UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

TREASURE ENTERPRISE LLC,
PATRICIA ENRIGHT GRAY and LARRY
ALLEN HOLLEY

No. 17-cv-10963
Hon. Marianne O. Battani

Defendants,

and

KINGDOM ASSET MANAGEMENT LLC
and CARLEEN RENEE HOLLY,

Relief Defendants
_________________________________/

MOTION FOR APPROVAL OF
CLAIMS DISTRIBUTION METHODOLOGY

Patrick O'Keefe and O'Keefe and Associates Consulting, LLC (the "Receiver"), through their counsel, Jaffe, Raitt, Heuer & Weiss, P.C. file this Motion for Approval of Claims Distribution Methodology (the "Motion"), and in support thereof state as follows:

Background

1. This Court has jurisdiction over this action pursuant to Section 22 of the Securities Act [15 U.S.C. § 77v] and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

2. Venue is proper in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa].

3. Pursuant to this Court's Sealed Order Appointing Receiver [Docket No. 10] entered on March 28, 2017 (the "Receivership Order"), the Receiver was appointed over the defendants (the "Defendants").

4. Pursuant to Paragraph 7D of the Receivership Order, the Receiver was authorized to "use Receivership Property[1] for the benefit of the Receivership Estate, **making payments and disbursements** and incurring expenses as may be necessary or advisable in the ordinary course of business in discharging his duties as Receiver." *Id.* at ¶ 7D (emphasis added).

5. Pursuant to Paragraph 41 of the Receivership Order, the Receiver was authorized "to take all actions to manage, maintain, and/or wind-down business operations of the Receivership Estates, including **making legally required payments to creditors, employees, and agents of the Receivership Estates** and

[1] Capitalized terms not otherwise defined herein shall have the meaning given to them in the Receivership Order.

communicating with vendors, investors, governmental and regulatory authorities, and others, as appropriate." *Id.* at 41 (emphasis added).

The Proofs of Claim Submission Process

6. On October 6, 2017, the Court entered the *Order Granting Motion of Receiver to Establish Claims Procedure* [Docket No. 75] (the "Claims Procedure Order").

7. Pursuant to the Claims Procedure Order, all known creditors of the Receivership Estates were provided with a Proof of Claim form and were advised to return their Proofs of Claim not later than December 15, 2017. In addition, pursuant to the Claims Procedure Order, notice of entry of the Claims Procedure Order and of the December 15, 2017 deadline was published in the Wall Street Journal and in the Flint Journal.

8. Per the Claims Procedures Order, any creditor who did not file a Proof of Claim by the bar date set forth in the Claims Procedure Order would not share in a distribution from the Receivership Estates.

Summary of the Proofs of Claim Filed

9. As a result of the dissemination of the Claims Procedure Order and the documents referenced therein to the creditors of the Receivership Estates and based on the publications made:

(a) 172 Proofs of Claim were filed; of this number 158 relate to investments made and 16 relate to trade payables (such as professional fees,

utility charges, building or HVAC maintenance, agreements to liquidate personal property, state taxes, insurance, or property management);

(b) The total amount sought in the Proofs of Claim exceeds $12,250,000 (inclusive of claimed unpaid interest and other damages);

(c) Of the Proofs of Claim filed, less than $600,000 is claimed to be secured by assets of the Receivership Estates;

(d) According to the Proofs of Claim, approximately $13,000,000, in total, is claimed to have been invested with the Defendants;

(e) According to the Proofs of Claim, approximately $1,500,000 was returned to various creditors, either as a return of principal or interest; however, a significant number of creditors either did not answer the question of how much was received or did not answer it with a specific dollar value;

(f) Of the 172 investor creditors, approximately 84 indicated that they received some return on their investment (a payment toward principal or interest), while approximately 88 claimed to have never received any payment on their investment or did not answer the question, whether interest or principal; and

(g) Of those investors who indicate that they received payment (whether as interest or principal), the percentage claimed as returned ranges from approximately 5% to 95%.

Analysis of the Proofs of Claim

10. The Receiver and its professionals are in the process of reviewing and reconciling the various Proofs of Claim. In addition to the Proofs of Claim, the Receiver has three other data sets from which to work. First, the Securities and Exchange Commission has obtained bank records of the Defendants for the time-period of August 1, 2011 through March 31, 2017, showing inflows and outflows of cash from the Defendants only (not affiliates), and has categorized them by

investor (the "SEC Records"). Second, the Defendants provided the Receiver with an investor list with stated debt amounts (the "Investor Lists"). Finally, the Receiver is in possession of investor files maintained by the Defendants (the "Investor Files"). The reliability of the Investor Lists has proven to be less than accurate. The Investor Files do contain various information, but in many instances, are incomplete.

