

**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 FOR FORTHWITH HEARING ON RECEIVER MARK B. CONLAN'S  
MOTION FOR ORDER AUTHORIZING: (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, as Receiver<sup>1</sup> over the (1) Entity Defendants, (2) the receivership assets of the Individual Defendants, and (3) the recoverable assets of the Receivership Relief Defendants, respectfully submits this Motion, pursuant to Section IV.G. of the Practice Standards (Civil) of the Honorable Raymond P. Moore, U.S.D.J., seeking a “forthwith hearing” on the Motion of Receiver

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<sup>1</sup> Capitalized terms not defined herein have the meaning ascribed to such terms in the Receiver’s Motion for (1) Authority to Pursue Certain Avoidance Claims and Asset Freeze Violations, and (2) Approval of Proposed Settlement Procedures. (ECF No. 332.)

for (1) Authority to Pursue Certain Avoidance Claims and Asset Freeze Violations,<sup>2</sup> and (2) Approval of Proposed Settlement Procedures (“Motion for Authority”), ECF No. 332.

This forthwith hearing is warranted because the Receiver requires immediate authority to pursue certain avoidance claims against various Net Winners, Brokers, and Asset Freeze Violators. Pursuant to the Colorado Uniform Fraudulent Transfer Act (“CUFTA”), the fraudulent transfers made from the Entity Defendants to the Net Winners, including the commissions paid to the Brokers in connection with the sale of the Debtor’s unregistered securities, are subject to avoidance and recovery but *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. C.R.S. § 38-8-110. Thus, the Receiver needs authority to pursue the Avoidance Claims—on an expedited basis—as the four-year statute of limitations is likely running low as to any unknown number of potential Avoidance Claims. Notice has been given to all parties of the intent to request a forthwith hearing.

### **GROUND FOR RELIEF**

As discussed in further detail in Receiver’s Motion for Authority, the Securities and Exchange Commission (“SEC”) has alleged after a thorough examination that the Entity Defendants purposefully misrepresented the success of its allegedly highly profitable algorithmic trading strategy. Rather than experience any profits whatsoever, the Entity Defendants incurred approximately \$19 million in aggregate trading losses. But rather than admit these losses to investors and risk jeopardizing new investments, the Entity Defendants falsified investors’ account

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<sup>2</sup> The Asset Freeze Violations are set forth at length in the Third Quarterly Report of Receiver’s Activities. (ECF No. 262.)

statements and manipulated trading results to reflect phantom profits. Dating as far back as approximately 2017, some investors (the Net Winners) began requesting to cash out their “profits,” but what they received was newer investors’ monies, which the Entity Defendants used to maintain the façade of a profitable enterprise in the face of staggering losses.

The SEC has determined that the securities offered by Entity Defendants Mediatrix Capital Inc. and Mediatrix Capital Fund Ltd. were never registered with the SEC. (Declaration of Jeffrey D. Felder, ECF No. 5 (“Felder Decl.”) ¶¶ 12 & 18.) The Entity Defendants also paid commissions to certain brokers selling the Entity Defendants’ unregistered securities (“Brokers”). (Felder Decl., ¶ 94.)

As is readily apparent, under CUFTA, the fraudulent transfers from the Entity Defendants to the Net Winners and to the Brokers pre-dating April 2018 may be at risk, starving the receivership estate of assets properly belonging to it. And each day that passes, additional claims may become time-barred under CUFTA’s four-year statute of limitations. Receiver Mark B. Conlan, recently appointed as substitute receiver on October 20, 2021 (ECF No. 284), having conducted a thorough—and still ongoing—investigation into these matters, has determined that time is of the essence and that these Avoidance Claims should be pursued immediately in the best interests of the receivership estate.

Pursuant to D.C. Colo.LCivR 7.1(d), a responding party shall have 21 days after the date of service of a motion to file a response. Because of the pressing legal matters noted above to preserve assets of the receivership estate, the Motion for Authority should not be handled in the normal course of motion practice. There is therefore a need for immediate judicial intervention.

**CONCLUSION**

For the foregoing reasons, the Receiver respectfully requests that this Court schedule the Motion for Authority for a forthwith hearing and to be heard as soon as practicable.

Respectfully submitted,

Dated: May 24, 2022

**GIBBONS P.C.**

By: /s/ David N. Crapo  
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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 Declaration of Mark B. Conlan and the Proposed Order, were 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  
David N. Crapo, Esq.

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**DECLARATION OF MARK B. CONLAN IN SUPPORT OF MOTION FOR  
FORTHWITH HEARING ON RECEIVER MARK B. CONLAN'S MOTION FOR  
ORDER AUTHORIZING: (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:

1. I am a Director of the law firm of Gibbons P.C. (the "Receiver") and the Court-appointed Receiver in the above-captioned case pursuant to the Order Appointing Receiver ("Receiver Order") entered on October 20, 2021. (ECF Nos. 153 & 284.) I have personal knowledge of the matters set forth in this Declaration, and if I were called upon to testify as to these matters, I could and would competently testify thereto.

2. My duties and responsibilities under the Receiver Order (ECF No. 153) require me to, among other things, identify, account for, and preserve and protect receivership assets. To that end, I require expedited approval for authority from this Court to pursue certain Avoidance Claims and Asset Freeze Violations.<sup>1</sup>

3. The Court appointed me as substitute receiver on October 20, 2021. (ECF No. 284) My still-ongoing investigation has recently revealed that the Colorado Uniform Fraudulent Transfer Act provides that claims for avoidance and recovery of fraudulent transfers *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. The clock with respect to such claims may already be running and is in danger of expiring on others. Thus, as each day passes, additional Avoidance Claims may become time-barred—depriving the receivership estate of much-needed assets.

4. Additionally, 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.) I similarly require expedited approval for authority from this Court to pursue actions regarding the Asset Freeze Violations.

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<sup>1</sup> Capitalized terms not defined herein have the meaning ascribed to such terms in the Receiver’s Motion for (1) Authority to Pursue Certain Avoidance Claims and Asset Freeze Violations, and (2) Approval of Proposed Settlement Procedures. (ECF No. 332.)



5. Because my duties as fiduciary to the receivership estate require me to act in the best interests of the estate, and to preserve assets of the estate to the maximum degree possible, and because time has become of the essence, it is of a paramount nature that the Motion for Authority not be handled in the normal course of action. There is a need for immediate judicial intervention.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed on May 24, 2022 at Newark, New Jersey 07102.

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

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**[PROPOSED] ORDER GRANTING FORTHWITH HEARING ON RECEIVER MARK  
B. CONLAN'S MOTION FOR ORDER AUTHORIZING: (1) AUTHORITY TO  
PURSUE CERTAIN AVOIDANCE CLAIMS AND ASSET FREEZE VIOLATIONS;  
AND (2) APPROVAL OF PROPOSED SETTLEMENT PROCEDURES**

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Before the Court is the Motion ("Motion") of Receiver, Mark B. Conlan ("Receiver"), for Forthwith Hearing on Receiver's Motion for Order Authorizing (1) Authority to Pursue Certain Avoidance Claims and Asset Freeze Violations, and (2) Approval of Proposed Settlement Procedures ("Motion for Authority"). The Court, having reviewed and considered the Motion and all pleadings and evidence filed in support of the Motion, and good cause appearing therefore, it is

ORDERED that the Motion is GRANTED in full, and this Court will schedule the Motion for Authority for a forthwith hearing to be heard as soon as practicable.

Dated:

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RAYMOND P. MOORE  
United States District Judge