

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION**

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION,

Plaintiff,

v.

CASE NO.: 50-2021-CA-008718-XXXX-MB

NATIONAL SENIOR INSURANCE, INC.
D/B/A SEEMAN HOLTZ,
MARSHAL SEEMAN,
CENTURION INSURANCE SERVICES GROUP, LLC,
BRIAN J. SCHWARTZ,
EMERALD ASSETS 2018, LLC,
INTEGRITY ASSETS 2016, LLC,
INTERGRITY ASSETS, LLC,
PARA LONGEVITY 2014-5, LLC,
PARA LONGEVITY 2015-3, LLC,
PARA LONGEVITY 2015-5, LLC,
PARA LONGEVITY 2016-3, LLC,
PARA LONGEVITY 2016-5, LLC,
PARA LONGEVITY 2018-3, LLC,
PARA LONGEVITY 2018-5, LLC,
PARA LONGEVITY 2019-3, LLC,
PARA LONGEVITY 2019-5, LLC,
PARA LONGEVITY 2019-6, LLC,
PARA LONGEVITY VI, LLC,
SH GLOBAL, LLC N/K/A PARA LONGEVITY V, LLC,
ALTRAI GLOBAL, LLC A/K/A ALTRAI HOLDINGS, LLC,
VALENTINO GLOBAL HOLDINGS, LLC,
AMERITONIAN ENTERPRISES, LLC,
SEEMAN-HOLTZ CONSULTING CORP.,
CENTURION ISG Holdings, LLC,
CENTURION ISG Holdings II, LLC,
CENTURION ISG (Europe) Limited,
CENTURION ISG SERVICES, LLC,
CENTURION ISG FINANCE GROUP, LLC,
CENTURION FUNDING SPV I LLC,
CENTURION FUNDING SPV II LLC,
GRACE HOLDINGS FINANCIAL, LLC,
PRIME SHORT TERM CREDIT INC.,

Defendants.

THE ESTATE OF ERIC CHARLES HOLTZ,
SEEMAN HOLTZ PROPERTY AND CASUALTY, LLC
F/K/A SEEMAN HOLTZ PROPERTY AND CASUALTY, INC.,
SHPC HOLDINGS I, LLC,

Relief Defendants.

**RECEIVER’S MOTION FOR COMMENCEMENT OF CLAIMS DISTRIBUTION
PROCESS AND PROTOCOL**

Daniel J. Stermer, formerly as the Court appointed Corporate Monitor and now as Court-appointed Receiver (the “**Receiver**”) over the above caption “**Consenting Corporate Defendants**”, respectfully moves for entry of an order authorizing the Receiver to commence the Claims Distribution Process and Protocol in this case. In support of this Motion, the Receiver states as follows:

A. Background.

1. On July 12, 2021, the State of Florida Office of Financial Regulation (the “**OFR**”) filed a *Complaint for Temporary and Permanent Injunction, Appointment of Receiver, Restitution, Civil Penalties, and Other Statutory and Equitable Relief* (the “**Complaint**”) against the Consenting Corporate Defendants, certain individuals and other entities, and Relief Defendants (the “**OFR Action**”). The Complaint seeks entry of a judgment to restrain acts and practices of the Defendants, including the Consenting Corporate Defendants, from violations of various provisions of Chapter 517, Florida Statutes, including sections 517.301, 517.12 and 517.07, and “halt the securities fraud scheme and common enterprise operated and controlled by Defendant Marshal Seeman (“**Seeman**”) and Seeman’s deceased business partner, Eric Charles Holtz (“**Holtz**”).” The Complaint also seeks entry of a judgment against the Consenting Corporate

Defendants in the form of the appointment of a receiver, restitution, an award of civil penalties, and disgorgement of ill-gotten gains and unjust enrichment.

2. The Complaint alleges that Seeman and Holtz were assisted in the scheme and enterprise (the “**SH Enterprise**”) by Defendant, Brian J. Schwartz (“**Schwartz**”)(also now deceased), who allegedly acted as the SH Enterprise’s untitled chief financial officer. The Complaint further alleges that as part of the SH Enterprise, Seeman, Holtz and Schwartz created and operated a myriad of corporate entities, certain of which are named as Defendants or Relief Defendants in the Complaint and certain of which are no longer active corporate entities; that the SH Enterprise raised more than \$400 Million in capital since 2011, through the sale of unregistered securities in the form of purportedly secured promissory notes which were purportedly secured by viaticated life settlement policies and other insurance-related assets; that investors were misled regarding the SH Enterprise’s profitability, the existence of sufficient life settlements and other assets securing their investments and the perfection of security interests in those assets; and that the SH Enterprise operated as a Ponzi-like scheme in which new investor monies were commingled within the common enterprise and used to repay prior investors in the ongoing scheme thereby providing the appearance of profitability.

3. On September 10, 2021, the OFR filed a *Consent Motion for Appointment of Corporate Monitor*, seeking the appointment of the Corporate Monitor for the property, assets, and businesses of the initial Consenting Corporate Defendants, as well as a temporary injunction against the Consenting Corporate Defendants and two natural-person Defendants, Marshal Seeman and Brian J. Schwartz (the “**Consenting Individual Defendants**”).

4. On September 14, 2021, the Court entered an *Agreed Order Granting Plaintiff’s Consent Motion for Appointment of Corporate Monitor and Related Injunctive Relief* (the

“**September 14, 2021 Order**”), thereby approving and appointing, *inter alia*, Daniel J. Stermer as the Corporate Monitor for the Consenting Corporate Defendants and their affiliates, subsidiaries, successors, and assigns, until further Order of the Court. On January 6, 2022, the Court entered an agreed order expanding the scope of the corporate monitorship to include five (5) additional corporate entities as Consenting Corporate Defendants (the “**January 6, 2022 Order**”).¹

5. On March 23, 2023, the Corporate Monitor filed a *Joint Motion to Appoint Receiver* (the “**Receiver Motion**”), which was filed jointly with the Plaintiff/OFR, seeking the entry of an order appointing the Corporate Monitor as receiver for the Consenting Corporate Defendants. The Receiver Motion was filed as it was the belief of the Corporate Monitor, with the consent of the OFR, that converting this monitorship into a receivership was necessary and appropriate to facilitate the wind up of the Consenting Corporate Defendants’ affairs, including the liquidation of assets, disposition and prosecution of claims, and to facilitate litigation against third-parties, which will benefit the investors, noteholders and creditors.

