

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:19-cv-02594-RM-SKC

UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

Plaintiff,

v.

MEDIATRIX CAPITAL INC. *et al.*,

Defendants,

and

MEDIATRIX CAPITAL FUND LTD *et al.*,

Relief Defendants.

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**MOTION OF RECEIVER FOR: (1) AUTHORITY TO PURSUE CERTAIN  
AVOIDANCE CLAIMS AND ASSET FREEZE VIOLATIONS; AND (2) APPROVAL  
OF PROPOSED SETTLEMENT PROCEDURES**

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Mark B. Conlan, the Court-appointed substitute receiver (the “Receiver”), will and hereby does make this Motion for (1) Authority to Pursue Certain Avoidance Claims and Asset Freeze Violations, and (2) Approval of Proposed Settlement Procedures (the “Motion”).<sup>1</sup>

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<sup>1</sup> A full copy of the Motion and related pleadings is available for free download at <https://mediatrixreceivership.com>.

## BACKGROUND AND REQUESTED RELIEF

This Motion concerns the Receiver's recommended procedures relating to the avoidance and recovery of any transfers that the Receiver determines may be voidable transfers under applicable law ("Avoidance Claims"). The Avoidance Claims are wasting assets of the receivership estate in the sense that the Colorado Uniform Fraudulent Transfer Act, C.R.S. § 38-1-101 *et seq.*, provides that such claims must be brought within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant. *Id.* § 38-1-110. That deadline is currently running in this case. The Receiver is concerned that if he waits until there is a finding of liability in this case, he will be time-barred from then bringing many of the receivership estate's Avoidance Claims. The receiver also notes that his burden of proof with respect to civil fraudulent transfer claims does not rise to the level of proof beyond a reasonable doubt, which will be the standard in the criminal cases currently pending against certain of the Defendants. Consequently, although the Receiver's investigation of the bona fides of the Avoidance Claims is ongoing, the Receiver is satisfied that this investigation has progressed to the point that he can now file many of the *civil* complaints asserting the Avoidance Claims consistent with his and his counsel's good faith obligations under Federal Rule of Civil Procedure 11.

By this Motion, the Receiver proposes procedures for pursuing Avoidance Claims and Asset Freeze Violation claims, which are designed to resolve the claims as efficiently and cost effectively as possible, thereby maximizing the recovery. Given the timing of transfers to the Net Winners and Brokers, the Receiver seeks to move promptly and expeditiously so as to avoid losing the ability to recover transfers that fall outside the four-year statute of limitations.

The Receiver requests the Court approve his Motion for authority to pursue the Avoidance Claims and Asset Freeze Violation claims, approve the proposed Settlement Procedures set forth in the Motion, and approve the proposed Settlement and Release Agreements attached as **Exhibits A & B** to the Declaration of Mark B. Conlan in support of the Motion.

In support of the Motion, the Receiver shall rely upon the Memorandum of Law in support thereof, the concurrently filed Declaration of Mark B. Conlan (with **Exhibits A & B**), any opposition or reply thereto, and upon such further oral argument, testimony, and evidence as may be received, together with all pleadings and proceedings on file in this matter. Pursuant to D.C. Colo.LCivR 7.1(d), any party who opposes the Motion must file and serve upon all other parties a response not later than twenty-one (21) days after the date of service of the Motion. The Receiver may thereafter file a reply within fourteen (14) days after the date of service of the opposition response. All opposing papers shall comply with the requirements of D.C. Colo.LCivR 10.1. Notwithstanding the foregoing and D.C. Colo.LCivR 7.1(d), the Receiver will also be filing a Motion for Forthwith Hearing on the Motion requesting expedited and prompt approval of the Motion, without a hearing, in light of the fact that available assets to fund the receivership estate may be reduced daily, including by operation of law, and time is of the essence. A Proposed Order is also submitted for the Court's consideration.

**DUTY TO CONFER PURSUANT TO D.C. COLO. LCivR 7.1(a)**

Counsel for the United States Securities and Exchange Commission ("SEC") advised the Receiver's counsel on approximately April 21, 2022 that the SEC has no objection to the relief sought herein.

Counsel for Defendant Michael Young and Relief Defendants Maria Young, West Beach LLC, Salve Regina Trust, TF Alliance, LLC, Casa Conejo LLC, and Hase Haus, LLC (collectively, the “Young Defendants”) advised the Receiver’s counsel on April 21, 2022 that the Young Defendants do object to the relief sought in this Motion as “premature.”

Counsel for the Receiver reached out to Defendants Mediatrix Capital Inc., Blue Isle Markets Inc., Blue Isle Markets Ltd. (collectively, the “Entity Defendants”), Bryant E. Sewall, and Hanna Ohonkova Sewall on April 21, 2022 but received no response.

Counsel for the Receiver reached out to *pro se* Defendant Michael Stewart and *pro se* Relief Defendant Victoria M. Stewart on April 21, 2022 but received no response.

Respectfully submitted,

Dated: May 24, 2022

**GIBBONS P.C.**

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*Counsel to Mark B. Conlan, as Receiver*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 24, 2022, I caused the foregoing to be electronically filed by means of the CM/ECF system.

Further, I certify that a copy of the foregoing (together with the Memorandum of Law, the Conlan Declaration, and a Proposed Order) was served on the same date, upon the following counsel of record via the Court's CM/ECF system and via email:

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Further, I certify that a copy of the foregoing was served on the same date upon the following non-CM/ECF participant by regular U.S. Mail: Aaron Stewart, 23800 North 73rd Place, Scottsdale, AZ 85255.

/s/ David N. Crapo  
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**IN THE UNITED STATES DISTRICT COURT  
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UNITED STATES SECURITIES  
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Relief Defendants.

Civil Action No.: 1:19-cv-02594-RM-SKC

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF RECEIVER FOR: (1)  
AUTHORITY TO PURSUE CERTAIN AVOIDANCE CLAIMS AND ASSET FREEZE  
VIOLATIONS; AND (2) APPROVAL OF PROPOSED SETTLEMENT PROCEDURES**

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## I. INTRODUCTION AND RELEVANT BACKGROUND

The Motion for (1) Authority to Pursue Certain Avoidance Claims and Asset Freeze Violations, and (2) Approval of Proposed Settlement Procedures (the “Motion”) concerns the Receiver’s recommended procedures relating to the avoidance and recovery of any transfers that the Receiver determines may be voidable transfers under applicable law (“Avoidance Claims”). The Avoidance Claims are wasting assets of the receivership estate in the sense that the Colorado Uniform Fraudulent Transfer Act, C.R.S. § 38-1-101 *et seq.*, provides that such claims must be brought within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant. *Id.* § 38-1-110. That deadline is currently running in this case. The Receiver is concerned that if he waits until there is a finding of liability in this case, he will be time-barred from then bringing many of the receivership estate’s Avoidance Claims. The receiver also notes that his burden of proof with respect to civil fraudulent transfer claims does not rise to the level of proof beyond a reasonable doubt, which will be the standard in the criminal cases currently pending against certain of the Defendants. Consequently, although the Receiver’s investigation of the bona fides of the Avoidance Claims is ongoing, the Receiver is satisfied that this investigation has progressed to the point that he can now file many of the *civil* complaints asserting the Avoidance Claims consistent with his and his counsel’s good faith obligations under Federal Rule of Civil Procedure 11.

On October 20, 2021, this Court granted Plaintiff U.S. Securities and Exchange Commission’s (“SEC”) Unopposed Motion for Appointment of a Substitute Receiver (ECF No. 283), requesting an Order substituting Mark B. Conlan (“Receiver”) of Gibbons P.C. as receiver

in this case (“Receiver Order”), to function under the terms and conditions of the existing Order Appointing Receiver (ECF No. 153) over the assets of Defendants: Michael A. Young, Michael S. Stewart, and Bryant E. Sewall (the “Individual Defendants”); and Mediatrix Capital Inc., Blue Isle Markets Inc., and Blue Isle Markets Ltd. (the “Entity Defendants,” and together with the Individual Defendants, the “Receivership Defendants”); and over the recoverable assets of Relief Defendants Mediatrix Capital Fund Ltd., Island Technologies LLC, West Beach LLC, Salve Regina Trust, TF Alliance, LLC, Casa Conejo LLC, Hase Haus, LLC, DCC Islands Foundation, Keystone Business Trust, Weinzell, LLC, The 1989 Foundation, Mediatrix Capital PR LLC, Mediatrix Capital, LLC, Blue Isle Markets Inc. (Cayman Islands), Victoria M. Stewart, Maria C. Young, and Hanna Ohonkova Sewall (collectively, the “Receivership Relief Defendants”).

In the complaint commencing this action (ECF No. 1) (the “Complaint”), the SEC alleged that the Entity Defendants herein operated a fraudulent investment scheme and concluded that the Entity Defendants made Ponzi-like payments to investors seeking redemption (the “Net Winners”), whereby the Entity Defendants disguised other investors’ monies as trading profits, in the face of staggering losses, to maintain the façade of a profitable enterprise.

