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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.;
WCM777 INC.; WCM777 LTD. d/b/a
19 WCM777 ENTERPRISES, INC.; and
MING XU a/k/a PHIL MING XU,

20 Defendants,

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

27 Relief Defendants.
28

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

**OMNIBUS REPLY TO
OPPOSITIONS TO 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.
Ctrm: 7A – 1st Street Courthouse
Judge: Hon. John F. Walter

1 Krista L. Freitag ("Receiver"), the Court-appointed receiver for Defendants
2 World Capital Market Inc.; WCM777 Inc.; WCM777 Ltd. d/b/a WCM777
3 Enterprises, Inc.; and Relief Defendants Kingdom Capital Market, LLC; Manna
4 Holding Group, LLC; Manna Source International, Inc.; WCM Resources, Inc.;
5 ToPacific Inc.; To Pacific Inc.; and their subsidiaries and affiliates (collectively,
6 "Receivership Entities"), hereby submits this omnibus reply to oppositions received
7 to her Motion for an Order (A) Sustaining Omnibus and Specific Objections to
8 Claims; (B) Approving Proposed Allowed Amounts of Claims; and (C) Approving
9 Distribution Plan and Authorizing Receiver to Make Interim Distributions
10 ("Motion").

11 As the Motion reflects, there were a total of 72,753 claimed investments
12 submitted during the claims process, for a total of \$412,359,702. The Receiver's
13 forensic accounting and supplemental analysis of offshore accounts reflects that
14 investor net losses from scheme total approximately \$80.8 million. Over the last
15 eight months, during which Phase II of the claims process was completed, the
16 Receiver was able to verify and recommend approval of \$50,608,229 of investor
17 claimed investments. Despite extensive testing and notices instructing investors to
18 submit documents, the remaining \$361,751,473 in claims could not be verified
19 because no or insufficient supporting bank records were provided.

20 A link to the Motion on the receivership website was emailed to all claimants.
21 Some claimants have responded informally and some have filed formal oppositions.
22 The Receiver has reviewed the hundreds of responses received on or before the
23 November 7, 2016 deadline for responses to the Motion, and, as discussed below, is
24 continuing to make adjustments to these claims in instances where claimants
25 provide additional records sufficient to verify their claims.

26 **I. ADJUSTMENTS TO PROPOSED ALLOWED CLAIM AMOUNTS**

27 Before addressing the oppositions to the Motion, the Receiver has received
28 hundreds of telephone calls and emails from claimants in response to the Motion.

1 With respect to those calls and emails received prior to the November 7, 2016
2 deadline to respond to the Motion, the Receiver is reviewing any and all new
3 information provided and in many cases has communicated with claimants by
4 telephone and email regarding the additional information. Some of these claimants
5 have provided sufficient additional documentation and information for the Receiver
6 to be able to verify their claims. Accordingly, the Receiver has made adjustments to
7 the schedules of Allowed, Partially Allowed, and Disallowed Claims filed with the
8 Motion and will continue to do so as she works through the remaining responses
9 received on or before November 7, 2016. The Receiver will submit revised
10 schedules of Allowed, Partially Allowed, and Disallowed claims on or before
11 November 21, 2016 and will ask that the Court approve the revised schedules.
12 Declaration of Krista Freitag filed herewith ("Freitag Decl."), ¶ 3.

13 **II. HANDWRITTEN OPPOSITIONS FROM FIVE CLAIMANTS**

14 On November 4, 2016, Claimant Alexandra Munoz filed a handwritten
15 opposition to the Motion. On November 7, 2016, Claimants Linda Mejia, Mayra
16 Hernandez, Nicole Villegas, Carlos Esquivel, and German Velasquez also filed
17 handwritten oppositions to the Motion. Per their handwritten oppositions, Linda
18 Mejia is the mother of Mayra Hernandez, Nicole Villegas, and Alexandra Munoz,
19 and Carlos Esquivel states that Linda Mejia is his friend. Freitag Decl., ¶ 4.

