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KRISTA L. FREITAG

11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **WESTERN DIVISION**

15 SECURITIES AND EXCHANGE
COMMISSION,

16 Plaintiff,

17 v.

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

21 Defendants,

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

27 Relief Defendants.
28

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

**DECLARATION OF KRISTA L.
FREITAG IN SUPPORT OF MOTION
FOR ORDER:**

**(A) SUSTAINING OMNIBUS AND
SPECIFIC OBJECTIONS TO
CLAIMS;**

**(B) APPROVING PROPOSED
ALLOWED AMOUNTS OF CLAIMS;**

**(C) APPROVING DISTRIBUTION
PLAN AND AUTHORIZING
RECEIVER TO MAKE INTERIM
DISTRIBUTIONS**

Date: November 28, 2016
Time: 1:30 p.m.
Ctmm: 16-Spring St. Floor
Judge: Hon. John F. Walter

1 I, Krista L. Freitag, declare:

2 1. I am the permanent receiver for Defendants World Capital Market Inc.
3 ("WCM"), WCM777 Inc. ("WCM777"), and WCM777 Ltd. d/b/a WCM777
4 Enterprises, Inc. ("WCM777 Enterprises"), and Relief Defendants Kingdom Capital
5 Market, LLC ("KCM"); Manna Holding Group, LLC ("MHG"); Manna Source
6 International, Inc. ("MSI"); WCM Resources, Inc. ("WCM Resources");
7 To Pacific, Inc.; ToPacific; and their subsidiaries and affiliates (collectively,
8 "Receivership Entities").

9 2. This declaration is made in support of my Motion for Order:
10 (A) Sustaining Omnibus and Specific Objections to Claims; (B) Approving
11 Proposed Allowed Amounts of Claims; and (C) Approving Distribution Plan and
12 Authorizing Receiver to Make Interim Distributions ("Motion"). I have personal
13 knowledge of the facts set forth herein and, if called as a witness, could and would
14 testify to such facts under oath.

15 3. With the assistance of Epiq Systems ("Epiq") and my staff, I have now
16 completed Phase II of the claims review process, including reviewing all investor
17 claimed investments and responses to claim deficiency notices and performing
18 supplemental checks designed to match investor claims by developing queries with
19 various criteria between the Actual Deposit File, the claims database, and the SQL
20 Database.

21 4. During the review of the 72,753 claimed investments, we took the
22 following steps:

23 **A. Initial Testing**

24 5. Throughout Phase I of the claims process, claimants were strongly
25 encouraged to submit bank records supporting their claims. Yet a significant
26 number of claimants submitted a copy of their identification only, no
27 documentation, or insufficient documentation. Thus, for all claimed investments,
28 the initial round of manual review resulted in the following categories:

- 1 1. Sufficient bank record support:¹
- 2 a. Records support payment directly to a Receivership Entity.
- 3 b. Records support payment to a "leader" or other individual (an
- 4 investor who recruited and often aggregated funds from other
- 5 investors).
- 6 2. No or insufficient bank record support (*e.g.*, bank records provided
- 7 do not directly support the claim or no bank records were provided
- 8 (but rather handwritten notes and other paperwork was)).
- 9 3. Disallowed – claims that duplicate other claims.

10 6. For the claimed investments with bank records supporting payment
11 directly to a Receivership Entity bank account, such support was tested against the
12 Actual Deposit File. If a match was made, the claimed investment was
13 conditionally allowed. A conditionally allowed claim means that prior to an
14 "Allowed" designation being assigned, further testing against the disbursements
15 included on claims was performed to capture the net loss.

16 7. For conditionally allowed claims at this point, it is important to note
17 that only the actual amount invested, as supported by bank records and which tied to
18 the Actual Deposit File was deemed conditionally allowed. There are instances
19 where the claimed investment amounts were higher than what was conditionally
20 allowed because only part of the claimed investment could be verified (*e.g.*, if the
21 claimants included both the dollars they invested and the value of their fictitious
22 WCM777 "points" in their claims). These claims were placed in the "Partially
23 Allowed" category.

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26 ¹ An example of sufficient bank record support is a copy of a canceled check
27 payable to a defendant entity or a leader; whereas insufficient bank record
28 support examples include a copy of a check paid to 'cash,' a cash withdrawal slip
with no indication of where the funds went, or a copy of a deposit slip into a non-
defendant entity bank account with no indication of the recipient name.