6. On May 10, 2023, the Court conducted a hearing to consider the Receiver Motion, and, on May 12, 2023, the Court entered the *Order Appointing Receiver* (the “**Receivership Order**”), which appointed the Corporate Monitor as the Receiver of the Consenting Corporate Defendants.

7. Among the Corporate Monitor’s duties under the Monitorship Order and Receiver’s duties under the Receivership Order is to collect and preserve documents and information about the Consenting Corporate Defendants/Receivership Defendants and investigate the operations of the businesses subject of the monitorship/receivership.

¹ On November 14, 2023, the Receiver filed the Receiver’s Unopposed Motion to Expand Receivership Estate to Include Grace Holdings and on November 28, 2023, the Court entered its Agreed Order Granting Receiver’s Unopposed Motion to Expand Receivership Estate to Include Grace Holdings.

8. Further, the Corporate Monitor and now Receiver has filed a total of eleven interim reports (collectively, the “**Reports**”) reporting his findings (Seven (7) as Corporate Monitor: October 14, 2021, January 12, 2022, April 12, 2022, July 1, 2022, October 3, 2022 January 3, 2023, and April 3, 2023 and four (4) as Receiver: June 23, 2023, October 20, 2023, February 7, 2024 and June 26, 2024), the status of the operations of the Consenting Corporate Defendants, and the financial affairs of the monitorship estate of the Consenting Corporate Defendants. The Corporate Monitor and now Receiver has also prepared, distributed, and posted updates to Noteholders and other parties in interest (October 6, 2021, October 22, 2021, December 22, 2021, January 25, 2022, February 28, 2022, July 17, 2022, August 2, 2022, August 15, 2022, August 26, 2022, August 31, 2022, and November 18, 2022 and May 15, 2023 and October 17, 2023).

B. Recovery Status/Recovery Actions

9. As set forth in the Receiver’s Reports, which are incorporated herein, the Receiver has been actively pursuing and settling claims for the benefit of the Consenting Corporate Defendants estate. The settlements include:

- a. On August 24, 2022, Seeman Holtz Property and Casualty, LLC (“SHPC”) paid the sum of \$2,250,000.00 (the “**Initial Settlement Payment**”) to the Corporate Monitor pursuant to a Court-approved settlement (the “**SHPC Settlement**”) between the Corporate Monitor, SHPC, and Hamilton HM 11 Bermuda, HSCM F1 Master Fund Ltd., a Bermuda corporation, and HS Select I, LLC, a Georgia limited liability company (the collectively, “**Secured Lender**”). There may be additional proceeds upon the sale or disposition of SHPC or the SHPC Assets, as further set forth in the SHPC Settlement and Reports.
- b. On August 3, 2023, the Receiver resolved his disputes with American Express Company for the sum of \$920,000.00 (the “**Amex Settlement Monies**”), in full and complete satisfaction of any and all claims that the Receiver has against American Express and the Receiver has received the Amex Settlement Monies.
- c. On April 3, 2024, the Receiver entered into a settlement agreement with the Katchis Family (as defined in the Reports), pursuant to which, the Katchis Family collectively agreed to repay \$900,000.00 of the alleged fraudulent

transfers received by them from the Receivership Entities and the \$900,000.00 has been received by the Receiver.

- d. On May 29, 2024, the Receiver entered into a settlement agreement with Fifth Avenue Physicians Services, LLC (“Fifth Avenue”), pursuant to which Fifth Avenue agreed to repay \$300,000.00 of the alleged fraudulent transfers received by them from the Receivership Entities, pursuant to an agreed upon payment schedule. Fifth Avenue remitted and the Receiver received the initial settlement payment with the remaining payments to be made pursuant to the agreed upon schedule.
- e. On May 23, 2024, the Court entered an Order approving the Settlement Agreement with Jeffrey Abramson. A copy of the redacted settlement agreement may be found on the Receiver’s website.²

10. In connection with the Receiver’s efforts to marshal the assets of the Receivership Defendants and pursue claims against individuals and entities that owe the Receivership Defendants money or received fraudulent or otherwise improper transfers from the Receivership Defendants, the Receiver has issued seventeen demand letters (the “**Demand Letters**”) to various individuals seeking the recovery of in excess of \$10,000,000 in fraudulent transfers. The Receiver and his counsel have received responses to some of the Demand Letters and have been in discussions with representative(s) for some of those served with Demand Letters to resolve the disputes with those who received Demand Letters.

11. On October 25, 2023, the Receiver commenced five actions (the “**Fraudulent Transfer Actions**”) in the Circuit Court in and for Palm Beach County, Florida, seeking to recover fraudulent transfers made to certain individuals by the Receivership Entities prior to the commencement of this OFR enforcement action and other causes of action. The Fraudulent Transfer Actions, and other proceedings filed by the Receiver, are subject to certain case

² On May 21, 2024, the Court entered an Order Granting the Receiver’s *Motion to Determine Confidentiality of Court Records and for Approval to File Unredacted Settlement Agreements Under Seal*. The Settlement Agreements attached to each of the Motion to Approve Settlements contain redacted financial terms to protect the Receiver’s work product and efforts in future mediations.

procedures and schedule established by the *Order Establishing Procedures Governing Recovery Actions to Be commenced by the Receiver* entered in the OFR enforcement action on September 9, 2023 (the “**Procedures Order**”). Pursuant to the terms of the Procedures Order, certain guidelines were approved for the efficient administration of Actions to recover fraudulent transfers and other alleged improper payments made by one or more of the Consenting Corporate Defendants (the “**Recovery Actions**”). The recoveries are intended to be utilized, *inter alia*, to fund distributions to creditors in this case.