11. The claims review process includes comparing the amounts asserted in the Proofs of Claim and the documentation attached to the thereto (i.e. check copies, bank statements, promissory notes, agreement, correspondences, handwritten summaries, etc.), including the amounts allegedly invested and the payments allegedly received against the other data available. To the extent possible, the Receiver will seek to arrive at an agreed upon claim amount with each claimant. To the extent controversies remain, the Receiver intends to use the mediation process set forth in the Claims Procedure Order to resolve any claim disputes.

12. As a preliminary statement, although Proofs of Claim were filed asserting claims in the approximate amount of $12,250,000 (inclusive of investor claims and trade creditors), based on an analysis of the available records and Proofs of Claim, if the investor claims are allowed on a cash-in/cash-out basis

(subtracting all repaid principal and interest from the original principal investment), the investors allowed claims would total approximately $8,235,000.

13. It is also apparent that there are many investors who did not file Proofs of Claim, whose names nonetheless appear in the SEC Records, in the Investor Files or on the Investor List. Unless a Proof of Claim has been filed, per the Claims Procedure Order, a person whose name appears in the SEC Records, the Investor Files or the Investor List will not be entitled to a distribution. The Receiver has made an earnest, good faith effort to contact all potential persons of whom the Receiver is aware, as gleaned from the Investor Files, the SEC Records and the Investor Lists, to encourage them to file a Proof of Claim.

14. It could be that certain of these investors who were listed as having invested with the Defendants but who did not file a Proof of Claim received the full return of their principal and possibly interest above that and therefore did not file a Proof of Claim. Based on the SEC Records, approximately $19,000,000 was invested from August 2011 through March 2017[2], with approximately $11,500,000 being paid out to investors over that same time-period. Some of the recipients of the $11,500,000 may well have received a total return of their investment and therefore had no reason to file a Proof of Claim.

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[2] As noted above, only approximately $13,000,000 is alleged to have been invested by those who filed a Proof of Claim.

15. In analyzing the Proofs of Claim, in conjunction with the SEC Records, the Investor List and the Investor Files, the Receiver has been attempting to determine an estimate of investors who received a total return of their principal, plus possible interest. Unfortunately, making this determination is difficult, for several reasons:

(a) First, investments date back prior to 2008, yet the SEC Records commence on August 1, 2011. Therefore, additional bank records, if available at all, would be needed to be subpoenaed and analyzed, to develop a full picture of inflows and outflows from the beginning of the investment pyramid.

(b) Second, investments repaid outside of a six-year statute of limitations period would be difficult to recover, absent a tolling or other equitable doctrine. Therefore, the utility in analyzing transactions outside of a six-year window has not been viewed by the Receiver as providing a benefit to the Receivership Estates.

(c) Based, however, on those creditors who (i) did not file a Proof of Claim; (ii) were not listed as having an outstanding investment based on the Investor List; and (iii) according to the SEC Records, received funds (as principal or interest) in an amount greater than or equal to the amount deposited with the Defendants, at the high end, up to 97 investor creditors

may have received as much as $3,600,000 (in the aggregate) in full repayment of their investments.

The Claims Methodology

16. Starting with an estimated creditor pool of approximately $12,250,000 (per the Proofs of Claims), the next step is to adopt certain payment methodologies, to arrive at the distribution method to be used to make distribution to each creditor.

17. Based on a rough analysis of the investor Proofs of Claim, investors received paybacks of principal and interest, compared against their original investment amount, in a wide range, from 5% to 95%. Therefore, depending on the payout methodology adopted by the Receiver and approved by this Court, certain creditors will invariably fare better than others. "When . . . there is 'a small pie and many disappointed investors,' there is an inherent conflict among investors." *SEC v. Parish*, 2010 U.S. Dist. LEXIS 11757, at *17 (D.S.C. Feb. 10, 2010).

18. Further, "[t]he only way to treat the victims fairly would be for each and every victim to be repaid in full. Unfortunately, this is impossible. It is the task of this court to choose not what is the 'fairest' distribution plan, but to choose the plan which is the least unfair." *Id.* at *16.