20 These six claims fall into the same category as thousands of other disallowed
21 claims, *i.e.*, claimants who state they gave money (primarily cash) to a Leader, but
22 have provided either no bank record support or insufficient bank record support to
23 trace the claimed transfers (either from their accounts or to their Leader's account).
24 Each of these claims was initially analyzed and determined to be deficient. As such
25 a deficiency notice was issued to the claimant, but the claims still could not be
26 verified (primarily because of a lack of response thereto). Specifically:

- 27 1. Carlos Esquivel – submitted a claim in the amount of \$2,000 with only
28 a copy of his identification card. Mr. Esquivel provided no documents

- 1 (bank or otherwise) in response to the deficiency notice issued to him
2 or with his objection to the Motion.
- 3 2. Mayra Hernandez – submitted a claim in the amount of \$4,000 with no
4 documents. Ms. Hernandez provided no documents in response to the
5 deficiency notice that was issued to her, and with her objection to the
6 Motion, she provided only email correspondence (no bank
7 documentation).
- 8 3. Nicole Villegas – submitted a claim in the amount of \$2,000 with only
9 a copy of her identification card. No documents were provided in
10 response to the deficiency notice issued to her and with her objection,
11 she provided her bank statement showing only a \$1,000 cash
12 withdrawal and other non-bank documents with handwritten notes and
13 email correspondence. There are no bank records indicating what was
14 done with the funds after they were withdrawn from her account.
- 15 4. Alexandra Munoz – submitted a claim in the amount of \$16,000 with a
16 copy of her identification card and her "binary leader tree." No
17 documents were provided in response to the deficiency notice issued to
18 her and with her objection, she claimed only \$12,000 was invested and
19 provided a \$10,000 certificate of deposit account statement, a cashier's
20 check written to herself in the amount of \$10,009.18, and email
21 correspondence. Ms. Munoz provided no bank records indicating what
22 was done with the cashier's check funds.
- 23 5. Linda Mejia – submitted a claim in the amount of \$10,400 with a copy
24 of her identification card and a Word document with Receivership
25 Entity bank account information (with no corresponding deposit). Ms.
26 Mejia provided no documents in response to the deficiency notice
27 issued to her and with her objection, she provided one \$4,000 deposit
28 slip into a non- Receivership Entity bank account and email

1 correspondence. There are no further bank records indicating whose
2 funds were deposited or whose account said funds were deposited into.
3 6. German Velasquez – submitted a claim stating he invested \$40,000 on
4 October 4, 2013, with pages of his bank statements highlighting three
5 \$10,000 cash withdrawals on October 4, 2013, October 8, 2013, and
6 December 3, 2013, plus a \$5,500 withdrawal on December 4, 2013,
7 which (per his objection) does not appear to be claim related. No
8 documents were provided in response to the deficiency notice issued to
9 him, and with his objection, he claimed only \$30,000 and provided the
10 same bank statements reflecting only the three aforementioned \$10,000
11 cash withdrawals. There are no further bank records indicating whose
12 account said funds were deposited into.

13 Freitag Decl., ¶ 5.

14 These six claimants ask that bank records which do not indicate where funds
15 ultimately went (*i.e.*, to the upline/leader) and/or ancillary, non-bank records be
16 taken into account in determining whether claims are allowed. Other claimants ask
17 that “contemporaneous” handwritten notes on documents, deposit slips for unknown
18 accounts or documents showing withdrawals from their account be accepted as
19 proof of investment. For a variety of reasons, the primary of which are noted below,
20 there are significant flaws and concerns in allowing incomplete or ancillary, non-
21 bank records as sufficient evidence of payment (claimed losses) for the numerous
22 claimants which fall into this category:

- 23 • Many cash claimants who have provided no or insufficient bank record
24 support do not delineate between actual funds paid versus those
25 believed to be earned.
 - 26 ○ There are countless examples of this, all of which are relevant
27 and some of which are material (investor claimed \$96,000, but
28 paid \$48,000). If the Receiver accepted ancillary records

1 proving such claimant was in the system without confirming
2 with bank records what was actually paid, the claimant's
3 proposed allowed claim would be overstated by \$48,000 – a
4 specific example of this exists within the 139 claimants
5 represented by Mr. Adams (see footnote number 3 below and
6 attached).

