

<p><b>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</b>  1437 Bannock Street  Denver, CO 80202</p>	<p>DATE FILED: May 22, 2023 4:49 PM  FILING ID: C7C1580643F41  CASE NUMBER: 2019CV33770</p> <p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p>TUNG CHAN, Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>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>Defendants.</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: 209</p>
<p><b>RECEIVER’S PROPOSED AMENDED PLAN OF DISTRIBUTION</b></p>	

Gary Schwartz, the duly-appointed receiver (“Receiver”) for Mark Ray (“Ray”), Reva Stachniw (“Stachniw”), Custom Consulting & Product Services (“Custom Consulting”), MR Cattle Production Services (“MR Cattle”), Universal Herbs (“UH”), DBC Limited (“DBC”), RM Farm & Livestock (“RM Farm”), and Sunshine Enterprises (“Sunshine” and collectively with Ray, Stachniw, Custom Consulting, MR Cattle, UH, DBC, RM Farm, and Sunshine, “Ray and the Ray Entities”), submits this proposed Plan of Distribution (“Plan”) and request to approve an interim distribution.

The Receiver is serving this Proposed Amended Plan of Distribution on all parties who have entered an appearance in this action and all persons who have filed claims against the Estate. The Receiver will also post this Amended Plan on its website. **All objections to the amended portions of this Proposed Amended Plan of Distribution and the treatment of any claim therein must be filed with the Court on or before June 15, 2023**, as provided in the Notice of Motion to Approve Proposed Amended Plan of Distribution filed concurrently herewith.

### **PROCEDURAL HISTORY**

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 Securities Commissioner is now Tung Chan.

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.

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.

On September 30, 2019, the Securities and Exchange Commission (“SEC”) filed a Complaint against Ray and the Ray Entities and Ronald Throgmartin in the United States District Court for the District of Colorado, case no. 19-cv-02789-DDD-NYW (the “Federal Case”).

On September 30, 2019 the SEC and Ray, Throgmartin, UH, Custom Consulting, MR Cattle, and DBC filed a stipulated request for the entry of consent orders in the Federal Case.

The Court in the Federal Case granted the request for entry of consent orders on October 10, 2019 (the “Ray Consent Judgments”).

On October 16, 2019, the SEC and Stachniw, RM Farm and Sunshine filed a second stipulated request for the entry of consent orders in the Federal Case.

The Court in the Federal Case granted the request for entry of consent orders on October 18, 2019 (the “Stachniw Consent Judgments”).

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 “Stachniw Assets”) pursuant to Colo. Rev. Stat. § 11-51-602(1) and C.R.C.P. 66.

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, Sunshine, and RM Farm’s and Sunshine’s respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses, and (the “Stachniw Estate”) and added the Stachniw Estate to the Ray Estate (collectively, the Stachniw Estate and Ray Estate are referred to herein as the “Receivership Estate” or “Estate”). November 4 Order at ¶¶ 3, 4.

The Ray Consent Judgments and the Stachniw Consent Judgments both stay the Federal Case during the pendency of the above-captioned litigation.

### **OVERVIEW OF THE PONZI SCHEME**

From 2014 to approximately March 2019, Mark Ray and his co-conspirators Ron Throgmartin and Reva Stachniw perpetrated a fraudulent investment scheme primarily involving fictitious cattle trading. Using business entities he owned or controlled, Ray raised hundreds of millions of dollars from purported investors, promising them high rates of return over short periods of time. In reality, Ray diverted some of the money for his own purposes and used much of the money to repay earlier investors in a classic Ponzi-style scheme (the “Scheme”).

Ray executed and concealed the ongoing Scheme using numerous business entities that are now part of the Receivership Estate: Custom Consulting and Product Services, LLC, MR Cattle Production Services, LLC, RM Farm and Livestock, LLC, Sunshine Enterprises, LLC, Universal Herbs, LLC, and DBC Limited, LLC (the “Ray Entities”). Aside from the licensed cannabis business owned by Universal Herbs, there was never any legitimate business activity underlying the Ray Entities.

From the beginning of the Scheme, Ray disregarded any distinctions between the Ray Entities and treated the Ray Entities as part of unified whole to execute the Scheme. Investments in one Ray Entity were quickly moved and comingled with funds from other Ray Entities. Investments in one Ray Entity were repaid from bank accounts owned by a different Ray Entity. In particular, Ray moved huge amounts of money quickly through his many, and ever changing, bank accounts, from one Ray Entity to another, and notably from one investor to another at Ray’s direction. This circular flow of money exceeded \$1 billion and frequently constituted classic “check-kiting” activity.

On February 20, 2020, Ray pleaded guilty to a one-count federal Information alleging conspiracy to commit wire fraud and bank fraud. The Information generally alleges that Ray and his co-conspirators executed a scheme to defraud investors by inducing them to send money under false pretenses and then diverting those funds for other uses or to repay earlier investors in a Ponzi-style scheme.

On August 26, 2022, Throgmartin and Stachniw were convicted in federal court after a week-long jury trial of wire fraud, conspiracy to commit wire fraud, and conspiracy to commit money laundering. The Indictment generally alleges that the co-conspirators solicited hundreds of millions of dollars from investor-victims across the United States. Most often, the co-conspirators would fraudulently represent that the investments were for short term cattle trades. All of the co-conspirators' representations to the victim-investors were false and fraudulent. At no time did the co-conspirators disclose that they were primarily using the money to repay earlier investors and to enrich themselves.