More specifically, the SEC alleged that Entity Defendants obtained investors’ funds by repeatedly misrepresenting the success of their allegedly highly profitable algorithmic trading strategy. According to the SEC, they also falsified investors’ account statements and manipulated trading results to reflect phantom profits rather than the actual losses suffered. As alleged by the SEC and corroborated by documentary evidence the Receiver has reviewed, the Entity Defendants made Ponzi-like payments to investors who opted to cash out their “profits”—all in order to prop up the façade of profitable trading. The Motion covers the payments made by the Entity

Defendants back to the Net Winners and certain brokers that were paid commissions selling the Entity Defendants' unregistered securities.

The Receiver's investigation has revealed that many investors, after receiving the account statements reflecting phantom trading profits from the Entity Defendant-run "Funds,"<sup>1</sup> opted to leave their money invested with those the Funds, some have invested additional monies with the Funds, and other investors received back more than the dollar amount than they invested. The documents the Receiver reviewed in the course of his investigation reflect that the Entity Defendants' investors were promised returns based on the value of their investments, which was not an accurate representation of the true value of their investments. Although the financial statements of the Funds that the Receiver reviewed generally showed consistent profits, after May 2016, the Funds never actually attained an aggregate profit. Indeed, from March 2016 through April 2019, the Funds incurred approximately \$19 million in aggregate trading losses. Accordingly, the Receiver can only conclude that the Net Winners were paid fictitious returns.

The Net Winners have received more than \$5.8 million in the aggregate in excess of the amounts of their principal investments in the Funds (the "Net Winnings"). A total number of approximately fifty-eight Net Winners received the Net Winnings. The Receiver contends that the Net Winnings are transfers made to the investors (the Net Winners) that are voidable and recoverable for the benefit of all Fund investors. This Motion seeks authority to pursue collection

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<sup>1</sup> The "Funds" include both the Managed Account Foreign Exchange Fund and the Mediatrix Capital Fund Ltd. (See ECF No. 1 ¶¶ 43-44.) Unbeknownst to investors, according to the SEC's Complaint, the Receivership Defendants pooled all monies from these Funds and transferred large portions (those portions that were not immediately misappropriated and diverted to the Individual Defendants themselves) into further pooled accounts at prime brokerage firms.

of the Net Winnings from the Net Winners and to fix procedures for the litigation and settlement process to streamline the process and save costs.

Additionally, certain brokers (“Brokers”) were paid in excess of \$1,000,000 in commissions for selling the Entity Defendants’ unregistered securities (“Broker Claims,” and with the Net Winner Claims (as defined below), “Avoidance Claims”). Based on his investigation to date, the Receiver believes that those transfers were made in furtherance of a Ponzi or Ponzi-type scheme concocted by the Entity Defendants’ and are therefore voidable.

The SEC also filed a Notice of Violation of Asset Freeze (ECF No. 137) (“Asset Freeze Violation”) in July 2020, asserting that certain named parties, and at least one third party, engaged in various violations of the asset freeze Orders previously issued by the Court. The specific details of the prior receiver’s findings with respect to the Asset Freeze Violations are set forth at length in the *Third Quarterly Report of Receiver’s Activities*. (ECF No. 262.)

## **II. PROPOSED PROCEDURES**

The Receiver’s proposed procedures for pursuing Avoidance Claims and Asset Freeze Violation claims are designed to resolve the claims as efficiently and cost effectively as possible, thereby maximizing the recovery. Given the timing of transfers to the Net Winners and Brokers, the Receiver seeks to move promptly and expeditiously so as to avoid losing the ability to recover transfers that fall outside the four-year statute of limitations, which is discussed further below. The Receiver proposes the following procedures for pursuing the Avoidance Claims:

### **A. Settlements**

The Receiver proposes a process to incentivize Net Winners and Brokers to settle the Net Winner Claims promptly, without the need for litigation. Litigation is expensive and time-

consuming for both sides and consumes judicial resources. Accordingly, the Receiver proposes and seeks authorization, but not direction, to engage in the following settlement procedures:

**1. Definitions**

- (a) “Demand Letters” means and refers to letters that the Receiver will send to Net Winner Recipients and Brokers, setting forth a demand for payment and offer of settlement pursuant to these Settlement Procedures.
- (b) “Early Settlement Period” means and refers to the period of time that is forty-five (45) days following the delivery of the Demand Letters.
- (c) “Hardship Discount” means and refers to a request by a Net Winner Recipient or Broker for a discount on the amounts owed on account of an inability to pay, which is subject to proof and documentation submitted to, and approved by, the Receiver in his business judgment. Eligibility for the program will be based on indicators of need, such as an inability to pay for necessary living expenses (e.g., housing, food, utilities, transportation), inability to pay medical expenses, a necessity to return to work for retirees, or the threat of declaring personal bankruptcy. Any Net Winner Recipient or Broker choosing to request a Hardship Discount will be required to submit to the Receiver on a confidential basis copies of the last three (3) years of federal tax returns, three (3) years of statements from all financial accounts, a sworn financial statement reflecting all assets, liabilities, current income and expenses, and a list of all transfers over \$5,000 made within the past four (4) years.
- (d) “Net Winner Claim” means and refers to the Receiver’s claims to avoid and recover the net amount paid to a Net Winner Recipient above the amount of principal invested by the Net Winner Recipient, less any credit applied by the Receiver for a Hardship Discount or for a Reasonably Sustainable Defense.
- (e) “Net Winner Recipients” means and refers to persons, including trusts, companies, and other legal entities, that received funds from the Entity Defendants in excess of the amount that they invested with the Entity Defendants.
- (f) “Reasonably Sustainable Defense” means and refers to a defense asserted by a Net Winner Recipient or Broker, subject to proof requested by the Receiver, which the Receiver determines in his

business judgment has a reasonable likelihood of being sustained by a court.

- (g) “Settlement Parameters” means and refers to the percentage and dollar figures set forth herein.

## 2. Demand Letters

The Receiver will send Demand Letters to the Net Winner Recipients and Brokers who received in total more than \$10,000 in Net Winnings, setting forth at least the following information:

- (a) the total amount of the Net Winner Claim or Broker Claim (“Profit Amount”);
- (b) the Receiver’s demand for the return of the Profit Amount and the legal basis for such claims;
- (c) an offer to settle the Avoidance Claim without litigation, depending on the timing of the settlement as follows:
  - i. if a settlement agreement is signed within the Early Settlement Period (i.e., no later than 45 days of the date of the Demand Letter), the Avoidance Claim can be settled for 50% of the amount in controversy;
  - ii. if a settlement agreement is signed in the forty-five (45) days following the Early Settlement Period, the Avoidance Claim can be settled for 60% of the amount in controversy;
  - iii. if a settlement agreement is signed following that initial ninety (90) day period, the Avoidance Claim can be settled for 70% of the amount in controversy;
  - iv. once the Receiver has filed a complaint in connection with a Avoidance Claim, the Receiver will settle for 80% of the amount in controversy;
  - v. notwithstanding subsections (i) through (iv) directly above, the Receiver shall have the discretion to toll the Early Settlement Period time limits where, for example, a Net Winner or Broker responds to a Demand Letter and presents documentary support rebutting the Net Winner Claim within



a particular Early Settlement window. In such a scenario, the Receiver shall have thirty (30) days from receipt of the documentary support to review and respond to the Net Winner. So, for example, if a Net Winner responds to a Demand Letter within forty-five (45) days and submits documentation refuting the Net Winner Claim, the Receiver shall have thirty (30) days to review it and respond, *all the meanwhile, from the date the Receiver receives the Net Winner's response, the Early Settlement Period clock remains tolled*, until the Receiver accepts or rejects the Net Winner's proofs. In that scenario, which is meant as an illustration and not limitation, the Net Winner Claim could still be settled for 50% of amount in controversy;

- vi. and assuming the statute of limitations period will expire within the parameters set forth in subsection (v) directly above, the Receiver shall be authorized, but not directed, to enter a tolling agreement with the Net Winner or Broker before preserving the Avoidance Claim via filed litigation as to the Avoidance Claim.

(collectively referred to as the "Settlement Benchmarks"); and

- (d) a draft settlement agreement, substantially in the form of **Exhibit A** (for Net Winners) and **Exhibit B** (for Brokers) attached to the Conlan Declaration.

### 3. Settlement Agreements

- (a) The Receiver will include a proposed settlement agreement, substantially in the form of **Exhibit A** or **B** attached to the Conlan Declaration, with each Demand Letter.
- (b) All terms of the settlement agreement will be final.
- (c) In order to accept the offer, a Net Winner Recipient or Broker must sign the settlement agreement and return it to the Receiver or his counsel.
- (d) The offer will not be deemed accepted until the signed documents have been received.
- (e) Settlement agreements executed in compliance with these procedures will be immediately effective, without further Court approval.