7 ○ Furthermore, as noted in the subject objections, these six
8 claimants believed they were earning \$16/day per unit
9 purchased. It is important to note that on a \$1,999 investment,
10 \$16/day translates to a nearly 300% annual return. Often, said
11 “earnings” were then used to “buy” more units (see Ms. Munoz's
12 objection – claimed \$16,000 and now states actually paid only
13 \$12,000, but used \$4,000 of “earnings” to buy more units).

14 ○ It is also important to note that investors could have invested as
15 little as \$300 and received access to the system (and then, in
16 addition to the daily “earnings” discussed in the prior bullet
17 point, earned additional voluminous points, by, for example,
18 signing up downline investors).

- 19 • There are instances where the exact same deposit slip into a non-
20 Receivership Entity account was used to support multiple claims.
21 Manually keeping track of what deposit slips (date, amount, account,
22 etc.) were used for each claim would require a significant amount of
23 time and expense.

24 Freitag Decl., ¶ 6.

25 As a result of these flaws, if the Receiver relies on incomplete or non-bank
26 data, the Receiver's recommendations as to which of these claims should be allowed
27 and disallowed would be inherently subjective; if there are no bank records showing
28 a transfer of funds, decisions would necessarily turn on various other ancillary

1 documents and information. Considering the innumerable variations in the
2 documentation and circumstances, it would not be possible to apply one set of
3 objective criteria to all claims. Difficult and subjective lines would have to be
4 drawn between allowed and disallowed claims and such lines would inevitably seem
5 arbitrary and unfair to those who were disallowed, resulting in more disputes and
6 oppositions from claimants. Freitag Decl., ¶ 7.

7 Furthermore, verifying the thousands of claimed investments in this category
8 would require additional manual, claim-by-claim review of ancillary documents
9 submitted to determine if there is sufficient *circumstantial* evidence to make a
10 subjective decision that supports a specific amount of a WCM investment. The
11 Receiver estimates this review could take another nine months to complete and
12 would cost an additional \$750,000 in fees, possibly more depending on the rate of
13 responses from claimants.¹ Freitag Decl., ¶ 8. It also should be noted as discussed
14 in the Motion, that supplemental testing was run in an attempt to objectively capture
15 claimants who paid leaders in cash but did not provide bank record support. Freitag
16 Decl., ¶ 9.

17 Accordingly, after careful consideration while formulating her Phase II
18 Recommendation, the Receiver determined that the substantial time and expense
19 associated with a claim-by-claim review of ancillary documents associated with
20 these "paid leaders in cash" claims with no or insufficient bank record support
21 would be inherently subjective and not be cost effective. After additional review of
22 the flaws and concerns originally raised with accepting insufficient or no bank
23 records, the Receiver recommends these six claims remain disallowed. That said, if
24 these six claimants provide documentation showing that the funds were received by
25 their respective leaders prior to November 21, 2016, the Receiver will review such

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27 ¹ Based on an estimated review 20,000 claimed investments out of a total of
28 approximately 69,000 claimed investments that were partially allowed or
disallowed.

1 documentation and, if appropriate, make an adjustment to the proposed allowed
2 amounts of their claims. Freitag Decl., ¶ 10.

3 **III. OPPOSITION OF LAURA BACINICH**

4 Laura Bacinich filed an objection to the Motion on November 7, 2016. Dkt.
5 No. 481. Ms. Bacinich's claim was partially allowed in the proposed amount of
6 \$8,000. This is because she provided bank records supporting transfers to the
7 company and a Leader totaling \$13,000. Ms. Bacinich also claimed to have
8 received \$5,000 from WCM. Accordingly, Ms. Bacinich's total claim was partially
9 allowed in the net amount of \$8,000. The remaining transfers claimed by
10 Ms. Bacinich, however, had no or insufficient bank record support (e.g., canceled
11 check made payable to "Cash" with no records regarding the ultimate deposit of said
12 funds) and could not be verified. Therefore, the disallowed portion of
13 Ms. Bacinich's claim falls into the same category as the six claims discussed above
14 (*i.e.*, claimed cash transfers to a Leader with no or insufficient supporting bank
15 records), and should be disallowed for the same reasons. However, if, prior to
16 November 21, 2016, Ms. Bacinich provides documents showing that her remaining
17 transfers were received by the company or a Leader, the Receiver will review such
18 documents, and, if appropriate, make an adjustment to the proposed allowed amount
19 of her claim. Freitag Decl., ¶ 11.