The Scheme was always insolvent and remains so today. The Estate has received far more in claims than it will ever have assets to distribute.

### **OVERVIEW OF THE RECEIVERSHIP ACTIVITIES**

Following the Receiver's appointment on September 30, 2019, the Receiver has engaged in the following general activities. More complete information on the Receivership is contained in the Receiver's period reports to the Court.

Upon appointment, the Receiver assumed control of Universal Herbs, which consisted of two licensed marijuana dispensaries and a licensed marijuana grow operation located in Denver. At the time the Receiver assumed control, Universal Herbs was operating at loss, owed substantial amounts in back taxes, owed substantial amounts to vendors, and had no accurate

accounting or financial records. The Receiver stabilized the operations of Universal Herbs, paid substantial amounts in back local and state taxes necessary to preserve the licenses, and ultimately negotiated a sale of the asset to Titan Health, LLC for \$4 million, \$750,000 upfront and the balance over time. After making \$837,560 on time payments, Titan Health defaulted on the promissory notes; the Receiver recently obtained a court order transferring this asset back to the Estate, where the Receiver will again market it for sale.

Upon appointment, the Receiver embarked on a massive and complex forensic accounting effort. Ray did not maintain any formal or informal accounting records or documentation of investments and payments. In summary, the forensic accounting team entered and analyzed more than 45,000 transactions in dozens of bank accounts associated with the Scheme that represent more than \$900 million in inflows and outflows. Because Ray would frequently direct one investor to send money to another investor, the forensic accounting team entered and analyzed thousands of investor-to-investor transactions. The forensic accounting team also prepared summary and detailed reports of all known financial activity of the Scheme overall and for each individual investor.

Throughout the Receivership, the Receiver has maintained a master list of all known investors and creditors of the Estate (the “Creditors’ Matrix”). The Receiver has used all reasonable methods to identify potential creditors of the Estate through analysis of records and documents, and through interviews of relevant witnesses.

The Receiver conducted a wide-ranging fact investigation of the Scheme and possible assets to recover. The Receiver conducted numerous witness interviews and reviewed tens of thousands of pages of documents and records. The Receiver responded to numerous requests

from the Department of Justice for information relating to the criminal investigations and prosecutions.

Through the forensic accounting investigation, the Receiver traced approximately \$8 million from the Scheme through various other accounts and then into two brokerage accounts owned by Stachniw and her husband. The Receiver threatened to file suit and ultimately entered into a court-approved settlement agreement with Stachniw.

The Estate owned a working cattle ranch and herd of pure breed show cattle located in Glencoe, Oklahoma. The Receiver operated the ranch and ultimately sold both the cattle and the real property.

Based on his factual investigation, the Receiver asserted claims against two financial institutions alleging they aided and abetted the Scheme. The financial institutions disputed and denied those claims. The Receiver entered into a court-approved settlement with Bank A for \$150,000. The Receiver recently entered into a court-approved settlement agreement with Bank B for \$995,000.

Based on the forensic accounting reports, the Receiver identified investors who received more from the Scheme in distributions than they had invested into the Scheme (“Net Winners”). To identify Net Winners, the Receiver used a “cash in/cash out” analysis, adding up all investments into the Scheme and then subtracting all distributions from the Scheme, ignoring all fictitious designations such as principal, interest, fees, profits, and the like. The Receiver sent “claw-back” demand letters to each of the material Net Winners, and ultimately entered into settlements or obtained judgments with each of the material Net Winners.

With court approval, the Receiver established a claims process and claims bar date. The Receiver mailed notice of the claims process and the claim form to all known creditors and investors and received 93 claims totaling \$51,068,647 (see discussion below).

### **ESTATE ASSETS**

Due to the Receiver's investigation and asset recovery efforts, there is now approximately \$1,917,590 million in the Receivership bank accounts. The Receiver also holds 12,550,252 shares of stock in Diego Pellicer received in a settlement with Throgmartin. The Receiver is attempting to liquidate those shares.

The Estate also has a number of future and/or potential asset recoveries that may increase the amount of money available for a final distribution:

- The Estate is expecting to receive \$39,000 as part of a pending claw-back settlement payment from Jordan Betensky on or before June 1, 2023.
- In its settlement with Throgmartin, the Estate obtained payments due under his severance agreement with Diego Pellicer. The Estate will receive \$5,000/month and then a final balloon payment of \$307,291.66 in October, 2024.
- The Receiver will again attempt to sell the licenses and business operations of Universal Herbs. However, the market is currently depressed for marijuana businesses, and business operations are currently running at a net loss.

### **CLASSIFICATION AND TREATMENT OF CLAIMS**

Pursuant to the terms of the Receivership Orders and with Court approval, the Receiver established a standardized process under which creditors and investors of the Scheme could file a claim against the Estate, including a deadline for filing claims. As of the claims bar date, the



Receiver received 93 claims totaling \$51,068,647. The claims include claims by vendors of Universal Herbs, investors, a bank, the Internal Revenue Service, and others.

After reviewing the claims, the Receiver proposes the following classification and treatment of certain groups of claims. Exhibit 1 identifies each claimants' classification as defined below.

The first category of claims consists of claims filed by vendors of Universal Herbs for goods and services provided before the receivership. These claims are listed on Schedule A. The Receiver reviewed and verified the reasonableness and amount of each of these claims.

