined the Liquid Web database could be useful in  
21 identifying unique individual investors. Freitag Declaration, ¶ 8.

22 Through her forensic accounting process, the Receiver additionally gathered  
23 information relevant to the claims process from banking institutions, individual  
24 investors, and third parties. Combining the information gathered from the SQL  
25 databases and the records accumulated in connection with the forensic accounting,  
26 the Receiver anticipates she may be able to verify the amounts of some of the  
27 investor claims. Freitag Declaration, ¶ 9.

28

1 In light of the foregoing, the Receiver's proposed claims process has been  
2 developed with an eye toward cost-effective claims processing, taking into account  
3 both the attributes of the likely claimants and the information available. In  
4 considering how to proceed, the Receiver considered the following: (a) the  
5 Receivership Entities' money raising scheme was largely propagated online and  
6 word of mouth; (b) investor physical address data remains largely incomplete (even  
7 in the SQL databases); (c) there are a large number of investors located in the  
8 United States as well as other countries throughout the world (estimated to be as  
9 many as 96,000 investors); (d) there were a myriad of ways in which funds were  
10 received by the Receivership Entities (via wires, checks, credit cards, and cash);  
11 (e) the receipt of so many indirect payments (*i.e.*, via Leaders and/or other  
12 individuals/entities; and (f) most investments were relatively small. Freitag  
13 Declaration, ¶ 10.

14 The foregoing factors necessitate retention of a third party claims processor  
15 and administrator with the ability to handle an online web-based platform for the  
16 claims process. In addition, the claims processor must be sophisticated enough to  
17 develop automated claims review software to process information with the  
18 foregoing attributes. Accordingly, the Receiver worked to locate a third party  
19 claims administrator with particular expertise in web-based claims processing as  
20 well as electronic payment and web-based database capabilities to address large  
21 numbers of investors located around the world. Freitag Declaration, ¶ 11.

22 **B. Selection of Claims Administrator**

23 After surveying the broad field of prospective claims processors, the  
24 Receiver interviewed four prospective claims administrators who appeared to have  
25 the capabilities to handle this project. In addition, she reached out to a fifth, who  
26 was not responsive to her inquiries. Because of the need for an automated web-  
27 based claims platform capable of handling a large volume of potential claims and  
28 the anticipated complexity of the claims receipt and review process, the Receiver

1 then further reviewed all four administrators' project specific experience with the  
2 information they provided regarding their proposed processes during her  
3 interviews. In particular, the Receiver considered their ability to tailor their  
4 software programs to capture and review claims and address the process in the  
5 faces of multiple languages (not simply capture claims and write checks). From  
6 this review, the Receiver ultimately considered two prospective administrators most  
7 suited to the project based upon their resources and experience. She obtained  
8 detailed proposals from both. Freitag Declaration, ¶ 12.

9       The Receiver selected EPIQ based on the breadth and depth of its experience  
10 in other large and complex matters and their significantly lower cost proposal.  
11 EPIQ has more than 14 years of experience in securities litigation settlements and  
12 government claims administration. Considering their government settlement  
13 experience alone, EPIQ has distributed over \$2.7 billion of assets, including in the  
14 *SEC v. American International Group Inc.* case, where EPIQ mailed 1.6 million  
15 notices and distributed \$843.3 million dollars to over 520,000 claimants in one of  
16 the largest SEC Fair Funds distributions to date. EPIQ has proprietary systems and  
17 technologies that are designed to accommodate project and claim form  
18 customization, which is critical in this instance. EPIQ can customize its system to  
19 potentially automate the review process (or at least parts thereof). In addition,  
20 EPIQ has the ability to process claims in the six languages the Receiver has  
21 identified as the primary set of potential languages. They also have the technical,  
22 core competencies and system security<sup>2</sup> to assist the Receiver with this claims  
23 process. Freitag Declaration, ¶ 13.

24       The breakdown of the phases and the cost are set forth below and in the  
25 attached proposal from EPIQ. In addition to these vendor costs, the Receiver  
26

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27 <sup>2</sup> EPIQ's system, ClaimsMatrix, allows for weekly reporting that will allow the  
28 Receiver to review progress on the various phases efficiently and collaboratively.

1 anticipates some Receiver time will be required primarily to assist in the start-up  
2 and oversight of phase one and during phase two with the claims review, claims  
3 approval and claims objection processes (in particular on disputes with claimants).  
4 Freitag Declaration, ¶ 14.