12. The status of the Fraudulent Transfer Actions commenced on October 25, 2023, is set forth below:

I. *Daniel J. Stermer, Receiver v. Jason Sussman, Case No. 50-2023-CA-015245-XXXAMB, seeking the recovery of fraudulent transfers totaling \$2,686,122.00;*

13. On October 25, 2023, the Receiver filed a complaint against Jason Sussman alleging multiple counts of Fraudulent Transfer pursuant to Florida Statutes seeking the recovery of \$2,686,122.00. Pursuant to the Procedures Order, mediation between the Receiver and Jason Sussman was held and the mediator filed his report indicating that no settlement was reached.

14. On May 9, 2024, the Receiver filed an Amended Complaint against Jason Sussman and added eleven (11) additional Defendants to the already pending matter: Scott Genad, Daniel Cucuiat, Joseph Corozza, Anthony Lombardo, Darrin Carlomagno, Melody Wilder, Andrea Matthews, Daryl Kutner, Kim Skidmore, Joseph Paluzzi, and Peter Beck (collectively, the “SH Defendants”), alleging claims of Fraudulent Transfers to each of the Defendants, Aiding and Abetting Fraud, Aiding and Abetting Breach of Fiduciary Duty, and Unjust Enrichment (Collectively, the “**Amended Complaint**”). The Amended Sussman Complaint can be reviewed on the Receiver’s Website.

15. The Amended Complaint alleges Jason Sussman sold over \$221,732,333 of unregistered Notes to innocent investors and that the Receiver is able to identify Sussman received at least \$2,857,122 in the form of payroll, commissions, bonuses, or other compensation from one or more of the Receivership Entities for his involvement with the Para Longevity Scheme (as defined in the Amended Complaint). The Amended Complaint also alleges the remaining SH Defendants sold \$90,000,000 of unregistered Notes to innocent investors and that the SH Defendants received at least \$3,138,997 in the form of payroll, commissions, bonuses, or other compensation from one or more of the Receivership Entities for his involvement with the Para Longevity Scheme.

16. On June 28, 2024, Counsel for Jason Sussman filed a Motion to Dismiss. Receiver's counsel filed a response on September 6, 2024 and the hearing on the Sussman Motion to Dismiss has been set by the Court for January 7, 2025 at 2:00 p.m. as a Special Set Hearing.

17. On August 30, 2024, Counsel for Daniel Cucuiat filed a Motion to Dismiss (the Cucuiat Motion to Dismiss was filed in the OFR Enforcement Action as opposed to the Sussman Action). Receiver's Counsel filed a response on October 11, 2024 (in both the OFR Enforcement Action and the Sussman Action) and the Receiver is in the process of setting the Cucuiat Motion for hearing before the Court.

II. *Daniel J. Stermer, Receiver v. Dean Emmets, Case No. 50-2023-CA-015250XXXAMB;*

18. On October 25, 2023, the Receiver filed a complaint against Dean Emmets alleging multiple counts of Fraudulent Transfer pursuant to Florida Statutes seeking the recovery of \$244,031.00.

19. On April 10, 2024, a mediation was conducted by Roy S. Kobert, mediator. Based upon a review of Mr. Emmets financial disclosures and current circumstances, the Parties agreed

to the entry of a *Stipulation and Consent to Final Judgment Against Defendant* in the amount of \$100,000.00.

III. Daniel J. Stermer, Receiver v. Daniel Tepper, Case No. 50-2023-CA-15241XXXAMB;

20. On October 25, 2023, the Receiver filed a complaint against Daniel Tepper alleging multiple counts of Fraudulent Transfer pursuant to Florida Statutes seeking the recovery of \$405,958.00.

21. On April 10, 2024, a mediation was conducted by Roy S. Kobert, mediator. The Parties were unable to reach a resolution of the matter and the Mediator declared an *Impasse*. The Receiver is continuing the litigation pursuant to the Procedures Order.

IV. Daniel J. Stermer, Receiver v. Antonio Dicembrino, Case No. 50-2023-CA-015228XXXAMB.

22. On October 25, 2023, the Receiver filed a complaint against Antonio Dicembrino alleging multiple counts of Fraudulent Transfer pursuant to Florida Statutes seeking the recovery of \$528,122.00.

23. On April 10, 2024, a mediation was conducted by Roy S. Kobert, mediator. The Parties were unable to reach a resolution of the matter and the Mediator declared an *Impasse*. The Receiver is continuing the litigation pursuant to the Procedures Order.

V. Daniel J. Stermer, Receiver v. Richard Donoff, Case No. 50-2024-CA-006353XXXAMB.

24. On July 7, 2024, the Receiver filed a Complaint to enforce a Court approved Settlement Agreement between the Receiver and Richard Donoff. Pursuant to the agreed terms of the Settlement Agreement, upon a default, the Receiver was entitled to the entry of an Agreed Final Judgment Against Defendant in the amount of \$796,295.00. On August 19, 2024, the Court entered the Agreed Final Judgment Against Defendant (the “**Donoff Judgment**”). Mr. Donoff

filed his Motion for Reconsideration of Approval of Settlement and Agreed Final Order on September 4, 2024, the Receiver filed his Response In Opposition to Mr. Donoff's Motion for Reconsideration of Approval of Settlement and Agreed Final Order, and the Court, on September 20, 2024, entered its Order Denying Motion for Reconsideration of Approval of Settlement and Agreed Final Order. On October 11, 2024, the Receiver filed his *Ex Parte* Motion to Compel Judgment Debtor Richard Donoff to Complete Fact Information Sheet and his *Ex Parte* Motion for Issuance of Writ of Garnishment After Judgment Upon Todd Zuckerbrod, P.A., and the Court, on October 11, 2024, entered its Order Granting Plaintiff's *Ex Parte* Motion to Compel Judgment Debtor Richard Donoff to Complete Fact Information Sheet and its Order Granting Plaintiff's *Ex Parte* Motion for Issuance of Writ of Garnishment After Judgment Upon Todd Zuckerbrod, P.A. The Receiver will continue his collection efforts with regard to Mr. Donoff.