1 8. If sufficient bank record support for a transfer made to a "leader" or
2 other individual was provided, such investment was conditionally allowed as a "paid
3 leader" claim, pending secondary testing discussed further below.

4 9. The claimed investments which fell into the second and third categories
5 above (insufficient bank record support and disallowed/duplicate) were initially
6 determined to be deficient. Such investment claimants, along with any Partially
7 Allowed claimants, were sent deficiency notices² to give each claimant an additional
8 opportunity to provide proper bank records supporting their claims. Claimants were
9 given 20 days to respond to such deficiency notice, responses to which were then
10 manually reviewed. In total, through Epiq, 30,389 deficiency email notices
11 representing 69,539 claimed investments were sent; only 3,779 deficiency responses
12 were received.

13 **B. Secondary Testing on Deficiency Notices**

14 10. For claimed investments that were initially classified as deficient (as
15 discussed above), deficiency notices were issued and the responses were manually
16 reviewed. If a claimant's response included bank record documentation supporting
17 the claim, such claimed investment was re-categorized from deficient to
18 conditionally allowed (whether it was a direct payment to a defendant entity or a
19 payment to a leader and as such categorized as a "paid leader" claim). If no or
20 insufficient documentation was included in a response, the investment remained in
21 the deficient category pending supplemental testing discussed further below.

22 **C. Supplemental Testing**

23 11. The supplemental testing was performed on all claimed investments
24 that were (a) not already conditionally allowed, or (b) not already disallowed
25 outright as duplicate and resulted in additionally recommended allowed claims in
26

27 ² Deficiency Notices were translated in six (6) languages. Initial round and
28 deficiency response documentation was translated as necessary, primarily
Mandarin, Spanish, and Russian.

1 the amount of \$10,707,324, positively impacting 1,607 investors. The supplemental
2 testing was run from the Actual Deposit File (all deposits not previously assigned to
3 a conditionally allowed claim) and included the following:

- 4 • Testing all unassigned *non-cash deposits* to the claimed investments by
5 claimant name. If the supplemental testing resulted in a positive match,
6 the lesser of the claimed investment or deposit amount was conditionally
7 allowed.
- 8 • Testing all remaining deficient claimed investments with payments to a
9 leader against the unassigned *non-cash deposits* in the Actual Deposit File
10 to determine if there are any deposits from such leader. The positive
11 matches were further tested against the SQL Database by claimant name.
12 The goal of this testing category is to capture investors who paid leaders in
13 cash, but did not provide bank record support. Therefore, the parameters
14 for claimed investments in this category were set at a maximum of
15 \$25,000 (virtually all single cash deposits made into the Receivership
16 Entity bank accounts were less than \$25,000).³
 - 17 ○ If the Actual Deposit File reflects (previously unassigned) payments
18 from such leader and the claimant name was in the SQL Database, the
19 claimed investment was conditionally allowed, such that the claimant's
20 recommended Allowed claim for this category does not exceed
21 \$25,000.
- 22 • Testing all unassigned *cash deposits* to the claimed investments *by date*
23 *and amount*. For the date and amount matches, the match was then tested
24 against the claimant name in the SQL Database. If these criteria were met,
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27 ³ The claim form asked claimants to specify whether their claimed investments
28 were made by cash, check, or wire. However, many claimants checked the
wrong box or did not check a box, so the cash/non-cash information in the claims
database could not be relied upon to isolate cash claimed investments.

1 but amount did not exactly match the SQL Database, the lesser of the two
 2 amounts was conditionally allowed.

3 **D. Final Testing**

4 12. One final test was run on all conditionally allowed claimed investments
 5 to capture the claimants' net loss amounts. In so doing, each conditionally allowed
 6 claim was reduced by the disbursements included on the claimant's claim.

