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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;
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.
25
26
27
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Case No. CV-14-2334-JFW-MRW

NOTICE OF MOTION AND MOTION
FOR APPROVAL OF SETTLEMENT
AGREEMENT WITH ZAYDA ABERIN
AND ZHB INTERNATIONAL CORP.

Date: August 29, 2016
Time: 1:30 p.m.
Ctvm: 16
Judge: Hon. John F. Walter

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on August 29, 2016, at 1:30 p.m. in
3 Courtroom 16 of the above-entitled Court, located at 312 North Spring Street, Los
4 Angeles, California 90012, Krista L. Freitag, the Court-appointed permanent
5 receiver for Defendants World Capital Market Inc.; WCM777 Inc.; WCM777 Ltd.
6 d/b/a WCM777 Enterprises, Inc.; and Relief Defendants Kingdom Capital Market,
7 LLC; Manna Holding Group, LLC; Manna Source International, Inc.; WCM
8 Resources, Inc.; ToPacific Inc.; To Pacific Inc.; and their subsidiaries and affiliates,
9 will and hereby does move the Court for approval of a settlement agreement with
10 Zayda Aberin and ZHB International Corp. ("Motion").

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

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

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

22 Dated: July 28, 2016

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

23 By: /s/ Tim C. Hsu

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25
26 TIM C. HSU
27 Attorneys for Court-appointed
Receiver
28 KRISTA L. FREITAG

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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

15 Since the Disgorgement Action was filed, the Receiver's claims against
16 Dantona and GII for the portion of funds they received and retained (\$425,000) have
17 been resolved through Court-approved settlement. As for the claims against Aberin
18 and ZHB for the remaining balance of \$325,000 they received, and as a
19 consequence of their failure to appear and defend the action, a default judgment was
20 entered against them in the Disgorgement Action in that amount. Aberin and ZHB
21 have since moved to set aside the default judgment, which motion is presently
22 scheduled to be heard on August 8, 2016 ("Motion to Set Aside Judgment").

23 Pursuant to this Court's order, the Receiver participated in mediation with
24 Aberin and ZHB on July 14, 2016. Through the mediation, the Receiver, subject to
25 Court approval, agreed to accept a total of \$72,500 in satisfaction of Aberin and
26 ZHB's obligations to the receivership estate. As part of the settlement, Aberin and
27 ZHB have made representations to the Receiver regarding the amount of their
28 limited net worth. Aberin has also agreed to a lien on real property held in the name

1 of a trust for her and her husband in order to secure the payments that she and ZHB
2 are required to make pursuant to the terms of the settlement.

3 Subject to Court approval, the Receiver, Aberin and ZHB have executed a
4 Settlement Agreement & Release ("Settlement Agreement"), the terms of which are
5 discussed in greater detail below. While the Receiver believes the claims for
6 disgorgement against Aberin and ZHB are meritorious, continued litigation (in the
7 Disgorgement Action and possibly on appeal) and pursuit of any ultimate judgment
8 would be expensive and time consuming, and would only serve to reduce any net
9 recovery to the estate.¹ In addition, although the terms of settlement provide for
10 settlement payments to be made over a period of five years which may likely outlive
11 the duration of this receivership, the Receiver anticipates selling the settlement
12 obligation which may entail a discounted recovery, but would generate immediate
13 proceeds for the estate upon sale. Under the circumstances as explained herein, the
14 Receiver believes that settlement of her claims against Aberin and ZHB, on the
15 terms provided in the Settlement Agreement, will generate the highest net recovery
16 for the receivership estate, and therefore respectfully requests that it be approved.

17 **II. RELEVANT FACTS**

18 Through her investigation and review of the records of the Receivership
19 Entities, the Receiver discovered that between January and March 2014,
20 Receivership Entity ToPacific Inc. ("ToPacific") transferred funds to GII in the
21 aggregate amount of \$750,000. (Declaration of Krista L. Freitag ("Freitag Decl."),
22 ¶ 3.) These transfers were purportedly made in connection with a Consulting
23 Agreement dated January 30, 2014, pursuant to which GII agreed to provide
24

25
26 ¹ The Motion to Set Aside Judgment is presently scheduled to be heard on August
27 8, 2016. To avoid the expenses associated with further litigation, the Receiver,
28 Aberin and ZHB will submit, concurrent with this filing, a joint stipulation in the
Disgorgement Action to continue the hearing on the Motion to Set Aside
Judgment. If the settlement is approved by the Court, the parties will submit a
second stipulation in the Disgorgement Action to set aside the judgment and
dismiss all claims against Aberin and ZHB.