25. The Receiver also negotiated and scheduled mediations with other individuals and entities who were served with Demand Letters as to their participation in the Para Longevity Scheme, but where complaints had not yet been filed. With the assistance of mediators, Roy Kobert and Keith Appleby, the Receiver entered into four additional pre-suit settlement agreements. These settlements have been approved pursuant to motions filed in this OFR enforcement matter. Copies of the additional motions to approve settlement agreements and the redacted settlement agreements and the various Orders entered by the Court can be found on the Receiver's website.

26. The Receiver has been and continues to be in discussions with certain other named Defendants in the Amended Complaint and will, upon successful resolution of the discussions, prepare and file appropriate motion(s) with the Court regarding those discussions and potential resolution(s).

27. The Receiver is in the process reviewing documents and negotiating with other individuals and entities in order to make a determination as to whether any additional fraudulent transfer action(s) are warranted. Additionally, discovery and analysis is ongoing regarding other potential Demand Letters to be sent and/or causes of action to be commenced by the Receiver.

A. Other Litigation

28. On May 9, 2024, the Receiver filed a Complaint against Wells Fargo Bank, N.A., asserting claims of: Aiding and Abetting Breach of Fiduciary Duties; Aiding and Abetting Fraud; Negligence; and Unjust Enrichment (the “**Wells Fargo Complaint**”). On July 29, 2024, Wells Fargo Bank, N.A. filed its Motion to Dismiss and on August 12, 2024, the Receiver filed his Response to Wells Fargo Bank, N.A.’s Motion to Dismiss, and on August 26, 2024, Wells Fargo Bank, N.A. filed its Reply in Support of its Motion to Dismiss, and the Court has taken the matter under consideration. The Receiver alleges that Wells Fargo had a bird’s eye view of the Ponzi Scheme and that it knew (or should have known) and failed to stop the operators of the Ponzi scheme from using funds raised from new investors to pay off old investors. A copy of the Wells Fargo Complaint can be found on the Receiver’s Website.

29. On May 9, 2024, the Receiver filed a Complaint against Pelican Capital Management, LLC (“**Pelican**”) asserting claims of Fraudulent Transfer and Unjust Enrichment (the “**Pelican Complaint**”). The Pelican Complaint alleges that the money received by Pelican was obtained from innocent investors involved in the Para Longevity Scheme (as defined therein), orchestrated by Marshall Seeman and Eric Holtz resulting in the loss of more than \$300 million to more than 1,000 elderly, retired, and unaccredited investors. The Pelican Complaint alleges that Pelican received over \$1,200,000 from the Para Longevity Scheme for no value given. A copy of the Pelican Complaint can be found on the Receiver’s Website. Pursuant to the Procedures Order,

mediation between the Receiver and Pelican was held and the mediator filed his report indicating that no settlement was reached.

30. On September 30, 2024, Pelican, through new Counsel Scott Alan Orth, Esq./Law Offices of Scott Alan Orth, P.A., filed its Motion to Dismiss, Notice of Service of Interrogatories, Notice of Service of Request for Production, and Request for Admissions and on October 2, 2024, filed and served its Notice of Serving Proposal for Settlement. On October 15, 2024, the Receiver filed his Verified Motion to Disqualify the Law Offices of Scott Alan Orth, P.A., and Scott Alan Orth, Esq. as Counsel to Defendant Pelican Management, LLC alleging conflicts of interest due to Mr. Orth's prior representation of the Consenting Corporate Defendants, some of whom are the entities who commenced this recovery action against Pelican, and the Verified Motion is currently pending before the Court and the Receiver prepared and filed his Notice of Filing of the Verified Motion in the OFR Enforcement Action as well as in the Pelican matter.

31. The Receiver also continued discussions with additional potential defendants to provide the Receiver and his professionals with additional time to review documents and information and determine whether viable claims exist against said Defendants. The Receiver will continue to investigate these claims and bring any viable claims in the near future.

32. On May 6, 2024, the Receiver filed a *Motion for Approval to Enter into Stipulation For Entry of Judgment As to Liability* (the "**Consent Judgment Motion**"), seeking approval to enter into a stipulated Consent Judgment between the Receivership Defendants and the OFR as to the issue of liability emanating from the OFR's enforcement action complaint. The Consent Judgment permanently enjoins the Receivership Defendants from engaging in any acts which are or may be deemed violations of Florida Statutes § 517.301(1)(a)1, 2, 3, § 517.12(1), § 517.12(4), and/or § 517.07(1). On May 29, 2024, the Court entered an Order approving the Consent Judgment

Motion and on May 31, 2024, the Court entered the Final Judgment as to Liability against the Receivership Defendants.

33. There is no doubt that the victims of this scheme have been patient. There is also not doubt that any meaningful recovery will flow from the pending and ongoing litigation recoveries.

34. The Receiver will continue his diligent efforts to maximize recovery but also wants to be in a position to commence a distribution, if and when sufficient funds are available for same. Accordingly, the Receiver files this Motion in anticipation of such event.

C. Claims Process

35. On June 17, 2022, the Corporate Monitor filed a motion seeking approval of certain proposed noticing and claims administration procedures and the form of the notice to be sent to potential claimants (the “**Claim Motion**”). Pursuant to the Claim Motion, the Corporate Monitor sought and obtained the approval of (a) a legal notice (the “**Legal Notice**”) to apprise potential claimants of how the claims process was created, who is eligible to submit a claim in order to potentially receive a monetary distribution³ from the Corporate Monitorship estate, the process by which eligible claimants can submit a claim, and the process by which the Corporate Monitor will determine which eligible claimants have allowed claims and are thus entitled to receive a *pro rata* distribution, if any, from the Corporate Monitorship estate, (b) a bar date notice (the “**Bar Date Notice**”) that will notify the potential claimants of the deadline to file claims and advise claimants that they will be forever barred and permanently enjoined from asserting a claim against the

³ The Claim Motion sought to commence the process of reconciling claims, so that if funds become available for distribution, the process is in place.