20 **IV. OPPOSITION OF 139 CLAIMANTS REPRESENTED**

21 **BY ATTORNEY MICHAEL ADAMS**

22 The 139 claimants represented by attorney Michael Adams ("Adams
23 Claimants") filed a partial opposition to the Motion on November 7, 2016. Dkt.
24 No. 483. Without identifying which of their claims are in the proposed Allowed,
25 Partially Allowed, and Disallowed categories, the Adams Claimants contend that
26 disallowing claims for cash paid to Leaders because such cash transfers lack bank
27 record support or the claimant could not be found in the Actual Deposit File or SQL
28 Database is flawed. Instead, the Adams Claimants suggest there should be "more

1 finely-tuned supplemental testing that invites claimants to submit additional
2 evidence in support" including to "give claimants the opportunity to appear before
3 the court (or a designated hearing officer) to testify in support of their claims." *Id.*
4 at p. 3. The Receiver understands that the Adams Claimants are simply advocating
5 for additional claims review work they believe would make the process more
6 inclusive of those who paid cash to other individuals, but she respectfully disagrees
7 with their proposal primarily due to the reasons discussed above (delay, cost, and
8 subjectivity). Freitag Decl., ¶ 12.

9 They suggest the Court should delay the entire claims process and hold a
10 hearing for them (and thousands of other claimants like them) to appear one by one
11 and testify to the Court. Considering the vast number of claimants who claim they
12 paid cash to a Leader but have not provided any bank record support, this hearing
13 could take weeks or even months to complete, would favor claimants located in
14 California due to travel expenses over those located in other states and countries,
15 and would necessarily involve a massive consumption of receivership estate and
16 judicial resources. Furthermore, to do so would be unfair to the investors who
17 submitted their supporting documentation, who have Allowed or Partially Allowed
18 claims, and who have been waiting to receive distributions since the Receiver was
19 appointed in March 2014. Freitag Decl., ¶ 13.

20 Indeed, it should be noted that some of the Adams Claimants did provide
21 sufficient bank record support for the claims, which enabled the Receiver to verify
22 their claims. Some were also captured through the supplemental testing performed.
23 The Receiver has proposed that these claims be Allowed or Partially Allowed, as the
24 case may be. Attached to the Freitag Declaration as Exhibit A is the same
25 (recreated) spreadsheet² of claimants attached as Exhibit 1 to the Declaration of
26

27 ² The Receiver recreated this spreadsheet; however, the totals do not tie to the
28 Adams Claimants' Exhibit 1 as the sum of the numbers in the rows on the Adams
schedule do not equal the totals shown at the bottom of their schedule.

1 Michael Adams (Dkt. No. 482), but with gray-shaded columns added on the right
2 side showing the claimants' tracking numbers and the Receiver's proposed allowed
3 amount for each claim. As the right hand columns reflect, many of the claimants
4 have Allowed or Partially Allowed claims totaling more than \$860,000 as
5 determined by the initial, secondary, and supplemental testing performed by the
6 Receiver and her claims administrator. Freitag Decl., ¶ 14.