- (f) If a Net Winner Recipient or Broker requests payment terms, the Receiver may agree to installment payments of up to twelve (12) months, he may increase the amount of the demand up to 10% more than the Settlement Benchmarks, and he will obtain a stipulated judgment to be held by the Receiver and not filed with the Court or otherwise sought to be enforced, provided the Net Winner Recipient timely makes all required payments under the settlement agreement. If the Net Winner Recipient or Broker defaults on any payments and does not cure such default within ten (10) days, the Receiver, in his discretion, may file a complaint against the Net Winner Recipient or Broker together with the stipulated judgment and proof of the Net Winner Recipient's or Broker's default and request entry of the stipulated judgment.

#### **4. Adjustments to Net Profit Amount**

- (a) The Receiver may, in his business discretion, without the need for further Court approval, offer Hardship Discounts of up to 100% of the amount of an Avoidance Claim. Any Net Winner Recipient or Broker requesting a Hardship Discount must submit all required documentation to the Receiver to be considered for such a discount, and the Receiver shall, in his discretion, determine the validity of such a request and the impact on collectability of a judgment. Any such Hardship Discount approved by the Receiver will reduce the amount of the Net Winner Claim or Broker claim by that amount, and the Settlement Parameters in Section 3 above shall apply to the reduced amount.
- (b) The Receiver may, in his business discretion, without the need for further Court approval, consider a Reasonably Sustainable Defense and make adjustments to the Avoidance Claim and Asset Freeze Violation claim amount of up to 100% of the amount of any such claim. Any such Reasonably Sustainable Defense approved by the Receiver will reduce the amount of the Avoidance Claim or Asset Freeze Violation claim by that amount, and the Settlement Parameters in Section 3 above shall apply to the reduced amount.

#### **5. Court Approval**

- (a) Provided that a proposed settlement represents a minimum recovery of at least the amounts in the Settlement Benchmarks pursuant to the terms set forth herein, as may be adjusted pursuant to Section 4 above, the Receiver may consummate settlements in his business judgment without further leave of the Court or additional notice.

- (b) If a proposed settlement amount does not fall within these established settlement procedures or meet the Settlement Benchmarks, the Receiver shall file a motion with the Court seeking approval of such a settlement. So as not to harm his ability to engage in settlement discussions with other parties or otherwise influence the outcome of other settlement discussions, the Receiver requests authority in advance to file any such motion for approval of a settlement outside of these settlement parameters under seal.

### **B. Sealing of Settlement Agreements**

In the Tenth Circuit, there is a “strong presumption in favor of public access” to court records in both civil and criminal actions, which can be overcome where there is “some significant interest that outweighs the presumption’ in favor of open access to judicial records.” *United States v. Pickard*, 733 F.3d 1297, 1300 (10th Cir. 2013). The presumption in favor of open access to judicial records “may be overcome where ‘countervailing interests heavily outweigh the public interests in access.’” *Colony Ins. Co. v. Burke*, 698 F.3d 1222, 1241 (10th Cir. 2012) (quoting *Mann v. Boatright*, 477 F.3d 1140, 1149 (10th Cir. 2007)). “[T]he district court, in exercising its discretion, must weigh the interests of the public, which are presumptively paramount, against those advanced by the parties.” *Pickard*, 733 F.3d at 1302 (quotation marks omitted). Here, there is such a countervailing interest because, in the absence of sealing (at least temporarily while the Receiver seeks to settle each of the Avoidance Claims and Asset Freeze Violations), confidential and sensitive proprietary business information will inevitably be used to gain unfair advantages regarding settlement leverage vis-à-vis the receivership estate. *See, e.g., Driscoll v. Castellanos*, 2020 WL 3618956, at \*1 (D.N.M. July 2, 2020) (finding “competitively sensitive information” constituted sufficient countervailing interest for purposes of sealing); *In re Syngenta AG MIR 162 Corn Litig.*, 2020 WL 1303967, at \*3 (D. Kan. Mar. 19, 2020) (sealing temporarily “sensitive and confidential” business information, disclosure of which “would likely harm plaintiff’s interests”).

Similarly, some defendants could use the settlement percentages reached with other defendants to try to gain an unfair advantage. The specific terms and conditions of the settlements that the Receiver may reach with particular defendants is not, and should not be, relevant to other defendants. The negotiated settlement agreements will reflect the Receiver's strategy, strengths, and weaknesses in his cases, which are business decisions, and that information will likely be used against him in subsequent settlement negotiations. *See, e.g., In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Practices & Antitrust Litig.*, 2019 WL 2357374, at \*2-3 (D. Kan. June 4, 2019) (concluding documents that contain potentially confidential and proprietary information, such as information about business practices that is "competitively sensitive," "may disadvantage the requesting parties' business interests unfairly" and thus may be filed under seal); *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978) (recognizing documents may qualify for sealing if they include "sources of business information that might harm a litigant's competitive standing").

Accordingly, in the event that it becomes necessary for the Receiver to obtain separate Court approval of any particular settlement agreement, he believes that it is appropriate to file such a motion and the agreement under seal.

### **C. Litigation**

If sixty (60) days have passed from the mailing of the Demand Letter and an avoidance defendant has not accepted the settlement offer, the Receiver may file a complaint ("Avoidance Proceedings") against each avoidance defendant who has not accepted a settlement offer. In order to minimize the administrative expenses associated with the Avoidance Proceedings, the Receiver requests that they all be managed and adjudicated by one district court judge and one magistrate judge who are familiar with the underlying facts. Many of the cases may be filed at the same time

and, for efficiency purposes, should be kept on the same track. Having the cases before one district court judge and one magistrate judge will also avoid inconsistent rulings, which could potentially lead to disparate treatment of similarly situated prospective defendants. Accordingly, the Receiver believes it is appropriate for all Avoidance Proceedings to be transferred to this Court as related actions and intends to file a notice of related cases with each complaint pursuant to D.C. Colo. LCivR 3.2.

In addition to the actions treated as related cases and transferred to this Court, the cases should follow the Federal Rules of Civil Procedure and Local Rules of the Court. The Receiver will request that all settlement conferences be held before the magistrate judge and may seek permission from the magistrate judge to schedule multiple settlement conferences on the same day so as to minimize administrative expenses.

As an exception to this procedure, the Receiver respectfully requests the Court permit the Receiver to immediately commence an Avoidance Proceeding on any Avoidance Claim or Asset Freeze Violation where the statute of limitations is about to run before the Receiver can even mail a Demand Letter or will run within the general sixty-day window after the mailing of the Demand Letter. While the Receiver's investigation and development of the Avoidance Claims continues, the Receiver is satisfied that, at the present time, he has sufficient factual bases to file complaints asserting the Avoidance Claims in most, if not all, instances that the Receiver has identified. And because the Receiver's investigation remains ongoing, including into addresses for the Net Winners, the Receiver respectfully requests the Court enlarge the usual 90-day period of service under Federal Rule of Civil Procedure 4(m) from 90 days to 180 days, without prejudice to the Receiver's right to seek further enlargements of that period.

**D. Business Judgment**

The Receiver’s objective in pursuing the Avoidance Claims and Asset Freeze Violations is to maximize the net recovery to the receivership estate. The Receiver will use his business judgment at all times in pursuing Avoidance Claims and Asset Freeze Violations and remains focused on the objective of maximizing recovery. This may include seeking exceptions to the procedures described above in circumstances that warrant exception. The Receiver may request tolling agreements to stop the running of statutes of limitations and statutes of repose. The Receiver may also seek to engage counsel on a contingency basis to pursue recovery of the Avoidance Claims and Asset Freeze Violations.

**III. THE COURT MAY APPROVE THE RELIEF REQUESTED UNDER THE COURT’S BROAD EQUITABLE POWERS**

**A. The Settlement Procedures Are Appropriate**

The “primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors.” *Broadbent v. Advantage Software, Inc.*, 415 Fed. App’x 73, 78 (10th Cir. 2011) (quoting *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986)). To that end, district courts have broad power to determine what is necessary for the administration and supervision of an equity receivership. *SEC v. Vescor Capital Corp.*, 599 F.3d 1189, 1197 (10th Cir. 2010) (adding that in cases of financial fraud, “the interests of the Receiver are very broad and include not only protection of the receivership *res*, but also protection of defrauded investors and considerations of judicial economy” (quoting *SEC v. Universal Fin.*, 760 F.2d 1034, 1038 (9th Cir. 1985))); *United States v. RaPower-3, LLC*, 2020 WL 5531563, at \*14 (D. Utah Sept. 15, 2020) (encouraging courts to fashion summary relief in equity receiverships “because they decrease litigation costs and prevent further dissipation of

receivership assets”); *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980) (“The power of a district court to impose a receivership or grant other forms of ancillary relief does not in the first instance depend on a statutory grant of power from the securities laws. Rather, the authority derives from the inherent power of a court of equity to fashion effective relief.”).