Consenting Corporate Defendants should they fail to timely file a proof of claim, and (c) a form Proof of Claim (the “**Proof of Claim Form**”).

36. On June 27, 2022,⁴ the Court entered an order granting the Claim Motion in its entirety, and approving the Legal Notice, Bar Date Notice and Proof of Claim Form.

37. In accordance with the Claims Order, the Corporate Monitor promptly served, by electronic transmission and/or first class, U.S. Mail, a claims package consisting of copies of the following: (i) *Amended Agreed Order Approving the Noticing and Claims Administration Process* dated June 29, 2022; (ii) the Legal Notice; (iii) the *Bar Date Notice*; and (iv) the Proof of Claim Form (collectively, the “**Claims Package**”) to each known noteholder and potential creditor of the Corporate Monitorship entities. In addition, the Corporate Monitor published the Legal Notice in New York Times, National Edition, and posted the Claims Package documents on the Internet website for the Corporate Monitorship entities, to wit: <http://nationalseniormonitorship.com> (the “**Website**”).

38. The Corporate Monitor used his best efforts to notify all known noteholders and creditors of the Corporate Monitorship estate by serving the Claims Package by email to all known email addresses as contained in the business records of the Consenting Corporate Defendants and as provided by the putative creditors and parties in interest, and their counsel, as applicable, that have contacted the Corporate Monitor since his appointment. For any known creditors that had a physical mailing address on record with the Consenting Corporate Defendants, the Corporate Monitor served the Claims Package by first class, U.S. Mail.

39. Pursuant to the preliminary approval of the class settlement (the “**Class Settlement**”) by the Federal District Court judge in the class action captioned *Millstein, et al. v.*

⁴ On June 29, 2022, the Court entered an Amended Agreed Order Approving the Noticing and Claims Administration Process (the “**Claims Order**”) and same has been posted on the Corporate Monitor’s website.

Marshal Seeman, et al., 21-CV-61179-RAR (S.D. Fla. 2021), the deadline to file proofs of claim with the Corporate Monitor was extended through October 31, 2022 (the “**Claims Bar Date**”). The original bar date for the filing of claims, as reflected in the Claim Order, was August 31, 2022. Following the extension of the Claims Bar Date to October 31, 2022, the Claims Package was promptly served, by electronic transmission and/or first class, U.S. Mail, upon all class members. After final approval of the Class Settlement by the Federal District Court judge, the Receiver received \$451,337.00 relative to the Class Settlement.

40. As of the filing of this Motion, there were 1,670 claims (collectively, the “**Claims**”) filed. Below is a summary of the Claims filed as of the date of this Motion:

Total # of Claims	1,670
Total # of Individualized Claimants	1,077
Total Amount of Claims	\$383,340.895
Total Amount of Noteholder-related Claims	\$340,718,216
Total Amount of Trade/non-individual Noteholder Creditor Claims	\$42,621,968

41. The Receiver and his professionals have:

a. **Bank Transaction Database Process**

Due to significant deficiencies of the companies’ books and records, the Receiver could not rely upon the financials and general ledger records previously created by the companies. Thus, the Receiver and his team subpoenaed 7 banks and reviewed company files to gather bank statements for 87 distinct bank accounts. The Receiver’s team then converted all the PDF bank statements to excel to create a bank transaction database which contains the transaction activity for each account. As part of this process, the Receiver’s team reviewed thousands of check images to identify who the payor was and include this information in the bank transaction database. Subsequently, each transaction was categorized based on the payee’s name and the nature of the activity. In some instances, the Receiver’s team spent time reviewing email records to confirm the nature of the activity.

b. **Work with IRA Administrators to supplement the Bank Transaction Database**

In review of the bank transaction database, the Receiver's team identified bulk payments to various IRA administrators that included interest payments for multiple noteholders. Once these bulk payments were received by the IRA administrators, they were responsible for allocating the payments to the various noteholder's accounts. The Receiver and his team worked closely with the various IRA administrators to acquire individual noteholder level detail for each of the bulk payments. Subsequently, the individual noteholder level payment details were incorporated into the larger bank transaction database.

42. However, the bank records available to the Receiver, in many instances do not exist for as far back as certain claimants' original investment.

43. As set forth in the Claims Order, Allowed Claims⁵ from noteholders "will be based upon the principal amount of money forwarded by the claimant to one or more of the Consenting Corporate Defendant(s) and/or Grace Holdings which shall be reduced by any periodic payment(s) or other payment made by one or more of the Consenting Corporate Defendant(s) and/or Grace Holdings and/or someone on behalf of one or more of the Consenting Corporate Defendant(s) and/or Grace Holdings to the claimant, regardless of whether such payment was intended to be and/or identified as a periodic interest payment and/or return of principal. The Corporate Monitor will not include within his calculation for distributions any profit, rate of return, dividend, periodic interest or other payment in excess of the principal amount invested." In essence, each allowed claim would be calculated on a cash-in vs cash-out basis. Under these guidelines, the Receiver has received approximately 1,670 claims from 1,077 creditors. Of the 1,077 individual creditors, 943 are noteholder claimants. Additionally, the Receiver has accounted for 117 "placeholder" claims for noteholders, which based on the company's books and records held an active promissory note from the Consenting Corporate Defendants but, to date, have not submitted a proof of claim.⁶

⁵ Capitalized terms not otherwise defined herein shall have the definition ascribed to them in the Claims Motion and/or the Claims Order.

⁶ On March 30, 2023, the Corporate Monitor filed his Motion for Authorization to File Protective Proofs of Claim on Behalf of Noteholders Who Failed to File Claims and on May 12, 2023, the Court entered its Order Granting Corporate

44. The Receiver's team commenced the initial claims reconciliation process by creating a detailed excel database of all information submitted with each proof of claim form filed by creditors, whether Noteholder or other creditors. Subsequently, the Receiver and his team followed up with individual creditors on an as-needed basis to ensure accuracy and completeness of their claim. Despite the guidelines established in the Claims Administration Process motion, many creditors included accrued but unpaid interest in their proof of claim and most creditors did not deduct interest payments that they received from one of the Consenting Corporate Defendants even though the Proof of Claim Form sought this information. Thus, the Receiver's team worked tediously to review the records submitted with each of these claims to split the filed amounts between principal, interest, and other amounts.