7 Finally, as discussed above, the Receiver and her staff have spoken to many
8 claimants who state they invested large sums, only to find out what they contend is a
9 cash investment is really fictitious "points" or "earnings" they received that had no
10 actual value (see discussion above). While a claimant's existence in the SQL
11 Database gives the Receiver reasonable assurance of a claimant's involvement with
12 the scheme, there is no way to determine which accounts/order numbers/points/units
13 reflected in the SQL database were paid for versus those which were "earned."
14 Furthermore, various individuals were propagating their own scheme by selling
15 earned points and never submitting such funds to the Receivership Entities. For the
16 various reasons discussed previously and herein, the Receiver has reason to doubt
17 the veracity of some of the Disallowed claims listed on the spreadsheet. Many of
18 the claims listed indicate the claimants gave upwards of \$10,000, \$20,000, or even
19 \$50,000 to a Leader and retained no record of it whatsoever. On its face, it is hard
20 to believe so many people would not be more prudent with such large sums of
21 money. Freitag Decl., ¶ 15.

22 Finally, as is common in this case, many of the amounts listed on the
23 spreadsheet differ significantly from amounts the same claimants stated on their
24 claim forms.³ As such, there are good reasons to believe many of the claims listed

25 ³ For example, claimant Kasey G. Chi submitted a claim in the amount of \$96,000.
26 The Receiver was able to verify that \$48,000 was received by Mr. Chi, and
27 therefore recommended the claim be partially allowed in that amount. Then the
28 Adams Claimants filed their list of claimants, on which Mr. Chi is listed as
having made an investment of \$48,000, the exact amount the Receiver proposed
be allowed (see # 137 on list). Freitag Decl., Exh. A.

1 may not represent actual cash transfers to Leaders related to WCM. Freitag Decl.,
2 ¶ 16.

3 **V. OPPOSITION OF AMALASOTHY CROOS**

4 Amalasothy Michael Croos submitted a claim to the Receiver in the amount
5 of \$20,000. The claim could not be verified and was therefore disallowed. On
6 November 7, 2016, in response to the Motion, Mr. Croos, through an attorney
7 located in Kansas, emailed a "*Pro Se* Objection" to the Receiver's counsel and the
8 Court's Courtroom Deputy Clerk, a copy of which is attached to the Freitag Decl. as
9 Exhibit B. The *Pro Se* Objection states that Mr. Croos has a claim of \$10,000 that
10 was disallowed. Mr. Croos provides deposit slips showing two cash deposits – one
11 for \$2,000 and one for \$7,000 – into an unknown bank account. Mr. Croos contends
12 the unknown bank account belongs to a Leader, Juan Montero, but there is no
13 evidence supporting that statement. Freitag Decl., ¶ 17.

14 Mr. Croos is in the same category as those discussed above in that he claims
15 to have given cash to a Leader, but has not provided bank records establishing that
16 the cash was actually received by a Leader. The unknown bank account could
17 belong to anyone. This is also another (common) case where Mr. Croos originally
18 submitted a claim for \$20,000, but now states that he has a claim for \$10,000 and
19 provides deposit slips into an unknown bank account totaling \$9,000. If Mr. Croos
20 provides documentation showing that the \$9,000 was received by Mr. Montero prior
21 to November 21, 2016, the Receiver will review such documentation and, if
22 appropriate, make an adjustment to the proposed allowed amount of Mr. Croos'
23 claim. Freitag Decl., ¶ 18.

24 **VI. CONCLUSION**

25 Based on the foregoing, the Receiver requests an order:

26 1. Sustaining her omnibus (investors) and specific (trade/personnel)
27 objections to claims discussed in the Motion;

28

1 2. Approving (a) the proposed allowed amounts of investor claims reflected
2 on the revised schedules of Allowed, Partially Allowed, and Disallowed claims to be
3 filed by the Receiver on or before November 21, 2016, (b) the proposed allowed
4 amounts of trade creditor and personnel claims reflected on Exhibit D to the Freitag
5 Declaration filed with the Motion (Dkt. No. 477-1), and (c) the Distribution Plan
6 attached as Exhibit E to the Freitag Decl. filed with the Motion; and

7 3. Authorizing her to make to make interim distributions to the holders of
8 allowed claims in the total amount of \$21 million.

9
10 Dated: November 14, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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12 By: /s/ Edward Fates
13 EDWARD G. FATES
14 Attorneys for Receiver
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