The second category of claims consists of claims filed by investors in the Scheme. To analyze this set of claims, the Receiver made a series of preliminary determinations. First, the Receiver proposes treating the Scheme as unified whole, rather than attempting to trace and account for individual investments and payments from specific Ray Entities. Ray himself treated the Scheme as a unified whole and, given the massive amount of comingling, circular funds flow, and the investor-to-investor transactions, it would be virtually impossible to trace individual investments.

Second, the Receiver proposes grouping certain investors together where there is a clear identity of interests and/or a large volume of internal transactions only some of which are related to the Scheme. This resulted in grouping investors with close family members and/or businesses owned by the investor(s). For each such group, the Receiver combined and collectively analyzed all the financial transactions with the Scheme and all claims submitted. The various groups are reflected on Schedule B.

For each investor in the Scheme, the forensic accounting team prepared a detailed report showing each investment into the Scheme and each payment from the Scheme, and then

calculated the investor's Net Loss or Net Gain. The Receiver disregarded fictitious designations such as principal, interest, fees, profits and the like, and based the forensic analysis on cash in/cash out. In conducting this analysis, the Receiver relied on actual bank statements and financial records; the Receiver generally disregarded all promissory notes, agreements, and representations by Mark Ray.

Based on the individual investor reports, for each claimant, the Receiver then determined the Net Allowed Claim as the lesser of the investor's Net Loss or the claim amount. The Receiver disallowed all investor claims to the extent they included requests for interest, fees, costs, attorney fees, lost profits, incidental damages, and consequential damages. The Receiver disallowed all claims filed by Net Winners. Schedule C lists the Net Allowed Claims for investors with a Net Loss.

After computing the Net Allowed Claim, the Receiver sent a letter to each investor claimant disclosing the Receiver's preliminary determination and enclosing the detailed individual investor report. The Receiver solicited additional information and documents, and in some cases, adjusted the Net Allowed Claim based on the additional information.

The Receiver also received claims filed by Henderson State Bank, the Internal Revenue Service, and Stachniw. Each will be discussed below.

### **DISTRIBUTION PLAN**

The Receiver proposes a substantial, interim distribution to certain claimants under the principles and amounts set forth in this Plan in the total amount of \$1,000,000. The Receiver proposes retaining the balance of the Estate as a reserve against future fees and costs of the Receivership and against any disputed or contingent claims.

The Receivership Order set forth the following priority of certain classes of claims against (or expenses of) the Estate:

“7. The Receiver is hereby authorized to apply the proceeds of the Estate in the following order of priority:

- a. First, to pay the cost of the bond;
- b. Second, to pay the Receivers’ fees incurred in connection with this Receivership, and to prepay or reimburse the out-of-pocket expenses of the Receiver, and to pay the Receiver’s professional fees, including attorneys’ fees, accountant’s fees, and consultant’s fees;
- c. Third, to pay the necessary and reasonable administrative costs of managing and preserving the Estate; and
- d. Fourth, to repay any Receiver’s Certificates, with interest as provided for therein.

All funds in possession of the Receiver after satisfaction of the foregoing obligations shall be maintained by the Receiver pending further order of this Court.”

The Receiver proposes in this Amended Plan the following classes of priority for distributions from the Estate. The cost of the bond has already been paid by the Estate and there are no Receiver’s Certificates.

Class One: Receiver Fees and Costs and Professional Fees and Costs. Pursuant to Paragraph 7 of the Receivership Orders, Receiver fees and costs and professional fees and costs have been paid by the Estate on a periodic basis subject to court review and order. Those fees and costs will continue to be paid in the same manner out of the Estate.

Class Two: Administrative Costs of the Estate. To date, the administrative costs of the Estate have been paid by the Estate. The Receiver believes the Estate’s reserves following this interim distribution will be sufficient to meet future administrative costs. This Class Two would

include any taxes owed to the Internal Revenue Service that were incurred by Universal Herbs during the receivership period, if any.

Class Three: Vendor Claims. This Class consists of claims filed by vendors of Universal Herbs for providing necessary goods and services prior to the receivership. The provision of these goods and services helped preserve and maintain a valuable asset that the Estate has sold and will attempt to sell again for the benefit of all claimants. As a matter of equitable discretion, the Receiver proposes that all claims in this Class be Allowed and paid in their entirety in this interim distribution, in the amounts reflected on Schedule A.<sup>1</sup> To the extent that any claim in this Class included a claim for interest, attorney fees, penalties, consequential damages, incidental damages, and the like, the claim is Disallowed to that extent.

Class Four: Claims by Investors with a Net Loss. This Class consists of claims filed by investors with a Net Loss as determined by the cash in/cash out analysis described above. For each such claim, the Receiver determined the Net Allowed Claim, as set forth on Schedule C. The Receiver proposes that the Net Allowed Claim for each claimant in this Class be Allowed and Fixed. The Receiver further proposes that the most equitable method to distribute the limited funds in the Estate to this Class is to utilize the “Rising Tide” methodology, as described in detail below. Using the Rising Tide method, the Receiver proposes the interim distribution of the amounts listed on Schedule C.