45. To arrive at an "Allowed Claim" for each creditor, the Receiver's team started with the as filed principal amount and then deducted any interest or partial principal repayments and/or distribution(s) to the creditor within the bank transaction database. The Receiver's professionals review was further complicated by the following:

- a. Creditors that erroneously included principal from promissory notes that had been fully repaid;
- b. Creditors that inherited a promissory note from a deceased relative;
- c. In some instances, a promissory note was split between multiple beneficiaries of the deceased;
- d. Creditors that filed separate claims for promissory notes held by them individually and by a Trust that they control but historical interest payments for all their notes were paid to them individually (or fully to their Trust);
- e. Creditors that filed claims including accrued but unpaid interest and which lacked supporting documentation and were unresponsive to requests for additional information;

Monitor's Motion for Authorization to File Protective Proofs of Claim on Behalf of Noteholders Who Failed to File Claims.

- f. Creditors that filed one claim for multiple promissory notes which lacked supporting documentation of the individual notes and were unresponsive to requests for additional information;
- g. Allocating noteholder interest and partial principal payments that were paid to an attorney as part of a settlement with the Consenting Corporate Defendants instead of being paid directly to the noteholder; and
- h. Generally, the Receiver only has access to bank statements from January 2015 and forward due to the 7-year statute-of-limitations for banks to keep client records. The Receiver has been and continues his efforts to obtain additional bank records that may assist or impact this data/analysis.

46. After a preliminary review of the Claims, the Receiver identified numerous issues that needed further attention, including, without limitation, (i) claimants who filed claims with incomplete information, such as not including an amount of the claim; (ii) claimants who failed to provide adequate information to readily identify the claimant; and (iii) claimants that asserted amounts far in excess of their actual investment/damages (“Disputed Claims”). Moreover, even those Claims asserted where the Receiver was able to match substantial investment amounts, in some cases, the Consenting Corporate Defendants’ books and records did not completely match the information provided by such claimants.

47. As set forth above, the vast majority of the 1,670 Claims that have been filed have been filed by Noteholders. The majority of these Noteholders assert suffered losses based on the investments they made with Seeman, Holtz and Schwartz in connection with the SH Enterprise. All of these claims generally arose from similar facts and it is unlikely that reconciliation of those claims will involve complex legal issues or factual disputes, although each claim has required detailed and particularized analysis. In an effort to avoid inundating this Court with claim disputes, the Receiver proposes the procedures set forth herein to address these potential disputes and conserve judicial resources and professional fees and allow the process to commence so that when

the Receiver determines that an initial interim (or final) distribution is appropriate, that such distribution can be accomplished promptly.

48. Thus, in order to complete the Claims reconciliation process, promote efficiency in the administration of this case, and to establish the methodology for making distributions in the future, the Receiver seeks the approval of the following relief: (1) the establishment of procedures for notifying claimants of the amount of their proposed Allowed Claim; (2) the establishment of procedures for addressing and resolving Disputed Claims as described above; (3) establishing reserve requirements for Disputed Claims at the time of distributions; and (4) establishing a process for approval of a plan of distribution (the “**Claims Distribution Process and Protocol**”)

Claim Distribution Process and Protocol Requested

A. Distribution Methodology

49. In order to make distributions on account of Allowed Claims and Disputed Claims, the Receiver must determine, subject to Court approval, the most fair, reasonable and equitable manner to make distributions in this case based upon the unique and particular facts in this case and ultimately, based upon the ultimate recoveries obtained by the Receiver.

50. Trial courts have broad discretion in determining the appropriateness of a decision by a receiver to make distributions and the methodology by which distributions should be made. *See Abramson v. Brant*, 141 So. 2d 777, 778-79 (Fla. 3d DCA 1962) (holding that the trial court did not abuse its discretion in granting petitioner’s request for a distribution by the receiver); *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (noting that trial courts possess “broad powers and wide discretion to determine relief in an equity receivership,” that such discretion “ derives from the inherent powers of an equity court to fashion relief”); *S.E.C. v. EB5 Asset Manager, LLC*, No. 15-62323-CIV-LENARD/GOODMAN, 2016 WL 11487857, at *3 (S.D. Fla. Dec. 8, 2016) (a

district court's decisions relating to the choice of a distribution plan for the receivership are reviewed for abuse of discretion (citing cases, including *Elliott*, 953 F.2d at 1569-70)). "In deciding how receivership assets should be distributed to investors, the fundamental principle which emerges from [the] case law is that any distribution should be done equitably and fairly, with similarly-situated investors or customers treated alike." *EB5 Asset Manager*, 2016 WL 11487857, at *4 (quotation omitted).

51. In general, there are two methods of making distributions in fraud scheme cases that have been favored, the "net loss" (sometimes referred to as "net investment") method of establishing amounts to be distributed, and the "rising tide" method. *See S.E.C. v. TCA Fund Mgmt. Grp, Corp.*, No. 20-21964-CIV-ALTONAGA/Goodman, 2022 WL 3334488, at *15 (S.D. Fla. Aug. 4, 2022) (discussing both methodologies, and noting that the "rising tide" methodology is "the method most commonly used (and judicially approved) for apportioning receivership assets.") (quotation omitted). The court in *S.E.C. v. Aequitas Mgmt., LLC*, No. 3:16-cv-00438-JRm 2020 WL 1528249, at *8 (D. Or. Mar. 31, 2020) described the "rising tide" methodology as one where "distributions are made with the purpose of equalizing the percentage of invested funds that are returned to each Ponzi-scheme investor without regard for whether those funds were returned by the perpetrators of the fraud before the scheme collapsed or as part of a distribution plan. Stated differently, the goal is for all investors to ultimately receive a distribution equal to the same percentage of their cumulative investment, irrespective of whether the distribution was made directly by the Ponzi scheme or by a receiver from the assets remaining from the Ponzi scheme." *Id.*

52. Under the "net loss" distribution methodology, a fiduciary seeks to distribute funds to claimants who hold allowed claims arising from investing in the fraud on a pro rata basis, based

on the net remaining loss the claimant was owed by the entity in the monitorship or receivership, as the case may be, on the date that the monitorship or receivership commenced. In sum, the “net loss” methodology ignores how much the monitorship or receivership entity distributed to the creditor in the past (assuming the creditor has not received more than such creditor invested), and, instead, focuses solely on the amount of the net loss of the creditor remaining on the date the monitorship or receivership commences. Creditors then receive distributions on a pro rata basis on account of their remaining net loss.

