

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO  Denver District Court  1437 Bannock St.  Denver, CO 80202</p>	<p>DATE FILED: May 19, 2022 1:28 PM  FILING ID: 7C09DB2D9F343  CASE NUMBER: 2019CV33770</p>
<p><b>Plaintiff:</b> TUNG CHAN, Securities Commissioner for the State of Colorado</p> <p>v.</p> <p><b>Defendants:</b> MARK RAY; REVA STACHNIW; CUSTOM CONSULTING &amp; PRODUCT SERVICES, LLC; RM FARM &amp; LIVESTOCK, LLC; MR CATTLE PRODUCTION SERVICES, LLC; SUNSHINE ENTERPRISES; UNIVERSAL HERBS, LLC; DBC LIMITED, LLC</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><i>Attorneys for Court-appointed Receiver Gary Schwartz:</i>  John A. Chanin, #20749  Katherine A. Roush, #39267  FOSTER GRAHAM MILSTEIN &amp; CALISHER, LLP  360 South Garfield Street, Suite 600  Denver, Colorado 80209  Phone: (303) 333-9810  Fax: (303) 333-9786  Email: <a href="mailto:jchanin@fostergraham.com">jchanin@fostergraham.com</a>;  <a href="mailto:kroush@fostergraham.com">kroush@fostergraham.com</a></p>	<p>Case Number: 19CV33770</p> <p>Division/Courtroom: 209</p>
<p style="text-align: center;"><b>RECEIVER’S MOTION TO APPROVE SETTLEMENT AGREEMENT</b></p>	

Gary Schwartz, the duly-appointed receiver “Receiver” for all of the assets of Mark Ray (“Ray”), Custom Consulting & Product Services, LLC (“Custom Consulting”), MR Cattle Production Services, LLC (“MR Cattle”), Universal Herbs, LLC (“UH”), DBC Limited, LLC (“DBC”), RM Farm & Livestock, LLC (“RM Farm”), Sunshine Enterprises (“Sunshine”) and the real property, equipment, supplies or inventory located at 12700 E. Lone Chimney Road, Glencoe,

OK 74032 that are in the name of or under the control of Reva Stachniw (“Glencoe Ranch”) (collectively “Ray and the Ray Entities” or the “Estate”), asks the Court to enter an order approving a settlement agreement he has reached with Ronald Throgmartin (“Throgmartin”).

## **I. BACKGROUND**

1. On September 30, 2019, David Cheval, then-Acting Securities Commissioner for the State of Colorado (the “Commissioner”), filed his Complaint for Injunctive and Other Relief against Ray and the Ray Entities. The plaintiff is now Securities Commissioner Tung Chan.

2. On September 30, 2019, the Commissioner and Ray, Custom Consulting, MR Cattle, UH and DBC filed a Stipulated Motion for Appointment of Receiver, consenting to the appointment of a receiver over Ray, Custom Consulting, MR Cattle, UH and DBC pursuant to Colo. Rev. Stat. § 11-51-602(1) and C.R.C.P. 66.

3. As detailed in the Complaint, this case involves a cattle-trading Ponzi scheme perpetrated by Ray and the entities he controlled. Since at least 2014, the entities raised tens of millions of dollars from investors. Ray promised all of these investors high rates of return, usually over short periods of times.

4. The Ponzi scheme involved the offer and sale of unregistered securities in the form of investment contracts and promissory notes that Ray advertised to investors, some of whom were unsophisticated, primarily through word of mouth.

5. On September 30, 2019, the Court entered a Stipulated Order Appointing Receiver (the “September 30 Order”) appointing Gary Schwartz of Betzer Call Lausten & Schwartz, LLP as receiver for Ray, Custom Consulting, MR Cattle, UH and DBC and their

respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses (the “Ray Estate”) September 30 Order at ¶ 3.

6. On September 30, 2019, the U.S. Securities and Exchange Commission filed a similar suit in federal court against Ray, Stachniw, the Ponzi Businesses, and Throgmartin individually.

7. The SEC complaint generally alleges that Ray, Stachniw, and Throgmartin perpetrated a fraudulent scheme using the Ponzi Businesses to raise tens of millions of dollars from investors, promising them high rates of return in short periods of time. In reality, Ray diverted some of the money to himself, Stachniw, Throgmartin, and the Ponzi Businesses, and used much of the money to re-pay earlier investors. The Ponzi scheme used numerous bank accounts in the names of the Ponzi Businesses and Stachniw to facilitate and conceal this fraudulent activity.

8. The SEC complaint specifically alleges that Throgmartin substantially assisted Ray and the Ponzi Businesses with the fraudulent scheme.

9. On October 30, 2019, the Commissioner and Stachniw, RM Farm and Sunshine filed a Second Stipulated Motion for Appointment of Receiver, consenting to the appointment of a receiver over RM Farm, Sunshine, and :the real property, equipment, supplies or inventory located at 12700 E. Lone Chimney Road, Glencoe, OK 74032 that are in the name of or under the control of” Stachniw (the “Stanchiw Assets”) pursuant to Colo. Rev. Stat. § 11-51-602(1) and C.R.C.P. 66.