Receivership courts, like bankruptcy courts, have discretion to approve settlements of disputed claims to receivership assets. *See generally SEC v. DeYoung*, 850 F.3d 1172, 1182 (10th Cir. 2017) (noting again, in context of settlement agreements, that “the district court has broad powers and wide discretion to determine . . . relief in an equity receivership” (quoting *Vescor*, 599 F.3d at 1194)); *see also Richie Capital Mgmt., LLC v Kelley*, 785 F.3d 273, 278 (8th Cir. 2015); *Gordon v. Dadante*, 336 Fed. App’x 540, 549 (6th Cir. 2009) (adding that “no federal rules prescribe a particular standard for approving settlements in the context of an equity receivership; instead, a district court has wide discretion to determine what relief is appropriate”). Nonetheless, “the Court should inquire whether the action to be taken is ‘in the best interest of the receivership,’” which includes, similar to the power of the bankruptcy courts, determining whether the settlement was “fair, equitable, reasonable,” and “in the best interests of the receivership estate and creditors.” *SEC v. Am. Pension Servs., Inc.*, 2015 WL 12860498, at \*10 (D. Utah Dec. 23, 2015) (citations omitted).

Here, the Settlement Procedures propose approval of settlements of the Avoidance Claims and Asset Freeze Violation claims at an amount of not less than 50% at the low end and up to 80% pursuant to the Settlement Benchmarks. In the Receiver’s business judgment, these Settlement Benchmarks are reflective of the fair settlement value of these cases, taking into account costs, risks, and the expenses of collection. The Receiver believes that settlements at this percentage

would be negotiated in good faith and are “fair, equitable, and reasonable.” The Settlement Procedures additionally propose allowing the Receiver discretion to adjust the amount of the Avoidance Claim and Asset Freeze Violations downward if he deems in his business judgment that a defendant has sufficiently demonstrated that they should be given a Hardship Discount or they have otherwise demonstrated a Reasonably Sustainable Defense.

The proposed Settlement Procedures will achieve the goal of bringing substantial assets into the receivership estate while avoiding the uncertainty of litigation and the costs and risks of both litigation and collection. The Receiver therefore requests that the Court approve the Settlement Procedures.

**B. The Receiver Has Authority to Bring Avoidance Actions**

The Receiver has been granted the full powers of an equity receiver over all funds, property, and assets belonging to, being managed by, or in the possession or control of the Receivership Defendants and the Receivership Relief Defendants. (ECF No. 153 § I.) The Receiver Order provides that the Receiver has been granted specific powers and duties to sue, marshal, collect, and take possession of the Receivership Defendants’ and the Receivership Relief Defendants’ property, to investigate and conduct discovery to locate and account for the assets of or managed by the Receivership Defendants and/or the Receivership Relief Defendants, and “[t]o take such action as necessary and appropriate for the preservation of Receivership Property or to prevent the dissipation or concealment of Receivership Property,” among others. (ECF No. 153 § I(4).)

Under the Colorado Uniform Fraudulent Transfer Act (“CUFTA”), in general terms, transfers are subject to avoidance and recovery when the transfers are made with either (a) actual



intent to defraud, or (b) constructive fraudulent intent based on the lack of reasonably equivalent value being provided in exchange. C.R.S. § 38-8-105; *see also In re Blair*, 594 B.R. 712, 741, 757 (Bankr. D. Colo. 2018). Federal equity receivers have standing to pursue fraudulent transfer claims on behalf of entities in receivership against the recipients of fraudulent transfers. *Miles Multimedia, LLC v. Schumann Printers, Inc.*, 2013 WL 185448, at \*6 (D. Colo. May 2, 2013); *Miller v. Wulf*, 84 F. Supp. 3d 1266, 1275 (D. Utah 2015); *Donell v. Kowell*, 533 F.3d 762, 776-77 (9th Cir. 2007).

**C. Actual Fraudulent Intent Exists Through Both the Ponzi Scheme Presumption and the Badges of Fraud**

Where a Ponzi scheme is demonstrated, the perpetrator’s actual intent to hinder, delay, or defraud is inferred simply from the operation of a Ponzi scheme itself. *In re M&L Bus. Mach. Co., Inc.*, 198 B.R. 800, 806 (Bankr. D. Colo. 1996). The Receiver’s investigation to date demonstrates that the Net Winnings paid to the Net Winners constituted Ponzi-scheme-like payments because the trading profits in the Blue Isle Brokerage Accounts (pooled, non-individualized accounts) were *in the negative*; and so, the Entity Defendants paying the Net Winners from an in-the-red account required misappropriating other investors’ monies and falsifying the Net Winners’ account statements to show net gains (although the actual account itself indisputably showed net losses). Because actual intent to defraud is presumed when the payments were made pursuant to Ponzi-style payments, it is likely that actual intent to defraud can be presumed in relation to the Net Winnings paid to the Net Winners. *See Miller*, 84 F. Supp. 3d at 1273 (“Payment of new investor money to old investors is the *sine qua non* of a Ponzi scheme.”).

The Receiver’s investigation also demonstrates that the Net Winners moreover cannot establish they took in good faith and for reasonably equivalent value because “[i]t is well

established that an investor in a Ponzi scheme does not exchange reasonably equivalent value for payments which exceed the investor's investments." *Id.* at 1274. This is because, among other reasons, such profits are fictitious and "they do not represent a return on legitimate investment activity." See *In re Lake State Commodities, Inc.*, 253 B.R. 866, 872 (Bankr. N.D. Ill. 2000). Thus, any excess in the form of fictitious profits are subject to avoidance. *In re Vaughn Co., Realtors*, 477 B.R. 206, 222-23 (Bankr. D.N.M. 2012) (finding that an investor "who had no actual knowledge and did not participate in the fraud is entitled to retain distributions up to the amount of their initial investment"). The percentage-cut the Brokers earned on these fictitious profits is also subject to avoidance. *In re Randy*, 189 B.R. 425, 438 (Bankr. N.D. Ill. 1995) (holding that "as a matter of law, when brokers are paid commissions for their efforts in promoting a Ponzi scheme, these commissions are fraudulent transfers" "whether or not they had any culpable intent").

#### **D. Statute of Limitations**

Under the CUFTA, a claim for recovery of a fraudulent transfer generally must be brought within four years of the transfer, or within one year of when the transfer was or reasonably could have been discovered by the claimant. C.R.S. § 38-8-110. Accordingly, claims to recover phantom investor profits or Broker commissions paid via the Entity Defendants' fraudulent scheme must be brought within four years of the transfer or one year of when the court-appointed receiver discovered them or reasonably could have discovered them. *Klein v. Cornelius*, 786 F.3d 1310, 1321-22 (10th Cir. 2015) (adding that the one-year discovery rule clock did not begin until after receiver "was appointed *and could finish an investigation*" (emphasis added)). Here, the Receiver's investigation is ongoing, but that the possibility exists that the statute of limitations is

running low as to any unknown number of Avoidance Claims is heightened reason for the Court to enter the equitable relief sought herein.

#### **IV. CONCLUSION**

For the foregoing reasons, the Receiver respectfully requests that this Court grant the relief as requested in detail in the Motion and all other appropriate relief.

Respectfully submitted,

Dated: May 24, 2022

**GIBBONS P.C.**

By: /s/ David N. Crapo  
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Newark, NJ 07102  
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dcrapo@gibbonslaw.com

*Counsel to Mark B. Conlan, as Receiver*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:19-cv-02594-RM-SKC

UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

Plaintiff,

v.

MEDIATRIX CAPITAL INC. *et al.*,

Defendants,

and

MEDIATRIX CAPITAL FUND LTD *et al.*,

Relief Defendants.

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**DECLARATION OF MARK B. CONLAN IN SUPPORT OF MOTION OF RECEIVER  
FOR: (1) AUTHORITY TO PURSUE CERTAIN AVOIDANCE CLAIMS AND ASSET  
FREEZE VIOLATIONS; AND (2) APPROVAL OF PROPOSED SETTLEMENT  
PROCEDURES**

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I, **Mark B. Conlan**, declare and state:

1. I was appointed Receiver by this Court over the Receivership Assets<sup>1</sup> of Defendants: Michael A. Young, Michael S. Stewart, and Bryant E. Sewall (the “Individual Defendants”); and Mediatrix Capital Inc., Blue Isle Markets Inc., and Blue Isle Markets Ltd. (the

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<sup>1</sup> Capitalized terms not defined herein have the meaning ascribed to such terms in the Order Appointing Receiver, ECF No. 153.