5 As previously discussed, the proposed claims process has been broken down  
6 into phases so that *if* the quality or quantity of information received in phase one of  
7 the process is such that the Receiver believes phase two is not feasible (either  
8 because there is a lack of verifiable information or the cost of reviewing the claims  
9 requiring manual review exceeds expectations), then the Receiver proposes to  
10 return to this Court with an alternative proposed approach to handling claims  
11 (*e.g.*, phase two). Freitag Declaration, ¶ 15.

### 12 **III. CLAIMS PROCESS AND CLAIMS BAR DATE**

#### 13 **A. Summary and Timeline**

14 While the Receiver believes the records obtained and compiled now contain  
15 the identity of most investors, there are particular challenges with investors (a) who  
16 invested through Leaders or others, (b) who invested with cash, and/or (c) whose  
17 records may not reconcile to those compiled by the Receiver for various reasons.  
18 Because of these challenges, in order to determine the amount invested by each  
19 claimant and formulate a recommendation for making distributions to investors, the  
20 Receiver must have a better understanding of the magnitude of claimants and  
21 amount of each allowed claim. As such, the Receiver is first seeking approval of  
22 the claims process and will later seek authorization to make distributions. Freitag  
23 Declaration, ¶ 16.

24 The Receiver proposes the following timeline<sup>3</sup> for the claims process:  
25  
26

27 <sup>3</sup> If any of the tasks subsequent to the claims filing deadline can be completed  
28 faster, the Receiver will move forward prior to the 'Due Dates' presented herein.  
The estimates are conservative in case the volume of claims received is high and  
in case the claims received are complicated.

TASKS	DUE DATE
1. (Phase One) Claims Process Timeline Develop Online Claim Filing Website, Develop Database Algorithms & Setup Automated Call Center	45 Days after Court Order
2. (Phase One) Send Proof of Claim (POC) Email Notice	45 Days from Court Order
3. (Phase One) Claims Filing Deadline (aka Claims Bar Date)	60 Days from POC Email notice
4. (Phase One) Process Data and POCs (download and log claims – this does not involve claims review)	60 Days from POC Email notice (continuous)
5. (Phase Two) Exception Reporting and Audits (claims review)	120 Days from Claims Filing Deadline
6. (Phase Two) Deficiency Notifications	120 Days after Claims Filing Deadline
7. File Motion to Allow and Deny Claims	180 Days from Claims Filing Deadline

Freitag Declaration, ¶ 17.

Details of the foregoing timeline are as follows:

1. **Develop Online Claim Filing Website** - see attached mockup attached to the Freitag Declaration as Exhibit B.
  - a) *Develop algorithms and programmatic audits* to Receivership Entities' source data/database to endeavor to automate the claims validation process as much as possible.
  - b) *Setup the Automated Call Center* providing answers to frequently asked questions and directing questions to a designated email address.
2. **Send POC Email Notice** - draft and send out claims form notices with claims bar date to potential claimants and investors via electronic mail and publication (see details below).
  - a) For investors, the electronic mail contact information obtained from the SQL databases will be used to generate notices. This

- 1 is the contact information used to send the October 2014 notice  
2 to investors, as updated by the Receiver.
- 3 b) For other potential claimants, the Receiver will send notices to  
4 known employees at the Receiver's takeover, known  
5 Receivership Entity vendors, and government agencies.
- 6 c) Prospective claimants will have a unique identifier with a  
7 specific link to the online claim form website and will be  
8 encouraged to electronically file their proofs of claim, but,  
9 alternatively, will be able to mail in a physical proof of claim  
10 form.
- 11 d) A copy of the notice, a link to the claim form website and a PDF  
12 of the claim form itself will be posted to the receivership  
13 website. The Receiver will also publish the claims bar date as  
14 further discussed below.
- 15 3. **Process Data and POCs** – claim forms and supporting documentation  
16 received will be downloaded and logged (not reviewed) during this  
17 process.
- 18 a) Claims automatically verified via the system's established  
19 algorithms will be logged and each claim received will be  
20 downloaded and logged on a continuous basis. However, so to  
21 not incur the variable costs associated with manual review of  
22 claims until the universe of claimants is understood, claims  
23 requiring manual review will not be processed until after the  
24 claims bar date.
- 25 4. **Exception Reporting and Audits** – claims will be reviewed and  
26 ineligible conditions, partially or entirely duplicate claims,  
27 undocumented, deficient or inconsistent conditions will be identified  
28 and evaluated.