1 purported consulting and governmental advocacy services for Ming Xu. (*Id.*) Of
2 the funds transferred to GII, approximately \$325,000 was subsequently paid by GII
3 to Aberin and her company ZHB, purportedly as payment for her referring GII and
4 Dantona to Ming Xu. (*Id.*)

5 After requesting and receiving approval from this Court, the Receiver filed
6 the Disgorgement Action on September 26, 2015, seeking recovery of the
7 transferred funds as against GII, Dantona, Aberin and ZHB. (*Id.* at ¶ 4.) Aberin and
8 ZHB failed to respond or otherwise appear to defend the Disgorgement Action
9 despite proper service of the summons and complaint. Default was entered against
10 Aberin and ZHB on February 24, 2015, and default judgment was entered against
11 them in the amount of \$325,000 on May 13, 2015. (*Id.*; *see also* Disgorgement
12 Action, Dkt. Nos. 26, 42.)

13 On May 11, 2016, Aberin and ZHB filed a Motion to Set Aside Judgment,
14 which has since been fully briefed by the parties. (*See* Disgorgement Action, Dkt.
15 Nos. 67-69.) On June 17, 2016, the Court, on its own order, continued the hearing
16 on the Motion to Set Aside Judgment to August 8, 2016 and ordered the parties to
17 participate in mediation. (*See* Disgorgement Action, Dkt. No. 71.) On July 14,
18 2016, the Receiver, Aberin and ZHB participated in mediation before a private
19 mediator as ordered, and through this mediation, the Receiver, Aberin and ZHB
20 agreed to settle the receivership estate's claims against Aberin and ZHB on the terms
21 specified below, subject to Court approval. (*See* Freitag Decl., ¶ 6.)

22 Since the entry of default judgment in 2015, the parties have engaged in
23 extensive discussions regarding settlement, pursuant to which Aberin and ZHB
24 provided a number of financial records to the Receiver for her review. (*Id.* at ¶ 5.)
25 The Receiver also independently obtained various bank records for Aberin and
26 ZHB's accounts going back a number of years. (*Id.*) From her review of the records
27 provided by Aberin and ZHB, and the financial records she independently obtained,
28 the Receiver has located no significant assets for Aberin or ZHB, other than a

1 residential property (the "Property") that Aberin uses as her primary residence. (*Id.*)
2 Although the Property has a substantial estimated value of approximately \$2.6
3 million, it is also heavily encumbered by a first mortgage and a line of credit which,
4 based on records the Receiver has reviewed, result in net equity of approximately
5 \$400,000. (*Id.*) According to public records, Aberin's interest in the Property was
6 also apparently quit claimed to her husband in 2006 as his separate Property, and
7 title to the Property was later transferred into the name of a trust for which Aberin
8 and her husband are trustees in 2011 (both transactions occurred prior to the
9 fraudulent transfer of funds to Aberin and ZHB at issue). (*Id.*) Other than the
10 Property, the Receiver has not located any significant sources of assets to pursue
11 collection. Aberin and ZHB have represented that Aberin's net worth is no greater
12 than \$100,000, while ZHB's net worth is *de minimis* as it has been dissolved. (*Id.* at
13 ¶¶ 5-6.)

14 **III. THE SETTLEMENT AGREEMENT**

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

18 1. GII and Dantona will pay the aggregate sum of \$72,500 to the
19 Receiver. The payments will be made through one initial payment of \$5,000 due
20 within five business days of Court approval of the Settlement Agreement ("Initial
21 Payment"), and 60 consecutive monthly payments ("Monthly Payments"). The
22 Monthly Payments will be paid monthly in graduated amounts, where the first
23 through twelfth payments will be \$750, the thirteenth through fifty-ninth payments
24 will be \$1,200, and the sixtieth monthly payment will be \$2,100.