“Entity Defendants,” and together with the Individual Defendants, the “Receivership Defendants”); and over the Recoverable Assets of Relief Defendants Mediatrix Capital Fund Ltd., Island Technologies LLC, West Beach LLC, Salve Regina Trust, TF Alliance, LLC, Casa Conejo LLC, Hase Haus, LLC, DCC Islands Foundation, Keystone Business Trust, Weinzell, LLC, The 1989 Foundation, Mediatrix Capital PR LLC, Mediatrix Capital, LLC, Blue Isle Markets Inc. (Cayman Islands), Victoria M. Stewart, Maria C. Young, and Hanna Ohonkova Sewall (collectively, the “Receivership Relief Defendants”). This receivership estate excludes jurisdiction over those assets previously excluded from the asset freeze. (*See* ECF Nos. 101 & 103 (“permitting the individual defendants to open separate bank accounts that will remain unfrozen for current living expenses”).)

2. I submit this Declaration in support of the Motion of Receiver for: (1) Authority to Pursue Certain Avoidance Claims and Asset Freeze Violations; and (2) Approval of Proposed Settlement Procedures.

3. I have personal knowledge of the facts set forth in this Declaration and, if called to testify, could testify competently thereto.

4. Pursuant to the existing Order Appointing Receiver (ECF No. 153) and the Court’s Order Appointing a Substitute Receiver (ECF No. 284), I have been given the full powers of an equity receiver over all funds, property, and assets belonging to, being managed by, or in the possession or control of the Receivership Defendants and/or the Receivership Relief Defendants, and to sue, collect, and take into possession all such property. I am also authorized to make agreements as may be necessary and advisable in discharging my duties as Receiver.

5. As part of my duties, I have analyzed the payments made by the Entity Defendants to investors and others to determine whether there are transfers that can be avoided as voidable transfers under applicable law.

6. In the complaint commencing this action (the “Complaint”), the Securities and Exchange Commission (“SEC”) alleged that the Entity Defendants herein operated a fraudulent investment scheme and concluded that the Entity Defendants made Ponzi-like payments to investors seeking redemption (the “Net Winners”), whereby the Entity Defendants disguised other investors’ monies as trading profits, in the face of staggering losses, to maintain the façade of a profitable enterprise.

7. The Entity Defendants obtained investors by repeatedly misrepresenting the success of their allegedly highly profitable algorithmic trading strategy. The Entity Defendants also falsified investors’ account statements and manipulated trading results to reflect phantom profits rather than the actual losses suffered. And the Entity Defendants made Ponzi-like payments to investors who opted to cash out their “profits”—all in order to prop up the façade of profitable trading. The Motion covers the payments made by Entity Defendants back to the Net Winners and certain brokers that were paid commissions selling the Entity Defendants’ unregistered securities.

8. My investigation has revealed that many investors, after receiving the account statements reflecting phantom trading profits from the Entity Defendant-run “Funds,”<sup>2</sup> opted to

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<sup>2</sup> The “Funds” include both the Managed Account Foreign Exchange Fund and the Mediatrix Capital Fund Ltd. (See ECF No. 1 ¶¶ 43-44.) Unbeknownst to investors, according to the SEC’s Complaint, Defendants pooled all monies from these Funds and transferred large portions (those portions that were not immediately misappropriated and diverted to Defendants themselves) into further pooled accounts at prime brokerage firms.

leave their money invested with the Funds, some have invested additional monies with the Funds, and other investors received back more than the dollar amount than they invested. The Entity Defendants' investors were promised returns based on the net asset value of their investments, per share, which was not an accurate representation of the true value of their investments. Although the Funds' falsified statements generally showed consistent profits, after May 2016, the Funds never actually attained an aggregate profit. Indeed, from March 2016 through April 2019, the Funds incurred approximately \$19 million in aggregate trading losses. Accordingly, the Net Winners were paid fictitious returns.

9. The Net Winners have received more than \$5.8 million in the aggregate in excess of the amounts of their principle investments in the Funds (the "Net Winnings"). A total number of approximately fifty-eight Net Winners received the Net Winnings. I believe that the Net Winnings are transfers made to the investors (the Net Winners) that are voidable and recoverable for the benefit of all Fund investors. This Motion seeks authority to pursue collection of the Net Winnings from the Net Winners and to fix procedures for the litigation and settlement process to streamline the process and save costs.

10. Additionally, certain brokers ("Brokers") were paid in excess of \$1,000,000 in commissions for selling the Entity Defendants' unregistered securities ("Broker Claims," and with the Net Winner Claims (as defined below), "Avoidance Claims"). The Receiver believes that those transfers were made in furtherance of the Entity Defendants' fraudulent scheme and are therefore voidable.

11. Moreover, the SEC filed a Notice of Violation of Asset Freeze (ECF No. 137) ("Asset Freeze Violation") in July 2020, asserting that certain named parties, and at least one third

party, engaged in various violations of the asset freeze Orders previously issued by the Court. The specific details of the prior receiver's findings with respect to the Asset Freeze Violations are set forth at length in the *Third Quarterly Report of Receiver's Activities*. (ECF No. 262.)

12. I believe that the Settlement Procedures set forth in the Motion are fair and reasonable. The proposed procedures for pursuing Avoidance Claims and the Asset Freeze Violations are designed to resolve the claims as efficiently and cost effectively as possible, thereby maximizing the recovery.

13. A draft of the proposed form Settlement and Release Agreement (the "Agreement") is attached hereto as **Exhibit A** (for Net Winners) and **Exhibit B** (for Brokers). The language in the Agreement, if adopted by any of the parties, will resolve all disputes with the agreeing party and in exchange will bring funds into the estate within a short amount of time and without the anticipated high costs and uncertainty of litigation.

14. I believe that the approval of settlements of Avoidance Claims at an amount of not less than 50% for claims settled in the Early Settlement Period, 60% for the next forty-five (45) days, 70% thereafter until a complaint is filed, and 80% after a complaint is filed, without the need for further Court approval, is reasonable under the circumstances. In my business judgment, these settlement percentages are reflective of the fair settlement value of these cases, taking into account costs, risks, and the expenses of collection. I believe that settlements at this percentage would be negotiated in good faith and are "fair, equitable, and reasonable." The Settlement Procedures additionally propose allowing me the discretion to adjust the amount of the Avoidance Claim downward if I deem in my business judgment that a Net Winner or Broker has sufficiently demonstrated that they should be given a Hardship Discount or they have otherwise demonstrated



a Reasonably Sustainable Defense. I believe that a Hardship Discount is appropriate where a Net Winner or Broker demonstrates an inability to pay, such that collection efforts would be fruitless or would not yield a full recovery. I further believe that if a Net Winner or Broker is able to demonstrate a Reasonably Sustainable Defense, that the Avoidance Claim should be adjusted accordingly. While I do not presently contemplate that Net Winners and Brokers will be able to establish a Reasonably Sustainable Defense, I believe that affording me the flexibility to evaluate such defenses and make any appropriate adjustments in the claim amount is appropriate and within my duties as Receiver. I request that such adjustments be made by me in my business discretion without the need for additional Court authority given the volume of claims that I and my counsel must evaluate, and given that we are well situated to evaluate the merits of any such claims and defenses as may be asserted.

15. If a proposed settlement amount does not fall within these established settlement procedures, I will file a motion with the Court seeking Court approval of such a settlement. So as not to harm my ability to engage in settlement discussions with other parties or otherwise influence the outcome of other settlement discussions, I am requesting authority in advance to file any such motion for approval of a settlement outside of these settlement parameters under seal. I believe that some Net Winners or Brokers could use the settlement percentages reached with other Net Winners and Brokers to try to gain an unfair advantage. The specific terms and conditions of the settlements that I reach with any particular Net Winner or Broker are not, and should not be, relevant to other Net Winners and Brokers. The negotiated agreements will reflect my strategy, strengths, and weaknesses in the cases, and that information will likely be used against me in subsequent settlement negotiations.

16. I believe that the proposed Settlement Procedures will achieve the goal of bringing substantial assets into the receivership estate while avoiding the uncertainty of litigation and the costs and risks of both litigation and collection. In my informed business judgment, I believe that the approval of the Settlement Procedures is fair, equitable, reasonable, and appropriate.

17. There are many investors in the receivership entities both in the United States and overseas. I have a website for investors to obtain information regarding the receivership at <https://mediatrixreceivership.com>.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 24, 2022, at Newark, New Jersey 07102.

/s/ Mark B. Conlan  
Mark B. Conlan  
Receiver

# **EXHIBIT A**

## **SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (“Agreement”), dated as of \_\_\_\_\_, 2022, is made by and between Mark B. Conlan (“Receiver”), in his capacity as Court-appointed receiver, and \_\_\_\_\_ (“Transferee”).