Fictitious Profits and Guaranteed Returns
<u>Should Not Be Considered in the Distribution Methodology</u>

19. In Ponzi cases, the courts generally initially divide the claims into two categories; the first is an analysis of actual cash in and cash back to a given investor and the second is everything else, including interest unearned but expected, damages and other promised returns. In *In re Taubman*, 160 B.R. 964, 982 (Bankr. S.D. Ohio 1993), the court, relying on the equitable powers of the Bankruptcy Court set forth in various Bankruptcy Code sections and applicable case law, stated that:

> equity dictates that the proofs of claim be split into an "A" portion and a "B" portion. The "A" claim represents on a cash-in/cash-out basis the difference, if any, between what an investor actually invested, lent, or gave to the Debtor, *minus* the total he or she received back at any time. The "B" portion consists of all profit, interest, return of principal, punitive damages, multiple damages, or any amount in excess of actual pecuniary loss. The "B" claims shall receive distribution only after all "A" claims have been paid in full.

20. The majority of the courts have held that the "B" claims related to fictitious profits should be disallowed. *SEC v. Credit Bancorp, Ltd.*, 2000 U.S. Dist. LEXIS 17171, at *137 (S.D.N.Y. Nov. 29, 2000); *CFTC v. Equity Financial Group, LLC*, 2005 U.S. Dist. LEXIS 20001, at *77 (D.N.J. Sept. 2, 2005). *But see Lustig v. Weisz & Assocs., Inc.* (*In re Unified Commercial Capital*), 2002 WL 325000567, at *8 (W.D.N.Y. June 21, 2002).

21. Accordingly, the Receiver is requesting that the distributions be based solely on the "A" portion of the claims, the "cash-in less cash-out." Any expectation or other fictitious profits (the "B" portion) not paid should be disallowed..

22. By way of example, a creditor who invested $50,000, who was promised interest totaling $10,000 over the life of the investment, and who was repaid nothing would have a claim for $50,000, not $60,000.

23. The Receiver is also seek to treat as "B" claims, portions of claims which seek repayment of bank charges/fees, attorney fees, amounts prepaid for unperformed investment training, amounts owing for personal property given to the Defendants to liquidate and allegedly never liquidated, funds intended as charitable donations but diverted, and damages related to the sale, purchase or management of real property ("Non-Investment Damages"). An estimated 20 of the 156 investor Proofs of Claim assert a component that qualifies as a "B" portion claim or as Non-Investment Damages.

IRS Tax Penalties

24. Certain investors were induced by the Defendants to transfer money from properly established IRA and other tax qualified retirement vehicles to the Defendants, with a promise that the monies would continue to be protected as tax qualified investments. However, the entities into which the investments were

transferred were not tax qualified retirement vehicles. As a result, certain investors became liable for IRS penalties for early withdrawal from their IRA accounts, based on the Defendants' failure to properly roll over the IRA account money into other IRA accounts, or based on the failure of Defendants to advise these investors that a penalty would be incurred for early withdrawal.

25. While a difficult call, the Receiver is requesting that these damages be included in the "B" claims and not part of the "A" claims, as they are more in the form of consequential damages than a component of cash-in, cash-out. An analysis of these IRS penalty claims would be a costly, labor-intensive undertaking for the Receiver, including an analysis of the claimants' tax returns, the penalty assessments that may have been asserted and mitigating factors that might have increased or decreased a given early withdrawal penalty, including claims that the investors were warned or failed to properly or timely fill out the paperwork providing for a roll over.

26. Accordingly, the Receiver is requesting that the Court allow only the "A" portion of the claims, the cash-in less cash-out portion of the claim unless and until the "A" portion of the claims have been paid in full. Any IRS penalties incurred or assessed should be disallowed.

27. By way of example, a creditor who invested $50,000, and incurred a $5,000 IRS penalty/tax would have an "A" portion claim for $50,000 and a "B" portion claim for the IRS $5,000 penatly/tax.

All Payments; Whether of Principal, Interest or Fees Should be Deemed Payments of Principal

28. In *SEC v. Basic Energy & Affiliated Resources, Inc.*, 273 F.3d 657 (6th Cir. 2001), the Sixth Circuit was called upon to approve a distribution plan involving the funds of a receivership. While not directly at issue before the Sixth Circuit, the starting point was a determination of the treatment of return of principal, interest and other payments. As stated by the Court:

> Under the distribution plan approved by the district court, each BEAR investor is assigned an investment number, a net investor claim ("NIC"), and an adjusted NIC ("ANIC"). Each investment is assigned an NIC by subtracting any commission payments, interest payments, return of principal payments, or similar payments made by BEAR to that account from the aggregate investment.