Class Five: IRS Claim. The IRS has asserted a claim of more than \$400,000 against the Estate for the pre-receivership tax liabilities of Universal Herbs. The exact amount of these

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<sup>1</sup> “When a fund is realized or produced or brought into court for distribution among claimants, those who by their exertions and activities have brought this fund into court are entitled to be paid out of the fund before it is distributed.” 1 Ralph Ewing Clark, *Clark on Receivers* [3rd Ed. 1959], Sec. 637

liabilities is the subject of the Receiver's continuing investigation, which is severely hampered by the lack of any prior accounting records for Universal Herbs and the extensive use of cash in a cannabis business. According to the IRS, at least \$378,944.90 is owed for Universal Herbs' 2016 tax return, the bulk of which is interest and penalties. Because Universal Herbs was under the control of Mark Ray in this period, and because any priority payment to the IRS reduces funds available to repay the victim investors, the Receiver has formally requested that the IRS abate these taxes in their entirety. *See Directive No. 137, Tax Division, U.S. Department of Justice, Tax Claims Against Embezzlers, Swindlers, Etc. v. Recovery by Investors, Dupes, and Victims, Etc.*

Based on this authority and with the agreement of the IRS, the Receiver proposes that the IRS's claim for pre-receivership tax liabilities be Allowed in an amount subject to further agreement, but only after all claims in Classes One through Four are paid in full.

Class Six: Claim by Henderson State Bank. Henderson State Bank submitted a claim for \$2.4 million related to an overdraft in an account owned by Nathan Kolterman. Mr. Kolterman was an investor in the Scheme, and Ray had coopted the use of his account to facilitate the Scheme.

The Receiver recommends that this claim be Disallowed in its entirety. The claimed loss (overdraft) was a direct result of the gross negligence and/or intentional misconduct of the claimant and its employees. The claimant failed to follow internal policies and procedures and federal and state regulations relating to Know Your Customer, Anti-Money Laundering, and check clearing rules. The claimant knew, or should have known, it was aiding and abetting securities fraud by allowing this account to remain open despite massive red flags and indicia of fraud.

In the alternative, if the Court does not accept the recommendation to Disallow this claim in its entirety, the Receiver recommends that this claim be Allowed for the net amount of loss that remains outstanding after deducting payments from collateral sources, but only after all claims in Classes One through Five are paid in full.

Class Seven: Claims by Net Winners, Purported Investors and Co-Conspirators. The Receiver received 14 claims filed by Net Winners, listed on Schedule D. The Receiver proposes that all these claims be Disallowed.

The Receiver received a claim from investor Chad Davidson based on a purported \$50,000 promissory note. The forensic accounting team has no record of any financial transactions between Mr. Davidson and the Scheme. Therefore, the Receiver proposes that this claim be Disallowed.

The Receiver received claims from Reva Stachniw and Xavier Rivera, both now convicted co-conspirators of Ray. The Receiver proposes that these claims be Disallowed.

### **OBJECTION DEADLINE**

**All objections to the amended portions of this Proposed Amended Plan of Distribution and the treatment of any claim must be filed with the Court on or before June 15, 2023**, as provided in the Receiver's Notice of Motion to Approve Proposed Amended Plan of Distribution, filed concurrently herewith.

### **LEGAL AUTHORITY**

Courts presiding over equity receivership proceedings have broad powers and wide discretion to determine appropriate relief. *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir.1982); *SEC v. Lincoln Thrift Assn*, 577 F.2d 600, 609 (9th Cir.1978); *SEC v. United Financial Group, Inc.*, 474 F.2d 354, 358 (9th Cir.1973). This discretion derives from the

inherent powers of an equity court to fashion relief. *Safety Finance*, 674 F.2d at 372. The court's broad discretion is applicable to the court's review of a receiver's proposed plan to distribute the assets of the receivership. *Securities and Exchange Commission v. Forex Asset Management*, 242 F. 3d 325, 331 (St" Cir. 2001) ("the district court, acting as a court of equity, is afforded the discretion to determine the most equitable remedy" in determining whether to approve a plan of distribution); *CFTC v. Walsh*, 712 F. 3d 735, 749-750 (2d Cir. 2013). As the Second Circuit in the *Walsh* decision explained:

The decision of a district court as to “the choice of distribution plan for [a] receivership estate” is reviewed “for abuse of discretion.” “A district court has abuse[d] its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence,” or rendered a decision that cannot be located within the range of permissible decisions[.]” (internal citations omitted).

*CFTC v. Walsh*, 712 F. 3d at 749-750. *See also Securities and Exchange Commission v. Wang*, 944 F. 2d 80, 83-84 (2d Cir. 1991) (court may approve a receiver’s distribution plan that is fair and reasonable).

Unlike a case arising under the Bankruptcy Code, there is no statutory mandate that prescribes how the assets recovered in a receivership should be distributed. Thus, it is within a receiver’s discretion to create a plan of distribution that classifies claims into different classes containing differing payment terms using equitable notions. *See SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 91 (2d Cir. 2002); *SEC v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 668 (6th Cir. 2001); *SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 328 (5th Cir. 2001); *SEC v. Elliott*, 953 F.2d 1560, 1566-67 (11th Cir. 1992); *SEC v. Hardy*, 803 F.2d 1034, 1037-39 (9th Cir. 1986); *see also* Kathy Bazoin Phelps, *Handling Claims in Ponzi Scheme Bankruptcy and Receivership Cases*, 42 Golden Gate U.L. Rev. 567, 572 (2012). In deciding how the assets of a receivership estate should be paid out to aggrieved investors and other creditors, “[n]o

specific distribution scheme is mandated so long as the distribution is ‘fair and equitable.’” *SEC v. P.B. Ventures*, Case. No. 90-5322, 1991 WL 269982 at \*2 (E.D. Pa. Dec. 11, 1991); *SEC v. Wealth Mgmt, LLC*, 628 F.3d 323, 336 (7th Cir. 2010). *See generally*, Phelps, *supra*, at 572 - 577.