10. On November 4, 2019, the Court entered a Stipulated Order Appointing Receiver (the “November 4 Order” and collectively with the September 30 Order, the “Receivership

Orders”) appointing Gary Schwartz of Betzer Call Lausten & Schwartz, LLP as receiver for the Stachniw Assets, RM Farm, and Sunshine and their identified properties, assets, interests and management rights in related affiliated and subsidiary businesses (the “Stachniw Estate”) and added the Stachniw Estate to the Ray Estate (collectively, the “Estate”). November 4 Order at ¶¶ 3, 4.

11. Under the Receivership Orders, the Receiver has the authority to prosecute claims to recover the fraudulent transfer of Estate assets and causes of action against third-parties, including claims held by creditors. Receivership Orders ¶¶ 5(v).

12. Pursuant to the Receivership Orders, the Receiver has conducted an exhaustive forensic accounting of the Ponzi scheme, including a detailed analysis of the total investments into the scheme and total payments from the scheme. This investigation revealed that Ronald Throgmartin, through his entity Phoenix Consulting, received numerous payments from the scheme.

13. Accordingly, on April 6, 2021, the Receiver brought claims against Throgmartin under Colorado’s Uniform Fraudulent Transfer Act, COLO. REV. STAT. § 38-8-101 *et seq.*, seeking the return of payments Throgmartin received from the scheme. That case is currently pending in the United States District Court for the District of Colorado, case number 1:21-cv-01314-RBJ-NRN (the “Civil Case”).

14. After the Receiver filed suit against Throgmartin, on April 22, 2021, the U.S. Department of Justice filed a criminal Indictment against Stachniw and Throgmartin in U.S. District Court of the District of Colorado charging conspiracy to commit wire fraud, wire fraud, and conspiracy to engage in monetary transactions in proceeds of specified unlawful activity

(money laundering). Case No. 21-cr-00148-PAB, USDC for Colorado (the “Criminal Case”). The Criminal Case is set for trial in July 2022.

15. Throgmartin and the Receiver have reached a settlement which resolves the Civil Case between the Receiver and Throgmartin regarding certain transfers Throgmartin received from Ray and the Ray Entities before the Receiver was appointed.

16. The proposed settlement includes the following: (1) the transfer of 100% of the stock Throgmartin and his company Phoenix Consulting own in Diego Pellicer Worldwide (“Diego”) to the Estate; and (2) payment of monies Throgmartin is entitled to receive under a separation agreement with Diego, which total either \$614,583.33 or \$307,291.66. The latter payment amount is dependent on whether Throgmartin is convicted of a felony in the criminal case, pursuant to the terms of the separation agreement.

## **II. The settlement agreement is in the best interests of the Estate and its creditors.**

17. There exists little Colorado authority with respect to factors the Court should consider in determining whether to approve a Receiver’s settlement agreement. In analogous bankruptcy contexts, courts consider whether “the settlement is fair and equitable and in the best interests of the estate.” In considering whether to approve a settlement, bankruptcy courts consider four primary factors: “the probable success of the underlying litigation on the merits, the possible difficulty in collection of a judgment, the complexity and expense of the litigation, and the interests of creditors in deference to their reasonable views.” *Kopp v. All Am. Life Ins. Co. (In re Kopexa Realty Venture Co.)*, 213 B.R. 1020, 1022 (B.A.P. 10th Cir. 1997); *Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.)*, 105 B.R. 971, 977 (D. Colo. 1989). Courts also recognize that deference should be given to the business judgment of the Receiver. *See, e.g., In*

*re OptInRealBig.com, LLC*, 345 B.R. 277, 291 (Bankr. D. Colo. 2006) (deferring to the business judgment of the bankruptcy trustee).

18. Considering these factors, the Court should approve the settlement agreement. While the Receiver believes his claims against Throgmartin in the Civil Case are strong, Throgmartin has raised various defenses to those claims. Further, potential recovery is complicated by the pending Criminal Case against Throgmartin, which may impact the Receiver's ability to collect any judgment.

19. The proposed agreement also resolves the ongoing Civil Case against Throgmartin without further expense or litigation risk.

20. Pursuant to paragraph 20 of the September 30 Order and paragraph 19 of the November 4 Order, Court approval of any motion filed by the Receiver shall be given as a matter of course within 10 days after the motion is filed and served. As reflected by the certificate of service below, this Motion is being served on all parties who have appeared in this case and posted to the Receiver's website.

WHEREFORE, the Receiver asks the Court to enter an Order approving the settlement agreement.

Dated: May 19, 2022.

FOSTER GRAHAM MILSTEIN & CALISHER, LLP.

By: /s/ John A. Chanin

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ATTORNEYS FOR THE COURT-APPOINTED RECEIVER,  
GARY SCHWARTZ