53. The “rising tide” distribution methodology seeks to make distributions based on the gross amount paid to the monitorship or receivership entity by a claimant (essentially treating that amount as such claimant’s gross claim), and treats each payment to the claimant over the life of the relationship with such entity as a distribution on account of that gross claim. Thus, using this method, the Receiver will only make a distribution to a claimant in an instance where the overall aggregate amount the Receiver has to distribute to claimants on a pro rata basis is more than the amount such claimant has been distributed in the past. To determine the amount the claimant will receive, the Receiver will compute the pro rata amount such claimant would be paid absent any deductions on account of prior distributions and subtract the amount of such prior distributions. If that difference is positive, Receiver would pay such claimant based on the amount of that difference, subject to the distribution procedures. If that amount is negative or zero, the claimant would not receive any distribution.

54. The Court in *S.E.C. v. Coadum Advisors, Inc.*, No. 1:08-CV-11-ODE, 2009 WL 10664889, at *5-6_ (N.D. Ga. Sept. 24, 2009), provided an illustration of both the “net investment” and “rising tide” methodologies in the context of the facts before it as follows:

A. An Illustrative Example

The equities promoted by the Rising Tide method can best be demonstrated with an example involving two hypothetical investors, Investor A and Investor B, and the outcomes that would result by applying either the Rising Tide method or the Net Investment method. Both Investor A and Investor B, but no other investors, invested \$100,000 apiece in Coadum. Unlike Investor A, however, Investor B withdrew \$20,000 of his investment from Coadum prior to the Court instituting the receivership in January 2008. Investor A made no pre-receivership withdrawals. Coadum's first distribution of recovered funds involves, hypothetically, \$40,000 in funds to be disbursed.

1. The Rising Tide Method Applied

Under the Rising Tide method, the applicable pro-rata multiplier ("PRM") would be twenty percent. Thus, each investor's pro rata share would be \$20,000, as both Investor A and Investor B invested \$100,000 apiece in Coadum. As Investor A made no pre-receivership withdrawals from his Coadum investment, no deductions would be made from his \$20,000 recovery under the Rising Tide method. However, because Investor B received pre-receivership withdrawals in an amount equal to his pro rata share of \$20,000, Investor B would receive no money in this distribution round. At the end of the first distribution round, Investor A would have received \$20,000 in recovered funds—twenty percent of his initial investment—and Investor B would have received no recovered funds, but still would have previously received a pre-receivership withdrawal of \$20,000—twenty percent of his initial investment.

After the first round of distributions, \$20,000 would remain for distribution among the investors. The PRM in the second distribution round would thus be ten percent, and each investor's pro rata share in this round would be \$10,000. Because neither investor would have any pre-receivership withdrawals not already offset in earlier distribution rounds, each investor would receive their \$10,000 pro rata share in this second distribution round.

At the end of both distributions, then, Investor A would have received \$30,000 overall in funds formerly held in the common Coadum pool, and Investor B would also have received \$30,000 overall in funds formerly held in the common Coadum pool—his \$20,000 pre-receivership withdrawal and \$10,000 recovered in the second round of distributions. Each investor would have recovered thirty percent of their initial investment as a result of the Rising Tide method.

2. The Net Investment Method Applied

The Net Investment method would subtract Investor B's pre-receivership withdrawals from his total invested amount prior to determining his pro rata share, leaving Investor B with an \$80,000 net investment. In contrast, Investor A would have nothing subtracted from his initial \$100,000 investment. Then, the Receiver would calculate the PRM by dividing the funds available for distribution by the sum of the investors' net investments, reaching a PRM of 22.22 percent. Finally, to

determine each investor's net distribution amount, the Receiver would multiply that PRM by each investor's net investment: Investor A would recover \$22,222 from the recovered Coadum funds, and Investor B would recover \$17,778.

At the end of this distribution, then, Investor A would have received \$22,222 overall in funds formerly held in the common Coadum pool, and Investor B would have received his pre-receivership withdrawal of \$20,000 and \$17,778 in recovered Coadum funds, leaving Investor B with \$37,778 in total funds recovered. Investor A would thus recover 22.2% of his initial investment, while Investor B would have recovered, based on his pre-receivership withdrawal and the money recovered in the Net Investment distribution, 37.8% of his initial investment.

Id. at *6 (concluding that “[t]he varying recovery percentages for Investor A and Investor B indicate the equities promoted by the Rising Tide distribution method and the inequities promoted by the Net Investment method.”).

55. Here, the Receiver will ultimately determine at a later date whether to utilize the Net Loss Methodology or the Rising Tide Methodology based upon the Receiver’s recoveries in order to promote a fair, reasonable, and equitable distribution to the holders of Allowed Claims.

B. CLAIM IDENTIFICATION NUMBER AND NOTIFICATION OF PROPOSED ALLOWED AMOUNT OF CLAIM OR OTHER CLAIM DEFICIENCIES.

56. To efficiently reconcile, track, and ultimately make distributions to the holders of Allowed Claims, but at the same time maintain each individual claimant’s privacy, the Receiver seeks to assign to each creditor a unique identifying number or claim number (the “**Claim Identification Number**”). The Receiver will notify each individual claimant via email or U.S. Mail of their corresponding Claim Identification Number.