For purposes of distribution in an equity receivership, courts may ignore the separate identities of entities that are part of “a unified scheme to defraud.” *SEC v. Byers*, 637 F. Supp. 2d 166, 180-81 (S.D.N.Y. 2009); *SEC v. AmeriFirst Funding, Inc.*, No. 3:08-CV1188-D, 2008 WL 919546, at \*4 (N.D. Tex. March 13, 2008) (“a pooled distribution is equitable when the separate legal entities were involved in a unified scheme to defraud”). In *SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001), the Fifth Circuit affirmed a district court’s approval of a consolidated distribution plan as being fair and equitable, even though the objecting investor’s funds could be traced to one specific investment vehicle which had not been commingled with the others used by the perpetrator. *See also United States v. Durham*, 86 F.3d 70, 73 (5th Cir. 1996), (approving a pooled distribution plan); *SEC v. Elliott*, 953 F.2d 1560, 159 (11th Cir. 1002), (rejecting one investor’s efforts to trace his funds, noting “[t]o allow any individual to elevate his position over that of other investors similarly ‘victimized’ by asserting claims [against] specific assets ... would create inequitable results, in that certain investors would recoup 100% of their investment while others would receive substantially less.”).

Here, for Class 4, the Receiver proposes using what is often called the “Rising Tide” method for distributing the limited funds in the Estate to the investor victims because it will come closest to equalizing the recoveries for all investors. *See* Exhibit 2 (Accounting memorandum explaining the Rising Tide methodology and its rationale in Ponzi scheme



receiverships). In summary, the Rising Tide method considers all payments received by investors from the Scheme and calculates a recovery percentage for each investor. Distributions under the Rising Tide method seek (to the greatest extent possible) to equalize the recovery percentage for each investor. Column H on Schedule C shows the interim Rising Tide distributions and Column K shows the resulting overall recovery percentages.

“Rising tide appears to be the method most commonly used (and judicially approved) for apportioning receivership assets.” *SEC v. Huber*, 702 F.3d 903, 906 (7th Cir. 2012), citing *In re Receiver*, No. 3:10-3141-MBS, 2011 WL 2601849, at \*2, \*4 (D.S.C. July 1, 2011); *CFTC v. Lake Shore Asset Management Ltd.*, No. 07 C 3598, 2010 WL 960362, at \*7-10 (N.D. Ill. March 15, 2010); *CFTC v. Equity Financial Group, LLC*, No. Civ. 04-1512 RBK AMD, 2005 WL 2143975, at \*24-25 (D.N.J. Sept. 2, 2005); *United States v. Cabe*, 311 F. Supp. 2d 501, 509-11 (D.S.C. 2003); *CFTC v. Hoffberg*, No. 93 C 3106, 1993 WL 441984, at \*2-3 (N.D. Ill. Oct. 28, 1993). *See also Phelps, supra*, at 576-77.

The primary alternative distribution methodology used in Ponzi scheme cases is the Pro Rata methodology. Under the Pro Rata method, each investor’s claim is determined by adding together all funds invested into the scheme and then subtracting all payments received from the scheme to determine a new net balance. Funds are then distributed from the Estate *pro rata* based on each investor’s percentage of the total loss. *SEC v. Huber*, 702 F.3d 903, 905-6. *See also Phelps, supra*, at 574-75. In this case, the Pro Rata methodology would have the perverse effect of distributing substantial sums to the investors with the highest recovery percentages. Therefore, the Receiver recommends that the Rising Tide method results in a more equitable distribution of funds from the Estate.

## **RELEASE AND EXCULPATION**

The purposes of the Plan include facilitating the administration and closing of the Estate.

Toward that end the Plan requests that the Receivership Court include the following in any approval order:

Except as otherwise expressly provided in the Receiver's Plan, each person or entity that filed a claim or received a distribution in this case (individually, a "Party in Interest") shall be deemed to have absolutely, unconditionally, and irrevocably released and discharged every other Party in Interest, the Receiver, the Receiver's professionals, the Plaintiff, and each party entering into a settlement agreement with the Receiver that has been or is in the future approved by the Court, for and from any and all claims and causes of action existing as of the date of this Order in any manner arising from, based upon, or related to the Receivership, the Receiver's Plan, the Estate, the subject matter of or the transactions or events giving rise to any claim that is classified in the Receiver's Plan, the Venture, and the business or contractual arrangements between the Venture and any Party in Interest.

Releasing and extinguishing potential claims arising from Ray's Ponzi scheme will further the purpose of the Receivership by bringing finality to all Parties in Interest, all parties that have entered into settlement agreements with the Receiver, and to the Estate.

## **CONCLUSION**

The foregoing reflects the Receiver's best professional judgment on an equitable plan for distribution of receivership assets to victims of this fraud that is consistent with controlling legal authority and falls within the purview of the Court's broad equitable discretion to approve a fair and reasonable plan of distribution. The Receiver respectfully requests that the Court enter an order approving the Plan in its entirety, and authorizing distribution of the proceeds and other assets of the Estate to the victims of Ray's fraud as provided in the Plan.