1           5.     **Deficiency Notifications** – notices regarding any exception reporting  
2                     and audit results will be sent to claimants.

3                     a) Claimants will have 20 days from the date of the deficiency  
4                     notifications to respond and address deficiencies.

5                     b) EPIQ will then have 40 additional days to review responses.

6           6.     **File Motion to Allow or Deny Claims** – Receiver will file a motion to  
7                     allow or disallow claims and recommendations as to next steps.

8                     a) The Receiver will use the final reports from EPIQ to prepare  
9                     and file objections to claims she recommends be disallowed and  
10                    seek approval of claims she recommends be allowed.

11                    b) To the extent there are claim disputes that cannot be resolved,  
12                    the Receiver will propose a summary process for the Court to  
13                    review and address disputed claims.

14 Freitag Declaration, ¶ 18.

15           **B. Claims Bar Date and Notices**

16                    Setting a bar date will provide certainty and finality to the claims process.

17 The receivership estate (and those with allowed claims) should not incur the  
18 expense of continuously receiving, reviewing, and objecting to claims, as well as  
19 recalculating distributions on account of late claims.

20                    Accordingly, the Receiver requests the Court enter an order establishing a  
21 date that is the first business day 105 days after approval of this Motion as the date  
22 by which proofs of claims against the Receivership Entities must be submitted to  
23 the Receiver as a prerequisite to being considered to receive a distribution from the  
24 estate's assets. The Receiver proposes providing notice of the claims bar date by  
25 email, on the receivership website and by publishing notice twice 60 days before  
26 the bar date, once in USA Today and once in The Wall Street Journal Asia (the  
27 version of the Wall Street Journal published in most major Asian cities). In  
28 addition, 60 days before the bar date, EPIQ will send an email to each identified

1 investor and each known non-investor creditor with a link to the claim form  
2 website and the claim form. Finally, the Receiver will also post the notice, a link to  
3 the claim form website and a copy of the physical claim form itself prominently on  
4 the Receiver's website, [www.worldcapitalmarketreceivership.com](http://www.worldcapitalmarketreceivership.com). Freitag  
5 Declaration, ¶ 19.

6 These notices are designed to efficiently inform as many investors and  
7 creditors as possible of the requirement and deadline to submit a claim. Investors  
8 are dispersed throughout the world and many of them invested relatively small  
9 amounts. As a result, there is no single publication or website that is likely to reach  
10 a greater population of investors than the proposed email, receivership website, and  
11 publication notices. Accordingly, consuming further receivership estate resources  
12 on publishing notices is not warranted.

13 **C. The Claim Form**

14 Attached as Exhibits A and B to the Freitag Declaration are the Receiver's  
15 proposed claim form and the draft online claim form mockup for investors and  
16 creditor claimants. Claimants will be encouraged to complete the claims process  
17 online and will be instructed to provide supporting documentation.<sup>4</sup> Detailed  
18 instructions for completing the claim form are provided on page two of the form  
19 itself and will also be included in the email notification. Additionally, a toll-free  
20 telephone number will provide automated answers to frequently asked questions  
21 and will direct claimants to send any further questions to a designated e-mail  
22 address. The notice, the physical claim form, the claim form website and call  
23 center will be presented in six languages - English, Spanish, Mandarin, Portuguese,  
24 Taiwanese and Japanese. While this does not cover all languages for known  
25

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26 <sup>4</sup> Many investors signed up and transferred their funds to WCM777 through an  
27 online platform. Therefore, it is reasonable and not unduly burdensome to  
28 encourage them to submit their claims via an online claims portal. If, however,  
they prefer to submit claims in paper form, they can download the claim form  
and mail it in along with their supporting documents.

1 investors (because the cost of translation is significant), these six languages account  
2 for nearly 90% of investors who received and opened the Receiver's October 2014  
3 e-blast notification. Freitag Declaration, ¶ 20.

4 The Proof of Claim Form and mockup of the claim form website are  
5 designed to make it clear to claimants what needs to be filled out and submitted for  
6 a claim to be accepted and allowed. The toll-free phone number and e-mail support  
7 will assist in answering questions claimants may have about how to fill out claim  
8 forms and what documentation to submit. Accordingly, the Receiver requests  
9 approval of the Proof of Claim form and authorization to complete the claim form  
10 website with assistance from the proposed claims administrator.