### **RECITALS**

A. On October 20, 2021, this Court granted Plaintiff U.S. Securities and Exchange Commission’s Unopposed Motion for Appointment of a Substitute Receiver (ECF No. 283), requesting an Order substituting Mark B. Conlan of Gibbons P.C. as receiver in this case (“Receiver Order”), to function under the terms and conditions of the existing Order Appointing Receiver (ECF No. 153) over the assets of Michael A. Young, Michael S. Stewart, and Bryant E. Sewall (the “Individual Defendants”); and Mediatrix Capital Inc., Blue Isle Markets Inc., and Blue Isle Markets Ltd. (the “Entity Defendants,” and together with the Individual Defendants, the “Receivership Defendants”); and over the recoverable assets of Relief Defendants Mediatrix Capital Fund Ltd., Island Technologies LLC, West Beach LLC, Salve Regina Trust, TF Alliance, LLC, Casa Conejo LLC, Hase Haus, LLC, DCC Islands Foundation, Keystone Business Trust, Weinzell, LLC, The 1989 Foundation, Mediatrix Capital PR LLC, Mediatrix Capital, LLC, Blue Isle Markets Inc. (Cayman Islands), Victoria M. Stewart, Maria C. Young, and Hanna Ohonkova Sewall (collectively, the “Receivership Relief Defendants”).

B. Transferee was an investor in one or more of the Entity Defendants. The Receiver alleges that during the last four (4) years, Transferee received transfers from the Entity Defendants of \$\_\_\_\_\_ in excess of any amounts paid or value provided to the Entity Defendants, hereinafter referred to as the “Transfer(s).” The Receiver has asserted claims against Transferee for avoidance and recovery of the Transfers made to Transferee pursuant to the Colorado Uniform Fraudulent Transfer Act. Transferee has disputed the Receiver’s claims.

C. The Receiver and Transferee have agreed to settle and resolve all disputes, and release all claims arising from the Transfers from the Entity Defendants to Transferee, under the terms and conditions provided herein.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

1. Payment. In consideration of and subject to the covenants and conditions herein, Transferee shall pay to the Receiver the total sum of \$\_\_\_\_\_ no later than fifteen (15) calendar days following execution of the Agreement (the “Settlement Payment”). The Settlement Payment is to be made by check payable to “Mark B. Conlan, as Receiver” and delivered to the Receiver by check or by wire. Each party shall bear its own bank fees and/or transaction fees.

2. Stipulated Judgment. *[If Settlement Payment to be paid in installments]* Contemporaneous with the execution of this Agreement, Transferee has signed the Stipulation for Entry of Judgment against Defendant in favor of the Receiver in the amount of \$\_\_\_\_\_ as against Transferee attached hereto as **Attachment 1** and delivered same to the Receiver ("Stipulated Judgment"). The Receiver shall hold the Stipulated Judgment and not seek to have it entered or enforced against Transferee unless and until Transferee defaults on the payment(s) due and fails to cure such default within ten (10) business days of being notified in writing of the default by the Receiver or his counsel. If such default occurs and is not cured within ten (10) business days of Transferee receiving written notice, the Receiver may in his sole discretion take all steps necessary to have the Stipulated Judgment entered and enforced against Transferee by all available means. Within three (3) business days following receipt of the settlement sum in full, the original Stipulated Judgment will be destroyed.

3. Mutual Release. On the condition that all payments due under Section 1 [or Section 2] above have been fully made in good funds and effective only upon satisfaction of such condition, the Receiver on the one hand, and Transferee on the other hand, and each of them, for themselves, their agents, employees, partners, directors, officers, successors, and assigns, forever, irrevocably, and unconditionally release and discharge one another and their respective officers, directors, representatives, heirs, executors, administrators, receivers, successors, assigns, predecessors, agents, attorneys, and employees of and from any and all claims, demands, debts, obligations, liabilities, costs, expenses, rights of action, causes of action, awards, and judgments arising from the Transfers making up the profit amount, all of which are hereinafter called "Released Claims."

Each of the Receiver and Transferee acknowledges and agrees that the Released Claims may include claims of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected, and further acknowledge that they may be presently unknown or unsuspected, and may be based upon hereafter-discovered facts different from, or in addition to, those which they now know or believe to be true. Nevertheless, the parties agree that the foregoing release shall be and remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof.

The Receiver and Transferee expressly waive and release any rights and benefits that they have or may have under any law or rule of any jurisdiction pertaining to the matters released herein (by way of example, and not limitation, any law or rule limiting general releases to not extend to claims that the creditor does not know or suspect to exist in his or her favor at the time of executing the release). It is the intention of the parties through this Agreement and with the advice of counsel to fully, finally, and forever settle and release the claims and disputes existing between them and provided herein, known or unknown. The releases given herein shall be and remain in effect as full and complete releases of all such matters notwithstanding the discovery of any additional claims or facts relating thereto.

4. Court Approval Not Required. The Receiver represents that the Court entered an Order on \_\_\_\_\_, 2022, granting him authority to settle claims that meet certain parameters, which are met in this settlement, without the need for further Court Order (ECF No. \_\_\_\_ ) (the "Settlement Procedures Order").

5. Confidentiality. Absent written consent by both parties or Court Order, neither party shall disclose the terms of this Agreement to any third party, except that (a) the Receiver or his counsel, in accordance with the Settlement Procedures Order or applicable law, may file a pleading in the receivership case stating the amount of the claim against Transferee and the amount for which it settled, (b) Transferee may disclose this Agreement to his attorneys, accountants, and tax/financial or other advisors, (c) either party may disclose the Agreement as required by any taxing authority, (d) either party may disclose the Agreement in accordance with applicable law, and (e) either party may disclose the Agreement as necessary to perform or enforce the Agreement.

6. No Admission of Liability. This Agreement was negotiated, in part, to avoid the time, effort, and cost of litigation. This Agreement was never intended and shall never constitute nor be construed as an admission of any liability or wrongdoing by either party.

7. No Third-Party Beneficiary Rights. Nothing contained in this Agreement shall confer any rights, claims, benefits, or remedies upon any person or entity who is not a party to this Agreement or expressly referenced herein.

8. Voluntary Signing. Each of the parties to this Agreement has executed this Agreement without any duress or undue influence.

9. Independent Counsel. Each of the parties acknowledge and agree that it has been represented by independent counsel of its own choice throughout all negotiations that preceded the execution of this Agreement, that it has executed and approved of this Agreement after consultation with said counsel, and that it shall not deny the validity of this Agreement on the ground that such party did not have the advice of legal counsel.

10. Governing Law and Venue. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of Colorado, and be subject to the exclusive jurisdiction of the United States District Court for the District of Colorado.

11. Waiver/Amendment. No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach of any provision of this Agreement is not a waiver of any other breach of the same or of any other provision of this Agreement. Amendment of this Agreement may be made only by written agreement signed by the parties.

12. Fax and Counterparts. This Agreement may be executed electronically or by facsimile and/or in counterparts and, if so executed, each such electronic, facsimile, and/or counterpart shall have the full force and effect of an original.

13. Attorneys' Fees and Costs. The parties hereto shall each bear their own costs and attorneys' fees incurred in connection with the negotiation and documentation of this Agreement, and the parties' efforts to obtain Court approval thereof. If any proceeding, action, suit, or claim is undertaken to interpret or enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs incurred in connection with such dispute.

14. Entire Agreement. This Agreement contains the entire agreement among the parties with respect to the matters referred to in this Agreement and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, and there are no representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein. No delay or omission on the part of either party in exercising any right hereunder will operate as a waiver of such right or any other right. A waiver on one occasion will not be construed as a bar to or a waiver of any right on any further occasion.

15. Modification. This Agreement may be modified only by a writing signed by both parties.

16. Warranties. Each of the parties warrants and represents that:

- a. it has not heretofore assigned, subrogated, or transferred or purported to assign, subrogate, or transfer to any person, firm, partnership, corporation, or entity whatsoever any action(s) or cause(s) of action at law or in equity any suits, debts, demands, claims, contracts, covenants, liens, liabilities, losses, costs, accounts, expenses (including, without limitation, attorneys' fees), or damages released in this Agreement; and
- b. it has full power and authority to execute and perform its obligations under this Agreement in all respects; and
- c. it has not relied upon the advice of any representative, agent, or attorney of any of the parties as to the legal or other consequences that attach from the assent to the terms of this Agreement.

17. No Other Representations or Warranties. The parties acknowledge that no representations or warranties of any kind have been made by anyone to induce the signing of this Agreement other than as expressly set forth in this Agreement.

18. Notices. Notices to be provided hereunder shall be effective if sent to the following:

To Transferee:

To the Receiver:

Mark B. Conlan, Receiver  
GIBBONS P.C.  
One Gateway Center  
Newark, New Jersey 07102-5310  
mconlan@gibbonslaw.com



Transferee

By: \_\_\_\_\_

MARK B. CONLAN, COURT-  
APPOINTED RECEIVER

By: \_\_\_\_\_  
MARK B. CONLAN, Receiver

ATTACHMENT 1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:19-cv-02594-RM-SKC

UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

Plaintiff,

v.

MEDIATRIX CAPITAL INC. *et al.*,

Defendants,

and

MEDIATRIX CAPITAL FUND LTD *et al.*,

Relief Defendants.

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MARK B. CONLAN, Receiver,

Plaintiff,

v.

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Defendant.