DATED this 22nd day of May, 2023.

FOSTER GRAHAM MILSTEIN & CALISHER, LLP

By: /s/ John A. Chanin  
John A. Chanin, #20749  
Katherine A. Roush, #39267

*Attorneys for Court-appointed Receiver Gary  
Schwartz*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 22, 2023, a true and correct copy of the foregoing **RECEIVER’S PROPOSED AMENDED PLAN OF DISTRIBUTION** was electronically filed and served on all parties of record via the Colorado Court E-Filing System.

I further certify that on May 22, 2023 a true and correct copy on the foregoing **RECEIVER’S PROPOSED AMENDED PLAN OF DISTRIBUTION** is being posted to the website [www.rayreceivership.com](http://www.rayreceivership.com).

I further certify that on May 23, 2023 a true and correct copy on the foregoing **RECEIVER’S PROPOSED AMENDED PLAN OF DISTRIBUTION** is being served by U.S. Mail on all currently known creditors of the Receivership Estate to the addresses set forth on the service list maintained in the Receiver’ s records.

*/s/ Lucas Wiggins*  
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Lucas Wiggins

RAY RECEIVERSHIP - EXHIBIT 1 - AMENDED  
CLASS IDENTIFICATION

CLASS	CLAIMANT NAME
	<b>INVESTOR CLAIMANTS</b>
Class 4	Alexander Investments
Class 7	Bacon, Richard
Class 7	Bynum, Alex
Class 4	Cheshire, Andrew
Class 4	Clark, Darrell
Class 4	Cockrell, Roy
Class 4	Colyer, Katie
Class 7	Colyer, Kyle
Class 4	Cornelius, Jane
Class 7	Curry, Patrick & Wendall/McAllen Gold
Class 4	Darby, Rusty
Class 4	Darby, Tandy
Class 7	Davidson, Chad
Class 7	Dilday, Mari
Class 4	Dimola, Frank
Class 4	Drinkall, Delvin L.
Class 4	Farley, John
Class 4	Finney, Ty
Class 7	Freeman, Sam
Class 4	Gordon, Chris
Class 3 and Class 4	Hindi, Joshua
Class 4 (Sched B)	Hirschfeld, Chad (J.D. Hirschfeld & Sons, Hirschfeld, Patty and Misty)
Class 4	Hobza, Jude & Lynette, Mattias
Class 7	Kao, David
Class 4	Kolterman, Nate and Lynn
Class 4	Litaker, Howard E., Jr.
Class 4 (Sched B)	Lowderman Auction Company [Monte and Carrie Lowderman]
Class 4 (Sched B)	Luckey, David (Spring Creek Investments LLC)
Class 7	McDaniel, Chris
Class 7	McGregor, Eric
Class 4	McMillion, Brett
Class 4	Medling, Craig
Class 4	Middlebrooks, Jason
Class 4	Moore, Randall
Class 4 (Sched B)	Mottale, Micha (Micha, Inc.)
Class 4 (Sched B)	Nowatzke, Barry (Nowatzke Cattle, Material Processing)
Class 4	Ozzello, David
Class 7	Papermaster, Benjamin
Class 4	Perkins, Brett
Class 4	Perkins, Graham
Class 4	Perkins, Jakob
Class 4	Perkins, Jeff
Class 4	Prince, Clay

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RAY RECEIVERSHIP - EXHIBIT 1 - AMENDED  
CLASS IDENTIFICATION

CLASS	CLAIMANT NAME
Class 4	Prince, Jamie
Class 7	Ray, David C. Ray or Editha
Class 7	Rivera, Xavier
Class 4	Rosales, Jose G. and April W.
Class 4	Seel, Greg
Class 7	Sharp, Kacey
Class 4	Spellings, Beverly
Class 4	Squire, Helen Carter
Class 7	Stephens, Roye
Class 4	Visin, Lisa
Class 4	Williams, Chris
Class 4	Yun, Young Don
	<b>VENDOR CLAIMANTS</b>
Class 3	ArcWest Architects Inc.
Class 3	Baker Technologies
Class 3	Beacon Integrated Technologies Inc.
Class 3	Bona Fides Laboratory, Inc.
Class 3	Broomhall Brothers Mechanical Contractors
Class 3	CO Product Services (Eric Netherton)
Class 3	Cultivate Denver
Class 3 and Class 4	Dabble (Joshua Hindi)
Class 3	Elite Horticulture (Elizabeth Alonzo)
Class 3	Green CO2 Systems (Carianne Roberts)
Class 3	Grow Generation Corp.
Class 3	Investments ETC LLC - HRVST Labs
Class 3	Joy Gum (Amy Ellen Nudelman)
Class 3	Montem Pharmed Labs Ltd
Class 3	Pinnacol Assurance
Class 3	Rooster Magazine (Simon Berger)
Class 3	springbig, Inc.
Class 3	Summit Concentrates (Oren Dlin)
Class 3	The Grow Foundry dba Coda Signature
Class 3	Three Rivers Dispensary
Class 3	Uline Shipping
Class 3	Viola Inc.
Class 3	West Edison Cannabis Concentrates
	<b>OTHER CLAIMANTS</b>
Class 2 and Class 5	IRS
Class 6	Henderson State Bank
Class 7	Stachniw, Reva