See also SEC v. AmeriFirst Funding, Inc., 2008 U.S. Dist. LEXIS 20044, at *17 (N.D. Tex. March 13, 2008).

29. Based on this Sixth Circuit precedent, the Receiver is seeking authority to treat all payments, whether of principal, of interest and any other non-principal payments (such as late fees, attorneys' fees or other amounts paid, other than principal) as a reduction in the principal amount owed to a given claimant, as

if such payments had been characterized as principal. This will then determine the "A" portion of each claimant's claim (the "Starting Claim Amount")[3].

30. By way of example, a creditor who invested $50,000 and who received $5,000 in principal payments and $3,000 in interest payments would have a Starting Claim Amount of $42,000, not $45,000. Likewise, a creditor who invested $50,000 and who rolled over $5,000 of unpaid interest into a new note, making his or her debt $55,000, would have a Starting Claim amount of $50,000 and not $55,000, as he or she only invested $50,000 with the Defendants.

31. Adoption of this methodology is also supported by the specific facts of this case. First, due to the inaccurate state of the Defendants' records and their imprecise and varying methods of documenting investment terms, it has been difficult for the Receiver to, in every instance, determine with certainty: (a) which payments were for interest and which were for principal; and (b) what interest rate was intended to apply. Second, in many instances, the Defendants failed to properly calculate interest, resulting in interest payments having been made on the initial principal investment amount, rather than on the then outstanding principal balance. Third, some claimants assert that their investments automatically or otherwise rolled over at the expiration of the initial term and should continue to

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[3] Also, in at least one instance, a creditor borrowed against its loan receivable. To the extent borrowed funds are unpaid, they should be offset against the amount owed, in calculating the Starting Claim Amount.

accrue interest until fully paid. Finally, in some instances, the term of the investment has not yet concluded and interest has not yet accrued.

Past Payments Should Not Be Disgorged

32. Theoretically, the most equitable solution would be to require investors to return all money they received from Defendants and then re-distribute those proceeds to all creditors. Doing so would put all investors on an even footing for purposes of a distribution, although as a practical matter, the chief beneficiaries would be investors who did not receive distributions from Defendants or who received less than payment in full. Conversely, this approach would adversely impact the approximate 97 creditors who may have received payment in full of their investment.

33. As a practical matter, however, this approach is not a realistic option. As a threshold matter, the cost of the inevitable litigation that would result from this approach would not justify the potential return to the Receivership Estates.

34. Apart from the burden of suing every person who received a payment for the return of funds received (whether principal, interest or some other amount) the Receiver believes that many of the payment recipients would be uncollectible, even if judgments were obtained.

35. Based on certain statements of claimants in the Proofs of Claim, many of the investors have or are experiencing severe financial difficulties. In fact,

based on the filing of several Proofs of Claim filed by bankruptcy trustees, some of the investors are or were insolvent.

36. It also appears that many of the investors are at or near retirement age and used retirement savings to fund their investment. To the extent such funds were previously returned to the investors, which would have occurred many years ago in some instances, it is unlikely those proceeds remain intact. Instead, it's probable that the funds will have been used for everyday living/necessities. Additionally, investors could claim that the monies invested were originally retirement funds protected from claims of creditors and should be cloaked with that same immunity from execution at this date.

37. Lastly, while older investments have had a greatest/longest opportunity for repayment, repayments on those investments may be the most difficult to collect. As discussed above, investors that received payments outside of a six-year window could assert a statute of limitations defense and due to the Defendants' poor record keeping and business practices, it has been difficult to obtain accurate records, particular for older investments. Without adequate and reliable records, it would be difficult for the Receivership Estates to satisfy their burdens of proof for collection.

38. Therefore, on balance, the Receiver is seeking authority to not pursue through litigation creditors who were previously paid in full (although the Receiver

is reserving the right to do so, if individual circumstances dictate). Those who received partial returns, whether of principal or interest, will have their claim amount reduced by the amounts received, creating their Starting Claim Amount.

Pro-Rata Payment of Claims

39. Assuming the Court approves the Receiver's recommendation that all payments, whether of principal, interest or other amounts all be deemed a return of principal, thereby establishing the Starting Claim Amount for each creditor, the next step it to determine how to disburse funds to the creditors, based on their Starting Claim Amounts.

40. Under the case law, there are two principal methods of repayment. The first is a basic pro-rata distribution, based on the Starting Claim Amounts. For example, if the total of the Starting Claim Amounts is $8,000,000 and the Receiver has $1,600,000 to disburse, each creditor would receive a 20% distribution on their Starting Claim Amount.