7 **E. Final Results of Claims Testing**

8 13. With all of the claims testing and supplemental testing work now
 9 completed, the investor claims results are as follows:

	Total Number of Claimed Investments	Total Dollar Value of Claimed Investments
Total Claimed Investments	72,753	\$412,359,702

	Number of Claimed Investments	% of Total Claimed Investments	Total Dollar Value of Claimed Investments	% of Total Claimed Investments
Allowed	4,018	5.6%	\$25,277,129	6.1%
Partially Allowed	7,159	9.8%	\$25,331,100	6.2%
Total Allowed	11,177	15.4%	\$50,608,229	12.3%
Disallowed (includes Disallowed portion of Partially Allowed)	61,576	84.6%	\$361,751,473	87.7%
Total Claimed Investments	72,753	100.0%	\$412,359,702	100.0%

14. There were 23 trade and personnel-related claims submitted in the total
 amount of \$734,436. The results of the review and testing of these claims are as
 follows:

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 27
 28

	#	Amounts
TRADE CREDITOR CLAIMS:		
Allowed ⁴	6	\$3,995
Partially Allowed	2	\$61,806
Sub-Total Trade Claims Allowed	8	\$65,801
PERSONNEL CLAIMS:		
Allowed	10	\$33,685
Partially Allowed	2	\$13,000
Sub-Total Personnel Claims Allowed	12	\$46,685
Total Trade Creditor and Personnel Claims Allowed	20	\$112,486
Total Trade Creditor and Personnel Claims Disallowed	3	\$621,950
Grand Total Trade Creditor and Personnel Claims	23	\$734,436

II. OMNIBUS OBJECTIONS TO INVESTOR CLAIMS

15. Pursuant to the claims testing work described above, and with the assistance of Epiq and my staff, I have created three lists of claims with their recommended treatment, each of which is attached hereto – Allowed Claims (Exhibit A), Partially Allowed Claims (Exhibit B), and Disallowed Claims (Exhibit C). Allowed Claims are claims that have been tested and verified, and I recommend they be allowed in their full amount. Partially Allowed Claims are claims that have been tested and partially verified, and I recommend they be allowed at the reduced/verified amount specified in Exhibit B. Disallowed Claims are claims that have been reviewed and tested, but could not be verified or are outright denied due to a duplicate claim being filed. I recommend these claims be disallowed.

16. Generally speaking, there are many different reasons claims have been placed in the Disallowed or Partially Allowed categories:

⁴ This number includes a \$1,699.01 Employment Development Department claim filed directly with this Court on September 11, 2014, for fourth quarter 2013 (pre-receivership) taxes (Dkt. No. 195).

- 1 • More than \$412 million of investor claims were received and the net
- 2 loss transacted at the defendant entity level was \$80.8 million, so
- 3 the number of disallowed claims is necessarily large.
- 4 • This scheme involved countless ways in which investors
- 5 purportedly transferred funds, much of which went to leaders or
- 6 other individuals and may or may not have ever reached the
- 7 Receivership Entities.
- 8 • Approximately 82% of the claimed investments (including a large
- 9 number of "paid leader" claims) were submitted as cash (58,481
- 10 claimed investments or \$270 million), which is inherently difficult
- 11 to verify.⁵
- 12 • The vast majority of claimants either submitted no documentation
- 13 (other than ID) or handwritten/non-bank record documentation,
- 14 which is very difficult to verify.

15 17. The most common reason claimed investments were disallowed is
16 because the claimant did not provide any bank record support that would allow the
17 claimed investment to be verified and such claimed investment could not be verified
18 through the supplemental testing efforts described above.

19 18. With respect to claimants who failed to provide sufficient
20 documentation, it should be noted that all claimants were specifically instructed on
21 numerous occasions to submit all documentation supporting their claims, with
22 banking records strongly recommended. This instruction was given in the
23 notices/instructions sent to investors, on the electronic claims portal, on the
24 receivership website, and when investors called or sent emails with questions. Bank
25 records were specifically requested in the deficiency notices emailed to claimants
26 whose claims could not be verified. In addition, in order to make it easier for

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28 ⁵ Nonetheless, there were claimants who did validate their cash deposits into the
defendant entities.

1 claimants to submit documents, we accepted hard copy documents by mail rather
2 than requiring all documents to be submitted electronically. Furthermore, even if
3 claimants did not initially submit bank records or sufficient support, deficiency
4 notices were sent to all giving them a second opportunity to submit sufficient bank
5 records to support their claims – only a small fraction of claimants responded to
6 such notices. Lastly, because the vast majority of claimants did not provide
7 sufficient bank records to support their claim, supplemental tests were run in an
8 attempt to conditionally approve more claimed investments.

9 19. I, with assistance from Epiq and my staff, have spent substantial time
10 and effort reviewing, testing, and verifying claims. My goals throughout the process
11 have been to (a) identify as many actual investors as possible, (b) ascertain the
12 proper amounts of their claims, and (c) treat all claimants fairly and equitably.
13 Accordingly, I ask that the proposed allowed amounts of claims and disallowance of
14 claims reflected on Exhibits A, B, and C attached hereto be approved.