RAY RECEIVERSHIP - EXHIBIT 1 - AMENDED  
CLASS IDENTIFICATION

<b>CLASS</b>	<b>CLAIMANT NAME</b>
	<b>INVESTOR PORTER-RELATED CLAIMANTS</b>
Class 4 (Sched B)	Porter, Joe
Sched B	JAB
Sched B	JGR Investments
Sched B	JP Enterprises
Sched B	Akin Porter Produce
Sched B	Moore & Porter Produce of Thomasville
Sched B	PM Scotch
Sched B	Porter, Andrew
Sched B	Porter, Brock
Sched B	Porter Children's Trust
Sched B	Porter Family LP
Sched B	SMP Marketing

## MEMORANDUM

To: Gary Schwartz, CFE, Receiver for Mark Ray Estate  
John Chanin and Katie Roush, Esqs., Counsel for Receiver  
From: Matt Lausten, CPA, CFE *ML*  
Date: January 24, 2023  
Re: Rising tide vs. pro rata distribution methodology in Ponzi Schemes

### I. Scope of Analysis

You asked me to provide a memorandum regarding the rising tide methodology that describes why it provides a more equitable distribution than the pro rata method in the instant Ponzi scheme.

### II. Discussion of Analysis and Procedures

Rising tide appears to be the most common and judicially approved method for apportioning receivership assets in Ponzi scheme cases. The primary alternative distribution methodology used is the pro rata method, also called the net investment or net loss method. The primary difference between the two methods relates to treatment of transactions between the investor and the Ponzi scheme. Distribution under a pro rata approach considers only the final net loss amount, whereas the rising tide method considers all transactions through its computation and analysis of a recovery percentage. Consider two investors: one who invested \$1 million and received \$900,000 during the scheme and another who invested \$100,000 but received nothing. Both have \$100,000 losses, whereas the first recouped 90% of their investment while the second has a total loss.

In a Ponzi scheme, little or no actual business activity typically exists to generate real returns on investment. Therefore, funds received from the scheme ultimately came from other investors and was not earned through business activity. Had returns been earned through legitimate business activity, then those who invested earliest would likely have a legitimate claim on more earnings. However, in a Ponzi scheme, there are no “earnings” because the funds exchanged represent commingled principal investments. As a result of the lack of actual “earnings”, ignoring the timing of investments and analyzing an overall cash-in, cash-out measurement for each investor results in the most equitable analysis.

The description attached by the scheme operator to repayments (e.g., interest, profit, share, principal, etc.) is disregarded; all transactions are considered as principal. This assumption follows the general nature of a Ponzi scheme, where profit-generating business activity did not occur and funds ultimately came from other investors, rendering the scheme operator’s labels for repayments (such as “profit”) meaningless.

A hypothetical illustration is perhaps the best means to understand the difference between the rising tide and pro rata methods. For example, consider three investors who each invested \$100,000 into a Ponzi scheme but received different amounts in return during the scheme. In this example, Albert



was repaid \$80,000 of his \$100,000; Beth received \$40,000; and Carol \$20,000. The example investors' investments, prior receipts, and initial losses are reflected in the following table:

**Figure 1: Example investments and receipts**

		Prior		Initial
	Invested	Receipts	Initial Loss	Recovery %
<b>Albert</b>	<b>\$100,000</b>	\$ 80,000	\$ (20,000)	80%
<b>Beth</b>	<b>100,000</b>	40,000	(60,000)	40%
<b>Carol</b>	<b>100,000</b>	20,000	(80,000)	20%
	<b>\$300,000</b>	<b>\$140,000</b>	<b>\$ (160,000)</b>	<b>47%</b>

As illustrated above, all three investors lost money in the scheme, but in varying degrees. Albert lost \$20,000; Beth lost \$60,000; and Carol lost \$80,000.

Assume that the receiver in this example has \$50,000 to distribute. Under a pro rata approach, the distribution amount is completed based on each investors' percentage of the total loss. Mathematically, the amount to distribute is multiplied by each investor's percentage of the total loss to determine individual distribution amounts, as shown below in Figure 2.

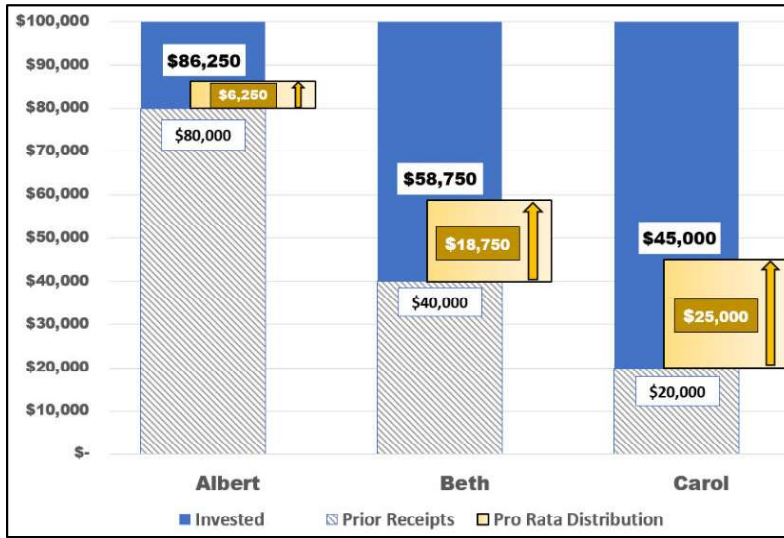
**Figure 2: Computations for a \$50,000 pro rata distribution**