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**STIPULATION FOR ENTRY OF JUDGMENT AGAINST DEFENDANT**

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This Stipulation is entered into by and between Plaintiff Mark B. Conlan, as Receiver (the “Receiver”) and Defendant \_\_\_\_\_ (“Defendant”) as follows:

A. On October 20, 2021, this Court granted Plaintiff U.S. Securities and Exchange Commission’s Unopposed Motion for Appointment of a Substitute Receiver (ECF No. 283), requesting an Order substituting Mark B. Conlan of Gibbons P.C. as receiver in this case (“Receiver Order”), to function under the terms and conditions of the existing Order Appointing Receiver (ECF No. 153) over the assets of Michael A. Young, Michael S. Stewart, and Bryant E. Sewall (the “Individual Defendants”); and Mediatrix Capital Inc., Blue Isle Markets Inc., and Blue Isle Markets Ltd. (the “Entity Defendants,” and together with the Individual Defendants, the “Receivership Defendants”); and over the recoverable assets of Relief Defendants Mediatrix Capital Fund Ltd., Island Technologies LLC, West Beach LLC, Salve Regina Trust, TF Alliance, LLC, Casa Conejo LLC, Hase Haus, LLC, DCC Islands Foundation, Keystone Business Trust, Weinzell, LLC, The 1989 Foundation, Mediatrix Capital PR LLC, Mediatrix Capital, LLC, Blue Isle Markets Inc. (Cayman Islands), Victoria M. Stewart, Maria C. Young, and Hanna Ohonkova Sewall (collectively, the “Receivership Relief Defendants”).

B. On \_\_\_\_\_, the Receiver filed a complaint to avoid and recover certain transfers made to Defendant, which was assigned Case No. \_\_\_\_\_ (the “Proceeding”).

C. The Receiver alleged that certain fraudulent transfers were made to Defendant (the “Transfer(s)”) and that the Transfers are avoidable as fraudulent transfers under the Colorado Uniform Fraudulent Transfer Act. Defendant disputed the Receiver’s contentions.

D. On or about \_\_\_\_\_, the parties entered into a Settlement and Release Agreement (the “Agreement”) that fully resolved all of the issues in the Proceeding. The

Agreement provided for the payment of the settlement sum over a period of several months, with the final installment due on \_\_\_\_\_.

E. The Agreement also provides that in the event of default under the terms of the Agreement, the Receiver shall be entitled to judgment against Defendant in the amount of \$\_\_\_\_\_, less any amounts already paid pursuant to the Agreement.

F. On the basis of the foregoing, Defendant agrees and stipulates that the Receiver is entitled to judgment against Defendant in the amount of \$\_\_\_\_\_, less any prorated amounts already paid to the Receiver pursuant to the Agreement and consents to entry of such judgment.

**IT IS SO STIPULATED.**

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
MARK B. CONLAN, RECEIVER

Dated: \_\_\_\_\_, 2022

/s/\_\_\_\_\_  
Defendant

**APPROVED AS TO FORM AND CONTENT:**

Dated: \_\_\_\_\_, 2022

**GIBBONS P.C.**  
By: \_\_\_\_\_  
David N. Crapo, Esq.  
One Gateway Center  
Newark, NJ 07102  
(973) 596-4500  
dcrapo@gibbonslaw.com

*Counsel to Mark B. Conlan, as  
Receiver*

## **EXHIBIT B**

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”), dated as of \_\_\_\_\_, 2022, is made by and between Mark B. Conlan (“Receiver”), in his capacity as Court-appointed receiver, and \_\_\_\_\_ (“Broker”).

### RECITALS

A. On October 20, 2021, this Court granted Plaintiff U.S. Securities and Exchange Commission’s Unopposed Motion for Appointment of a Substitute Receiver (ECF No. 283), requesting an Order substituting Mark B. Conlan of Gibbons P.C. as receiver in this case (“Receiver Order”), to function under the terms and conditions of the existing Order Appointing Receiver (ECF No. 153) over the assets of Michael A. Young, Michael S. Stewart, and Bryant E. Sewall (the “Individual Defendants”); and Mediatrix Capital Inc., Blue Isle Markets Inc., and Blue Isle Markets Ltd. (the “Entity Defendants,” and together with the Individual Defendants, the “Receivership Defendants”); and over the recoverable assets of Relief Defendants Mediatrix Capital Fund Ltd., Island Technologies LLC, West Beach LLC, Salve Regina Trust, TF Alliance, LLC, Casa Conejo LLC, Hase Haus, LLC, DCC Islands Foundation, Keystone Business Trust, Weinzell, LLC, The 1989 Foundation, Mediatrix Capital PR LLC, Mediatrix Capital, LLC, Blue Isle Markets Inc. (Cayman Islands), Victoria M. Stewart, Maria C. Young, and Hanna Ohonkova Sewall (collectively, the “Receivership Relief Defendants”).

B. Broker was a broker that received one or more commission payments in connection with the sale of one or more Entity Defendant’s unregistered securities (the “Commission” or “Transfer(s)”). The Receiver has asserted claims against Broker for avoidance and recovery of the Transfers pursuant to the Colorado Uniform Fraudulent Transfer Act. Broker has disputed the Receiver’s claims.

C. The Receiver and Broker have agreed to settle and resolve all disputes, and release all claims arising from the Transfers from the Entity Defendants to Broker, under the terms and conditions provided herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

1. Payment. In consideration of and subject to the covenants and conditions herein, Broker shall pay to the Receiver the total sum of \$\_\_\_\_\_ no later than fifteen (15) calendar days following execution of the Agreement (the “Settlement Payment”). The Settlement Payment is to be made by check payable to “Mark B. Conlan, as Receiver” and delivered to the Receiver by check (or by wire). Each party shall bear its own bank fees and/or transaction fees.



2. Stipulated Judgment. *[If Settlement Payment to be paid in installments]* Contemporaneous with the execution of this Agreement, Broker has signed the Stipulation for Entry of Judgment against Defendant in favor of the Receiver in the amount of \$\_\_\_\_\_ as against Broker attached hereto as **Attachment 1** and delivered same to the Receiver (“Stipulated Judgment”). The Receiver shall hold the Stipulated Judgment and not seek to have it entered or enforced against Broker unless and until Broker defaults on the payment(s) due and fails to cure such default within ten (10) business days of being notified in writing of the default by the Receiver or his counsel. If such default occurs and is not cured within ten (10) business days of Broker receiving written notice, the Receiver may in his sole discretion take all steps necessary to have the Stipulated Judgment entered and enforced against Broker by all available means. Within three (3) business days following receipt of the settlement sum in full, the original Stipulated Judgment will be destroyed.

3. Mutual Release. On the condition that all payments due under Section 1 [or Section 2] above have been fully made in good funds and effective only upon satisfaction of such condition, the Receiver on the one hand, and Broker on the other hand, and each of them, for themselves, their agents, employees, partners, directors, officers, successors, and assigns, forever, irrevocably, and unconditionally release and discharge one another and their respective officers, directors, representatives, heirs, executors, administrators, receivers, successors, assigns, predecessors, agents, attorneys, and employees of and from any and all claims, demands, debts, obligations, liabilities, costs, expenses, rights of action, causes of action, awards, and judgments arising from the Commission, all of which are hereinafter called “Released Claims.”

Each of the Receiver and Broker acknowledges and agrees that the Released Claims may include claims of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected, and further acknowledge that they may be presently unknown or unsuspected, and may be based upon hereafter-discovered facts different from, or in addition to, those which they now know or believe to be true. Nevertheless, the parties agree that the foregoing release shall be and remain effective in all respects, notwithstanding such different or additional facts, or the discovery thereof.

The Receiver and Broker expressly waive and release any rights and benefits that they have or may have under any law or rule of any jurisdiction pertaining to the matters released herein (by way of example, and not limitation, any law or rule limiting general releases to not extend to claims that the creditor does not know or suspect to exist in his or her favor at the time of executing the release). It is the intention of the parties through this Agreement and with the advice of counsel to fully, finally, and forever settle and release the claims and disputes existing between them and provided herein, known or unknown. The releases given herein shall be and remain in effect as full and complete releases of all such matters notwithstanding the discovery of any additional claims or facts relating thereto.

4. Court Approval Not Required. The Receiver represents that the Court entered an Order on \_\_\_\_\_, 2022, granting him authority to settle claims that meet certain

parameters, which are met in this settlement, without the need for further Court Order (ECF No. \_\_\_) (the “Settlement Procedures Order”).

5. Confidentiality. Absent written consent by both parties or Court Order, neither party shall disclose the terms of this Agreement to any third party, except that (a) the Receiver or his counsel, in accordance with the Settlement Procedures Order or applicable law, may file a pleading in the receivership case stating the amount of the claim against Broker and the amount for which it settled, (b) Broker may disclose this Agreement to his attorneys, accountants, and tax/financial or other advisors, (c) either party may disclose the Agreement as required by any taxing authority, (d) either party may disclose the Agreement in accordance with applicable law, and (e) either party may disclose the Agreement as necessary to perform or enforce the Agreement.