11 **D. Claims Review**

12 Once the universe and magnitude of claims are determined, the Receiver,  
13 with the assistance of the third party claims administrator, can determine an  
14 appropriate claims review strategy. Claims review is one of the most cost-intensive  
15 and variable parts of the process. Based on the number of potential claimants, there  
16 may be a point at which the costs outweigh the benefits in terms of providing the  
17 maximum recovery to investors. Freitag Declaration, ¶ 21.

18 If the number of claims is manageable and the claimants provide sufficient  
19 data to conduct an analysis, then EPIQ will proceed with the anticipated claims  
20 review process in order to determine the allowed amount of each claim. Based  
21 upon the Receiver and EPIQ's review of information in the available databases, if  
22 investors provide most of the requested data through the online portal, then the  
23 Receiver and EPIQ believe it will likely be cost effective to review approximately  
24 33,713 individual claims to verify claim amounts. If the number of claimants  
25 reaches 40,000 or 50,000 and/or the quality of data does not match expectations,  
26 then it may not make economic sense to try and reach a firm number for each  
27 claimant. Instead, it may be more cost effective to simply determine that the  
28 claimant is a *bona fide* investor and place investors into broader claims tranches for

1 purposes of making distributions. If the Receiver reaches this latter conclusion, she  
2 will seek Court approval before moving forward with such a claims determination  
3 methodology. Freitag Declaration, ¶ 22.

4 **IV. ENGAGEMENT OF THIRD PARTY CLAIMS ADMINISTRATOR**

5 As previously discussed, the Receiver interviewed a number of claims  
6 administrators and spent a significant amount of time with two qualified claims  
7 administrators. After carefully considering the experience, capabilities, and  
8 proposals from both, the Receiver seeks authority to engage EPIQ. A copy of the  
9 proposed contract with EPIQ, contingent upon Court approval, is attached to the  
10 Freitag Declaration as Exhibit C. The proposal from EPIQ was significantly lower  
11 and, after much consideration and review, the Receiver determined, in her business  
12 judgment, that EPIQ can handle the unique challenges presented by this claims  
13 process. Further, EPIQ has agreed to provide a discount on its hourly rates for this  
14 project, as requested by the Receiver. Freitag Declaration, ¶ 23.

15 While there are numerous cost categories and subcategories included in  
16 EPIQ's proposal, for the sake of explaining the proposed administrator costs, the  
17 Receiver has broken down the EPIQ proposal into cost phases. (See below chart.)  
18 In addition, EPIQ has also agreed to a fee structure for the future anticipated  
19 distribution phase based on a single distribution being made to an estimated 27,814  
20 allowed claims. Freitag Declaration, ¶ 24.

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<b>CLAIMS PROCESSING ESTIMATE</b>		
<b>CATEGORY</b>	<b>COST ESTIMATE<sup>5</sup></b>	<b>SCOPE DESCRIPTION</b>
(Phase One) Project Set-Up & Project Management	\$144,367; will not exceed \$166,023 <sup>6</sup>	Database Set-Up Fee, Email Notice, Translation Costs, <sup>7</sup> Website Monthly Maintenance Costs, Database Analysis, Develop Online Claim Filing Screens, Develop Algorithms/Programmatic Audits to Source Data, Project Management, Technical Consulting, etc.
(Phase Two) Claims Review	\$153,960; will not exceed \$177,054 (based on assumptions discussed below)	Manual Claims Review, Exceptions Review, Quality Review (for larger investments), Deficient Claims Form Processing, etc.
<b>DISTRIBUTION COST ESTIMATE</b>		
Distribution (Estimated based on 33,713 claims for one distribution) <sup>8</sup>	\$67,177 or a maximum of \$2.00 per claim	Process Checks and Postage <sup>9</sup>
Out of Pocket Expenses	\$1,000	Costs include actual out of pocket expenses such as Overnight Shipments, Data Storage, etc.

Freitag Declaration, ¶ 24.

<sup>5</sup> EPIQ will bill the receivership estate on a monthly basis so costs can be closely monitored. EPIQ will also provide weekly claims update reports.

<sup>6</sup> EPIQ has agreed to a hard cap of \$166,023 that it will not exceed for phase one.

<sup>7</sup> The Translation Costs are not fixed, but provided no additional languages are needed and no significant changes to the claim form occur, this anticipated expense should be materially accurate.