25 2. To secure the Monthly Payments, Aberin consents to having a lien
26 recorded against the Property, and has provided a fully executed and notarized deed
27 of trust to be recorded by the Receiver upon this Court's approval of the Settlement
28 Agreement.

1 3. Aberin and ZHB 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 Aberin and ZHB, and will
5 seek to dismiss her claims against Aberin and ZHB in the Disgorgement Action.

6 To induce the Receiver to agree to settlement on the above-terms, Aberin and
7 ZHB have also made representations regarding their net worth which, as reflected in
8 the Settlement Agreement, states Aberin's net worth does not exceed \$100,000 and
9 ZHB's net worth is de minimis as it is a dissolved entity.

10 Under the Agreement, the Receiver is required to file a motion to approve the
11 settlement which obligation is satisfied by the filing of this Motion. The Receiver is
12 also required to and will seek to dismiss her claims against Aberin and ZHB, and
13 intends to do so through a joint stipulation to set aside the present default judgment
14 entered against Aberin and ZHB and dismiss all claims as soon as practicable upon
15 this Court's granting of this Motion.

16 **IV. ARGUMENT**

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

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

1 1133, 1140 (9th Cir. 1996); *SEC v. Basic Energy & Affiliated Resources*, 273 F.3d
2 657, 665 (6th Cir. 2001); *see also* Local Civil Rule 66-8 ("a receiver shall
3 administer the estate as nearly as possible in accordance with the practice in the
4 administration of estates in bankruptcy"). A bankruptcy court may approve a
5 compromise of claims asserted by or against the estate if the compromise is "fair
6 and equitable." *Woodson v. Fireman's Fund Insurance Co. (In re Woodson)*, 839
7 F.2d 610, 620 (9th Cir. 1988). The approval of a proposed compromise negotiated
8 by a court-appointed fiduciary "is an exercise of discretion that should not be
9 overturned except in cases of abuse leading to a result that is neither in the best
10 interest of the estate nor fair and equitable for the creditors." *In re MGS Marketing*,
11 111 B.R. 264, 266-67 (B.A.P. 9th Cir. 1990).

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

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

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

20 Here, the Receiver believes that the receivership estate's claims for
21 disgorgement against GII and Dantona are meritorious. (Freitag Decl., ¶ 7.) The
22 Receiver is also aware, however, that additional litigation would be expensive and
23 time consuming. (*Id.*) As explained above, the Receiver has not located any
24 significant sources of assets for recovery other than the Property. (*Id.*) Although
25 the Property has substantial estimated market value, it is heavily encumbered by an
26 existing mortgage and a line of credit, and Aberin may claim a homestead
27 exemption which would further reduce the amount of equity available for collection.
28 In addition, the history of title to the Property is such that any efforts to seek

1 collection against the Property will likely require significant additional time and
2 costs to clarify issues regarding title to the Property, the nature of any existing
3 equity as either marital or separate property, and liability of the trust for obligations
4 of its trustors. (*Id.*)

5 Therefore, in all likelihood, continuing to incur litigation expenses (in this
6 Court and possibly on appeal), and the anticipated costs of seeking collection would
7 reduce, and perhaps negate, the receivership estate's net recovery from Aberin and
8 ZHB, and may not result in any greater recovery for the estate than provided by the
9 terms of the Settlement Agreement. (*Id.*) In addition, the Receiver anticipates
10 selling the obligation for Monthly Payments, which would generate immediate
11 proceeds for the estate. Accordingly, the Receiver believes that the Settlement
12 Agreement, on the terms as summarized herein, will generate the highest net
13 recovery for the receivership estate, and therefore respectfully requests that it be
14 approved. (*Id.*)

15 **V. CONCLUSION**

16 For the reasons set forth herein, the Receiver respectfully requests entry of an
17 order granting this Motion and approving the Settlement Agreement.

18
19 Dated: July 28, 2016

ALLEN MATKINS LECK GAMBLE
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22 By: /s/ Tim C. Hsu

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