41. The second repayment method is known as the "Rising Tide Method." Under this distribution method, the goal is to assure that every investor has received a minimal return on their investment. As one court described it: "Payments received by the claimant prior to the Ponzi Scheme's collapse are treated as 'distributions' on par with the distributions to be made by the Receiver, so that prior amounts paid by [the debtor] are credited against the amount that

would otherwise be paid from the Receiver Estate." *In re Receiver*, 2011 U.S. Dist. LEXIS 71961, at *7 (D.S.C. July 1, 2011).

42. As stated in *CFTC v. Equity Financial Group, LLC*, 2005 U.S. Dist. LEXIS 20001, at *83 "[u]nder this method, investors are permitted to retain previously received funds, but those withdrawals will be credited against the investors' respective pro rata shares calculated based on the full amounts invested."

43. Similarly, the court in *United States v. Cabe*, 311 F. Supp. 2d 501, 509 (D.S.C. 2003) adopted the same methodology, although not calling it the Rising Tide method, as follows:

> The Court further finds that persons who have previously been repaid by defendants should not be wholly barred from participating in the distribution. Rather, such persons should receive a reduced amount so that the total amount they receive (both from the distribution and from the earlier repayment from the defendants) would roughly equal the amount they would have received from a pro rata distribution had they not received any money during the scheme from the defendants.

44. Therefore, under the Rising Tide method, not all creditors of the Receivership Estates would receive a distribution. Using the prior example, with Starting Claim Amounts totaling $8,000,000 and $1,600,000 to distribute, creditors would not receive a uniform 20% distribution. Certain creditors would receive a distribution of less than 20% (those who received a greater percentage return of aggregate funds on their investment versus others), while other creditors would

receive a distribution greater than 20%. The exact cut-off percentage will not be known until all Stated Claim Amounts are determined and all amounts available to collect are collected.

45. The determination of whether to adopt a straight pro-rata distribution scheme against the Starting Claim Amounts (sometimes called the "Net Investment" method"), versus the Rising Tide method is based on the Court's equitable powers. In *United States CFTC v. Lake Shore Asset Management Ltd.*, 2010 U.S. Dist. Ct. LEXIS 24061, at *30 (N.D. Ill. Mar. 15, 2010) the court, in addressing the two theories stated:

> The propriety of using the "Net Investment" method, however, does not turn on whether mathematically, a group of investors will lose more under the "Rising Tide" method than other investors will gain. Instead, as discussed above, the court must determine which method is equitable given the facts and circumstances of the case.

46. The court in *United States CFTC v. Lakeshore Asset Management, Ltd.* approved the Rising Tide method, stating:

> [I]t prevents an investor who previously received funds as withdrawals from "benefitting at the expense of other investors by retaining the benefit of the full amount of his withdrawal *plus* a distribution calculated on the basis of net funds invested, rather than the recommended distribution amount adjusted to take into account all amounts already received." . . .
>
> Moreover, there is no reason to allow certain investors to receive different percentages of their initial investment given that all of the investors were all equally victimized by the conduct of the Receivership Defendants.

Id. at *28. (footnote omitted).

The court went on to conclude:

> The fact that certain investors may not receive a distribution under the "Rising Tide" method is thus not germane. Investors who received pre-receivership payments may not recover more than their proportionate share of their respective initial investments than other investors. This is what would happen if the investors who received pre-receivership payments were allowed to retain those payments *and* also receive a pro rata distribution today. In this regard, the court notes that the "Net Investment" method adherents do not propose that they return their pre-receivership payments so that all of the investors can receive a true proportionate share of their initial investments.

Id. at *30-31.

47. Other courts have also supported the Rising Tide method over the Net Investment method. *See, e.g.*, *SEC v. Parish*, 2010 U.S. Dist. LEXIS 11757, at *19 ("investors who received payments over the course of the Ponzi scheme that exceed their proportionate share are permitted under the Net Loss method to keep those payments *and* share in a distribution of the estate, thereby ultimately recovering more than other investors who did not receive any payments over the course of the scheme"); *CFTC v. Equity Financial*, 2005 U.S. Dist. LEXIS 20001, at *84 ("subtract[ing] any withdrawals from an investor's total cash investment prior to calculating each investor's pro rata share, would result in certain investors receiving back more than such investor's proportionate share of investments").