<sup>8</sup> If an interim distribution is deemed prudent, a second distribution would also cost approximately \$2.00 per claim.

<sup>9</sup> After reviewing Electronic Funds Transfer and Paypal-type payment options, at this point, physical checks are the most economic form of distribution. However, for security and ease, international claimants will be offered the option to receive their payment via Paypal, however, the fees for that transaction will be deducted from their overall claim distribution. If a more cost-efficient approach is determined, the Receiver will incorporate same.

1 Numerous assumptions are included in the phase two and phase three costs  
2 above; however, the primary assumptions are that 86,696 notices will reach their  
3 intended recipient and 33,713 claims will be received. These numbers are based on  
4 the statistical results of the Receiver's October 2014 investor e-blast  
5 communication. This e-blast went to nearly 100,000 unique email addresses pulled  
6 from the SQL database, produced a 90% successful delivery rate, and nearly 30%  
7 of the emails delivered were opened. Freitag Declaration, ¶ 25.

8 Additional assumptions which materially impact phases two and three  
9 include the following: 10% of the notice population will use the frequently asked  
10 question platform an average of six minutes per call; 50% of the claims submitted  
11 will achieve a programmatic match (thus 50% of the claims submitted will require  
12 manual review); 65% of the claims received will be from domestic investors; and  
13 50% of the ultimately approved claimants will opt for physical check distribution  
14 (vs. Paypal). Freitag Declaration, ¶ 26.

15 Significant efforts have gone into estimating costs and the total actual costs  
16 could vary depending on the number of claims received as well as the number of  
17 excepted/deficient claims. If the claims data actually received proves to be  
18 materially different than the assumptions outlined above and/or the costs of phases  
19 two and three will be higher than those listed above, the Receiver will return to the  
20 Court with an update and seek further authority to proceed. If, for example,  
21 materially more than 33,713 claims are received or materially less than 50% of  
22 claims can be automatically verified, resulting in higher costs for phase two, the  
23 Receiver will provide the Court with the updated expected cost and seek authority  
24 to proceed. Moreover, the Receiver will review the costs incurred by EPIQ on a  
25 weekly basis and work diligently to manage the costs of the claims process. Freitag  
26 Declaration, ¶ 27.

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1 **V. ARGUMENT**

2 "The power of a district court to impose a receivership or grant other forms  
3 of ancillary relief does not in the first instance depend on a statutory grant of power  
4 from the securities laws. Rather, the authority derives from the inherent power of a  
5 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369  
6 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
7 and efficient administration of the estate by the district court for the benefit of  
8 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
9 of a receiver is authorized by the broad equitable powers of the court, any  
10 distribution of assets must also be done equitably and fairly. See *SEC v. Elliot*,  
11 953 F.2d 1560, 1569 (11th Cir. 1992).

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

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

22 *Id* (citations omitted); see also *Commodities Futures Trading Comm'n. v. Topworth*  
23 *Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad  
24 deference' to the court's supervisory role, and 'we generally uphold reasonable  
25 procedures instituted by the district court that serve th[e] purpose' of orderly and  
26 efficient administration of the receivership for the benefit of creditors.").

27 Accordingly, this Court has broad equitable powers and discretion in  
28 formulating procedures, schedules and guidelines for administration of the

1 receivership estate, including establishing procedures for the administration of  
2 claims. Here, the Receiver's proposal for a phased approach to claims processing is  
3 reasonable and prudent under the facts and circumstances of the case. The  
4 proposed procedures are designed to allow as many investors and other claimants  
5 as possible to submit claims to the Receiver and have those claims processed and  
6 reviewed with the minimum consumption of receivership estate resources. The  
7 proposed proof of claim form and draft website mockup have been formulated to be  
8 as clear and user friendly as possible, while requiring investors and other claimants  
9 to submit information necessary for the efficient review of their claims. Finally,  
10 the need to retain a third party claims administrator has been sufficiently  
11 established based upon the large number of potential claimants located throughout  
12 the world who speak various languages, the need to automate the claims process to  
13 the extent possible, and the complexities in the review process discussed above.

14 **VI. CONCLUSION**

15 For the foregoing reasons, the Receiver respectfully requests the Court set a  
16 claims bar date, approve the proposed proof of claim form for investors and  
17 creditors, and approve the retention of EPIQ as claims administrator.

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19 Dated: June 3, 2015

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21 By:           /s/ Ted Fates          

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KRISTA L. FREITAG

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