6. No Admission of Liability. This Agreement was negotiated, in part, to avoid the time, effort, and cost of litigation. This Agreement was never intended and shall never constitute nor be construed as an admission of any liability or wrongdoing by either party.

7. No Third-Party Beneficiary Rights. Nothing contained in this Agreement shall confer any rights, claims, benefits, or remedies upon any person or entity who is not a party to this Agreement or expressly referenced herein.

8. Voluntary Signing. Each of the parties to this Agreement has executed this Agreement without any duress or undue influence.

9. Independent Counsel. Each of the parties acknowledge and agree that it has been represented by independent counsel of its own choice throughout all negotiations that preceded the execution of this Agreement, that it has executed and approved of this Agreement after consultation with said counsel, and that it shall not deny the validity of this Agreement on the ground that such party did not have the advice of legal counsel.

10. Governing Law and Venue. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of Colorado, and be subject to the exclusive jurisdiction of the United States District Court for the District of Colorado.

11. Waiver/Amendment. No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach of any provision of this Agreement is not a waiver of any other breach of the same or of any other provision of this Agreement. Amendment of this Agreement may be made only by written agreement signed by the parties.

12. Fax and Counterparts. This Agreement may be executed electronically or by facsimile and/or in counterparts and, if so executed, each such electronic, facsimile, and/or counterpart shall have the full force and effect of an original.

13. Attorneys’ Fees and Costs. The parties hereto shall each bear their own costs and attorneys’ fees incurred in connection with the negotiation and documentation of this Agreement,

and the parties' efforts to obtain Court approval thereof. If any proceeding, action, suit, or claim is undertaken to interpret or enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs incurred in connection with such dispute.

14. Entire Agreement. This Agreement contains the entire agreement among the parties with respect to the matters referred to in this Agreement and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, and there are no representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein. No delay or omission on the part of either party in exercising any right hereunder will operate as a waiver of such right or any other right. A waiver on one occasion will not be construed as a bar to or a waiver of any right on any further occasion.

15. Modification. This Agreement may be modified only by a writing signed by both parties.

16. Warranties. Each of the parties warrants and represents that:

- a. it has not heretofore assigned, subrogated, or transferred or purported to assign, subrogate, or transfer to any person, firm, partnership, corporation, or entity whatsoever any action(s) or cause(s) of action at law or in equity any suits, debts, demands, claims, contracts, covenants, liens, liabilities, losses, costs, accounts, expenses (including, without limitation, attorneys' fees), or damages released in this Agreement; and
- b. it has full power and authority to execute and perform its obligations under this Agreement in all respects; and
- c. it has not relied upon the advice of any representative, agent, or attorney of any of the parties as to the legal or other consequences that attach from the assent to the terms of this Agreement.

17. No Other Representations or Warranties. The parties acknowledge that no representations or warranties of any kind have been made by anyone to induce the signing of this Agreement other than as expressly set forth in this Agreement.

18. Notices. Notices to be provided hereunder shall be effective if sent to the following:

To Broker:

To the Receiver:

Mark B. Conlan, Receiver

GIBBONS P.C.  
One Gateway Center  
Newark, New Jersey 07102-5310  
mconlan@gibbonslaw.com

Broker

By: \_\_\_\_\_

MARK B. CONLAN, COURT-  
APPOINTED RECEIVER

By: \_\_\_\_\_  
MARK B. CONLAN, Receiver

ATTACHMENT 1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:19-cv-02594-RM-SKC

UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

Plaintiff,

v.

MEDIATRIX CAPITAL INC. *et al.*,

Defendants,

and

MEDIATRIX CAPITAL FUND LTD *et al.*,

Relief Defendants.

---

MARK B. CONLAN, Receiver,

Plaintiff,

v.

---

Defendant.

---

**STIPULATION FOR ENTRY OF JUDGMENT AGAINST DEFENDANT**

---

This Stipulation is entered into by and between Plaintiff Mark B. Conlan, as Receiver (the “Receiver”) and Defendant \_\_\_\_\_ (“Defendant”) as follows:

A. On October 20, 2021, this Court granted Plaintiff U.S. Securities and Exchange Commission’s Unopposed Motion for Appointment of a Substitute Receiver (ECF No. 283), requesting an Order substituting Mark B. Conlan of Gibbons P.C. as receiver in this case (“Receiver Order”), to function under the terms and conditions of the existing Order Appointing Receiver (ECF No. 153) over the assets of Michael A. Young, Michael S. Stewart, and Bryant E. Sewall (the “Individual Defendants”); and Mediatrix Capital Inc., Blue Isle Markets Inc., and Blue Isle Markets Ltd. (the “Entity Defendants,” and together with the Individual Defendants, the “Receivership Defendants”); and over the recoverable assets of Relief Defendants Mediatrix Capital Fund Ltd., Island Technologies LLC, West Beach LLC, Salve Regina Trust, TF Alliance, LLC, Casa Conejo LLC, Hase Haus, LLC, DCC Islands Foundation, Keystone Business Trust, Weinzell, LLC, The 1989 Foundation, Mediatrix Capital PR LLC, Mediatrix Capital, LLC, Blue Isle Markets Inc. (Cayman Islands), Victoria M. Stewart, Maria C. Young, and Hanna Ohonkova Sewall (collectively, the “Receivership Relief Defendants”).

B. On \_\_\_\_\_, the Receiver filed a complaint to avoid and recover certain transfers made to Defendant, which was assigned Case No. \_\_\_\_\_ (the “Proceeding”).

C. The Receiver alleged that certain fraudulent transfers were made to Defendant (the “Transfer(s)”) and that the Transfers are avoidable as fraudulent transfers under the Colorado Uniform Fraudulent Transfer Act. Defendant disputed the Receiver’s contentions.

D. On or about \_\_\_\_\_, the parties entered into a Settlement and Release Agreement (the “Agreement”) that fully resolved all of the issues in the Proceeding. The



Agreement provided for the payment of the settlement sum over a period of several months, with the final installment due on \_\_\_\_\_.

E. The Agreement also provides that in the event of default under the terms of the Agreement, the Receiver shall be entitled to judgment against Defendant in the amount of \$\_\_\_\_\_, less any amounts already paid pursuant to the Agreement.

F. On the basis of the foregoing, Defendant agrees and stipulates that the Receiver is entitled to judgment against Defendant in the amount of \$\_\_\_\_\_, less any prorated amounts already paid to the Receiver pursuant to the Agreement and consents to entry of such judgment.

**IT IS SO STIPULATED.**

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
MARK B. CONLAN, RECEIVER

Dated: \_\_\_\_\_, 2022

/s/\_\_\_\_\_  
Defendant

**APPROVED AS TO FORM AND CONTENT:**

Dated: \_\_\_\_\_, 2022

**GIBBONS P.C.**  
By: \_\_\_\_\_  
David N. Crapo, Esq.  
One Gateway Center  
Newark, NJ 07102  
(973) 596-4500  
dcrapo@gibbonslaw.com

*Counsel to Mark B. Conlan, as  
Receiver*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 1:19-cv-02594-RM-SKC

UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION,

Plaintiff,

v.

MEDIATRIX CAPITAL INC. *et al.*,

Defendants,

and

MEDIATRIX CAPITAL FUND LTD *et al.*,

Relief Defendants.

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**[PROPOSED] ORDER GRANTING MOTION OF RECEIVER FOR: (1) AUTHORITY  
TO PURSUE CERTAIN AVOIDANCE CLAIMS AND ASSET FREEZE VIOLATIONS;  
AND (2) APPROVAL OF PROPOSED SETTLEMENT PROCEDURES**

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The Motion for (1) Authority to Pursue Certain Avoidance Claims and Asset Freeze Violations, and (2) Approval of Proposed Settlement Procedures (the “Motion”) (ECF No. \_\_\_\_\_) filed by Mark B. Conlan, the Court-appointed receiver in this proceeding (the “Receiver”), came before the Honorable Raymond P. Moore, United States District Judge. The Court, having reviewed and considered the Motion and all pleadings and papers filed in support thereof, and oppositions or responses to the Motion, if any, and good cause appearing therefor,

IT IS ORDERED that:

1. The Motion and the relief sought therein is GRANTED;

2. The Receiver is authorized to pursue the Avoidance Claims and Asset Freeze Violation claims as described in the Motion;
3. The Settlement Procedures set forth in the Motion are APPROVED;
4. The form of Settlement and Release Agreements proposed by the Receiver and attached as **Exhibits A & B** to the Declaration of Mark B. Conlan in support of the Motion are APPROVED;
5. To the extent that the Receiver requires Court approval of a settlement agreement pursuant to the Settlement Procedures, the Receiver is authorized to file a motion under seal seeking Court approval of such a settlement;

IT IS SO ORDERED.

Dated:

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RAYMOND P. MOORE  
United States District Judge