57. The Receiver will also notify the holders of Disputed Claims (as defined herein) via email and/or U.S. Mail, the nature of the dispute and the proposed amount that the Receiver submits the Claim should allowed.

C. CLAIMS OBJECTION PROCESS

58. The Receiver believes it is in the best interest of the Consenting Corporate Defendants Estate to permit him to settle objections to Claim Determinations. No distribution will be made on a disputed claim unless the claim is allowed by agreement of the Receiver or by a final non-appealable order. The Receiver will have the power and authority to settle and compromise a disputed claim. If the Claimant disputes the amount asserted by the Receiver or the rationale for the Disputed Claim (i.e. procedural defects or other), then the parties shall engage first in a good faith discussion to resolve the issues in dispute. If that fails to achieve resolution, the Parties shall engage in mediation of the dispute in an effort to avoid costly and time-consuming Court intervention (“Claim Resolution Mediation”). In order to determine whether a settlement of a claim is in the best interest of an estate, courts have found that the compromise proposed must be fair and equitable, reasonable and in the best interests of that estate. In assessing the adequacy of a proposed settlement, courts have considered (1) the probability of success in the litigation for the estate; (2) the difficulties associated with collection; (3) the complexity of the litigation; (4) the attendant expense, inconvenience and delay; and (5) other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Because this Court would consider these factors when determining whether to approve a proposed settlement, the Receiver will utilize these principles to determine whether to agree to a settlement.

59. Claim Resolution Mediations may be conducted via Zoom and with procedures and logistics meant to ensure an efficient and fair resolution in a prompt manner. The Receiver may aggregate mediations to, in his discretion. If the parties are unable to resolve the dispute over the amount of the Claim, then the Receiver shall bring the objections to the attention of the Court after first determining the number of matters that may be brought before the Court

and seeking approval from this Court of a process⁷ for Court determination of the disputes. The Receiver shall submit a list of five (5) proposed mediators to be the preferred mediators for the Claim Resolution Mediations.

60. This settlement protocol will permit the Receiver to efficiently administer the Claims process and resolve matters that would otherwise require intervention by the Court without needlessly involving the Court if a compromise can be reached.

D. DISTRIBUTION RESERVES

61. To the extent a distribution is made, and Disputed Claims still exist, the Receiver shall establish a reserve for the pro rata distribution for any Disputed Claim based upon the highest amount alleged by the Claimant. Such reserves will be released by the Receiver to make appropriate distributions to the holder of the Claim (if the Claim is allowed) or to the pool of assets to be distributed to all holders of allowed claims. Establishing such reserves will undoubtedly decrease the amount of funds that are available to be distributed to holders of Claims on an interim basis. This is a necessary step in order to provide an interim distribution, however, and as Claims are reconciled, the Receiver will be able to release reserves not needed to provide distributions on account of the Claims for which the reserve was established. This shall preserve the rights of the Claimant.

E. PLAN OF DISTRIBUTION

62. When the Receiver, in his business judgment, determines that sufficient claims have been resolved and that there are appropriate funds to make a distribution (either interim or final), the Receiver shall file with the Court a proposed Plan of Distribution setting forth the proposed

⁷ The Receiver would urge that it is premature to establish the procedures until such time as the number of unresolved Disputed Claims can be determined and then such procedure can be brought before the Court for approval.

distribution methodology (i.e. Net Loss or Rising Tide), the Claimant Identification Number, the Amount of their Claim and the amount of the proposed pro rata distribution for each Claimant.

63. The Receiver shall make distributions solely to the holders of allowed Claims without regard to any Claim or interest asserted by any third party in such distributions. Distributions shall be made to the holders of allowed Claims at the addresses set forth in the Claims asserted by such holders, as may be amended by such holder on the Claims.

64. The Receiver has determined that, pursuant to applicable law, he is required to obtain certain information from holders of allowed Claims in order to make distributions to such holders. Based on the Receivership team's analysis, the Receiver has determined that he is required to collect certain tax information in order to make distributions pursuant to certain regulations of the Internal Revenue Service (the "IRS") or be required to utilize the Court-approved financial advisor to maintain and collect backup withholdings for each individual or entity that receives a distribution. This would create a costly and time-consuming administrative process that provides no benefit to the Corporate Consenting Defendant's estate and would reduce the distributions that could be paid to all holders of allowed Claims. Therefore, in order to receive a distribution, the Receiver hereby requests that this Court require the holder of an allowed Claim to submit either a W-9 form, if the holder is treated as a United States entity or citizen by the IRS, or a W-8 form, if the holder is treated as a non-U.S. entity or citizen by the IRS (although the Receiver does not believe any holder of Claims is a non-U.S. entity or citizen. The proposed treatment of the distribution that is allocated to an allowed Claim holder that fails to submit a W-9 form or a W-8 form is set forth in more detail below. If approved by this Court, the Receiver would also request that the submission of a W-9 or W-8 also serve as conclusive evidence that the submitting Claimant agrees that it has released any and all claims that it has or may have, if any, against the Receiver

or the Receivership Estate. However, the failure to submit a W-9 or W-8 form would be treated as the waiver of a holder of an allowed claim to any distribution by the Receiver or Receivership Estate

WHEREFORE, Daniel J. Stermer, as Receiver, respectfully requests this Court enter an order authorizing (1) the establishment of procedures for notifying claimants of the amount of their proposed Allowed Claim; (2) the establishment of procedures for addressing and resolving Disputed Claims as described above; (3) the establishment of reserve requirements for Disputed Claims at the time of distributions; (4) the establishment of a process for approval of a plan of distribution; (5) the procedures for the collection of necessary information to make distributions to holders of allowed claims, and the establishment of the procedures for making distributions; and (6) for such further relief as this Court deems just and proper.

Dated: October 18, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on October 18, 2024, the foregoing was filed using the Florida Court's E-Filing Portal, which served a copy of the foregoing electronically upon all electronic service parties. I further certify that a true and correct copy of the foregoing was served by electronic transmission upon all parties on the attached Service List.

By: /s/ Brian G. Rich
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