15 III. SPECIFIC OBJECTIONS TO CLAIMS

16 20. Certain claims submitted are not for investment losses, but other losses
17 or damages claimed by third parties – notably vendors (trade creditors) and
18 personnel of the defendant entities. There were 11 trade creditor claims (one of
19 which was filed directly with the Court) and 12 personnel claims submitted. From
20 an amount perspective, as further discussed hereinafter, the vast majority of this
21 claimant "pool" was Disallowed.

22 **Personnel** – each personnel claim was reviewed to (a) ensure that they were
23 previously employed (directly or via contract) by one of the Receivership Entities,
24 (b) cross reference to their compensation records, and (c) prorate the compensation
25 for the known unpaid 26 day-period that each person worked prior to my
26 appointment.

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1 **Trade Creditors** – for the most part, with the exception of those discussed
2 below, I recommend that vendors who provided goods or services to the
3 Receivership Entities prior to my appointment and submitted a claim be allowed.

- 4 • One vendor submitted a \$146,054.03 claim for labor and supplies related
5 to oil exploration services provided to Aeon Operating, Inc., but it was
6 determined that none of the Receivership Entities is liable to the vendor.
7 The vendor was given the opportunity (via a phone call and email request)
8 to provide additional information to substantiate that a Receivership Entity
9 was liable for the claim. However, the vendor failed to respond.

10 Accordingly, I propose the claim be disallowed.

- 11 • PNC, the vendor that provided financing for the golf carts at the Links at
12 Summerly and Glen Ivy Golf Club filed two claims, one claim for each of
13 those leases. After discussions with PNC, the claim for Glen Ivy was
14 withdrawn because that lease was assumed by the Glen Ivy buyer.
15 However, when the Links at Summerly was sold, the buyer did not assume
16 the golf cart lease. I, therefore, terminated the lease. After various
17 discussions with PNC, with assistance of my staff, I was able to reconcile
18 the amount due under the contract, which reduced the Summerly claim by
19 nearly \$20,000. The various discussions with PNC, including the
20 withdrawn claim and the reconciliation with the contract, reduced the
21 claim by a total of \$287,658.10, resulting in an agreed-upon \$61,079.41
22 non-priority claim.

- 23 • Michael Norton submitted a claim in the amount of \$200,000. The
24 documents submitted with the claim, however, do not support the claimed
25 amount. Mr. Norton appears to have entered into a joint venture
26 agreement with Defendants Ming Xu and WCM. It appears Mr. Norton
27 then incurred a modest amount of business expenses in furtherance of the
28 agreement. The joint venture never materialized, so Mr. Norton's losses

1 were limited to the business expenses he incurred. The receipts provided
2 by Mr. Norton show he incurred \$726.46 in business expenses. The
3 remainder of the claim is not supported by any documentation indicating
4 Mr. Norton suffered actual losses. Accordingly, I propose Mr. Norton's
5 claim be partially allowed in the amount of \$726.46.

6 These creditor claims, and my proposed allowed amount for each of them, are listed
7 on Exhibit D attached hereto.

8 **IV. DISTRIBUTION PLAN AND INTERIM DISTRIBUTIONS**

9 21. Once the allowed amount of each claim is set, I will be in a position to
10 distribute the bulk of the funds in the receivership estate. Accordingly, I seek
11 approval of a plan of distributing receivership estate funds to the holders of allowed
12 claims. My proposed plan, which is attached hereto as Exhibit E ("Distribution
13 Plan"), includes the following features:

- 14 • All administrative claims, including Court-approved fees and costs
15 of myself and my professionals, will be paid in full upon entry of
16 orders allowing such fees and costs and authorizing payment;
- 17 • All holders of allowed claims, including investors, trade creditors,
18 and employees will receive a *pro rata* share of funds distributed
19 based on the allowed amount of their claims;
- 20 • Distributions will be made in form of checks or PayPal – whichever
21 method each claimant selected when they submitted their claim;
- 22 • Once the initial distribution amount is approved by the Court and
23 interim distribution payments are issued, I may make further interim
24 distributions pursuant to the Plan in my discretion and with notice to
25 the Court and the Commission's review and approval, with the goal
26 of returning funds to investors as promptly and efficiently as
27 possible; and

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