48. *But see U.S. CFTC v. Barki, LLC*, 2009 U.S. Dist. LEXIS 112998, at *4-5 (W.D.N.C. Nov. 12, 2009) ("[h]ere, the court is painfully aware that no

matter the method employed, the Investors will feel the sting of inequity. That being said, the court finds that the net investment method will be the most equitable mode of distribution"); *Id.* at *6-7 ("[f]or the reasons given above, the court finds that the net investment method is most equitable. The Receiver's request to use the rising tide method is therefore not approved, and the court orders the Receiver to distribute the funds using the net investment method").

49. The Receiver in this case is advocating for adoption of the Rising Tide method. The Receiver sees no basis to distinguish between the level of harm inflicted on the investor creditors. Each was defrauded. Certain investors were fortunate enough to invest early, to be rewarded with the fruits of later investor monies. Those who invested early should not be able to retain their initial returns and receive the same pro-rata distribution of later investors, who have received less of their initial investments returned.

50. In a perfect world, all payments received by investors would be repaid to the Receiver and a pro-rata distribution of those funds, plus all other recoveries would be paid pro-rata to all investors. Because no investor is being required to give back monies previously received, the most equitable distribution process would be to adopt the Rising Tide method.

Equal Payment of General Unsecured Claims With Investor Claims

51. The Receiver is also seeking equal payment of general unsecured claims with those of investor creditors, rather than subordinating the general unsecured claims to investor claims. Certain case law, however, supports separate classification and subordination. *Norwest Bank Wisc., N.A. v. Malachi Corp.*, 245 F. App'x 488, 495 (6th Cir. 2007). The justification for subordinating general unsecured claims to those of investors' claims is based on the equitable theory that the investors were not voluntary creditors, but rather, involuntary creditors, in the sense that their investments were procured through fraud. General unsecured creditors, unless they can prove they were induced to do business with the defendants through fraud, had the opportunity to make their credit decisions and are generally more sophisticated. *See, e.g.*, *U.S. CFTC v. Capitalstreet Financial, LLC*, 2010 U.S. Dist. LEXIS 75113 (W.D.N.C. June 18, 2010) (approving a distribution scheme prioritizing payments to investors over those of general unsecured creditors); *SEC v. HKW Trading, LLC*, 2009 U.S. Dist. LEXIS 77215, at *8 (M.D. Fla. Aug. 14, 2009) ("[p]ayment to claimants whose property was unlawfully taken from them is given a higher priority than payment to the general creditors").

52. Based on the Proofs of Claim filed, only 12 non-investor unsecured claims were filed, in a total aggregate amount of $113,460. Most of these claims

related to legal fees of counsel to the Defendants and security deposits owed by the Defendants, rents or other amounts due from Defendants.

53. Based on the *de minimus* amount of the unsecured claims in relation to the total claims (approximately 1%), the Receiver is seeking authority to treat the payment of general unsecured claims (legal fees, amounts owed for services rendered, rents and security deposits owing and other commercial and non-investment transactions) on equal parity with all other investor claims.

54. Finally, there are a handful of creditors who have asserted claims based on investments made with non-Defendants, such as Kingdom Investors Group or Bernard Drew. These claims should receive no distribution, as those claimants did not invest with the Defendants.

Wherefore, the Receiver request that this Court enter an order permitting the Receiver to: (a) utilize the method described herein to arrive at the Starting Claim Amounts; and (b) adopt the Rising Tide method in making distributions to creditors; (c) permit the payment of investor claims before the claims of general unsecured creditors; (d) exclude payment to certain creditors as noted herein; and (e) grant such other relief as the Court deems equitable and just.

Respectfully submitted by,

JAFFE RAITT HEUER & WEISS, P.C

Dated: August 22, 2018

By: /s/ Jay L. Welford

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BRIEF IN SUPPORT OF MOTION FOR APPROVAL OF CLAIMS DISTRIBUTION METHODOLOGY

Patrick O'Keefe and O'Keefe & Associates Consulting LLC (the "Receiver") relies on the facts and law set forth in the *Motion for Approval of Claims Distribution Methodology*.

Respectfully submitted by,

JAFFE RAITT HEUER & WEISS, P.C.

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Attorneys for the Receiver

Dated: August 22, 2018

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CERTIFICATE OF SERVICE REGARDING MOTION
FOR APPROVAL OF CLAIMS DISTRIBUTION METHODOLOGY

I hereby certify that a copy of the Motion for Approval of Claims Distribution Methodology and Certificate of Service were served upon all counsel of record on August 22, 2018 using the Court's CM/ECF filing system.

/s/ Deon M. Goldberg