	A Pro Rata Repayment Amount \$ 50,000							
B	C	D = C - B	E = C / B	F = D / ΣD	G = A * F	H = C + G	J = H / B	
	Prior Invested	Prior Receipts	Initial Loss	Initial Recovery %	% of Total Loss	Pro Rata Distribution	Total Received	Recovery Percentage
<b>Albert</b>	<b>\$100,000</b>	\$ 80,000	(20,000)	80%	12.5%	\$ 6,250	<b>\$ 86,250</b>	<b>86%</b>
<b>Beth</b>	<b>100,000</b>	40,000	(60,000)	40%	37.5%	18,750	<b>58,750</b>	<b>59%</b>
<b>Carol</b>	<b>100,000</b>	20,000	(80,000)	20%	50.0%	25,000	<b>45,000</b>	<b>45%</b>
	<b>\$300,000</b>	<b>\$140,000</b>	<b>\$ (160,000)</b>	<b>47%</b>	<b>100%</b>	<b>\$ 50,000</b>	<b>\$190,000</b>	<b>63%</b>

As reflected in the figure above, Albert had 12.5% of the total loss and therefore receives \$6,250 of the \$50,000 distributed. Carol had 50% of the total loss and receives \$25,000; Beth receives \$18,750. While using the total loss percentage sounds equitable, the disparity becomes clear when we evaluate their respective recovery percentages. Because Albert had already received 80% of his investment during the scheme, the pro rata distribution increases his recovery to approximately 86% of his investment, or approximately 86 cents on each dollar invested. In the same scheme, however, Carol receives only 45 cents on each dollar she invested. The pro rata distribution leaves these investors in a far different positions despite similar investments.

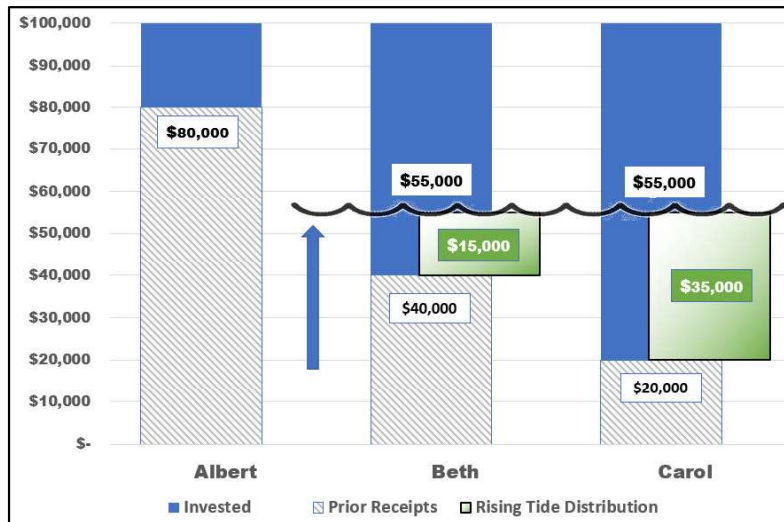
Graphically, the pro rata distribution is reflected in the following figure, which illustrates that all investors receive some portion of the distribution and that Carol's net recovery is far different than Albert's, despite participating in the same scheme:

Figure 3: Illustration of a pro rata distribution



By comparison, the rising tide method seeks parity, to the extent possible, by distributing funds first to those investors who received the least, by percentage, during the scheme. This is illustrated in the figure below:

Figure 4: Illustration of a rising tide distribution



The rising tide method gets its name from a visual image where the “tide”, the distributions, are made in such a manner that all investors rise together to equalize returns as much as possible. In the above example, where Beth received \$40,000 and Carol only \$20,000 during the scheme’s operation, the rising tide method returns the first \$20,000 solely to Carol, until she receives the same as Beth. Then, the next \$30,000 is distributed equally between Beth and Carol until the distribution amount is exhausted. Had an additional \$65,000 been available for distribution, \$50,000 of this additional distribution would have been equally distributed to Beth and Carol, then the remaining \$15,000 would have been equally distributed between all three.

The computations of the example are reflected in the figure below:

Figure 5: Computations for a \$50,000 rising tide distribution

	A Rising Tide Recovery Percentage		55%					
	B Rising Tide Repayment Amount		\$ 50,000					
	C	D	E = D - C	F = D / C	G = A - F (where F < A)	H = G * C	J = D + H	K = J / C
	Invested	Prior Receipts	Initial Loss	Initial Recovery %	Incremental Recovery %	Rising Tide Distribution	Total Received	Recovery Percentage
Albert	\$ 100,000	\$ 80,000	\$ (20,000)	80%	0%	\$ -	\$ 80,000	80%
Beth	100,000	40,000	(60,000)	40%	15%	15,000	55,000	55%
Carol	100,000	20,000	(80,000)	20%	35%	35,000	55,000	55%
	<b>\$ 300,000</b>	<b>\$ 140,000</b>	<b>\$ (160,000)</b>	<b>47%</b>		<b>\$ 50,000</b>	<b>\$ 190,000</b>	<b>63%</b>

The rising tide computation in the example results in a rising tide recovery percentage of 55%, which means that, following the distribution, all investors have received at least 55 cents on every dollar invested. Mathematically, the rising tide recovery percentage is adjusted using the formulas shown until the total rising tide distribution equals the amounts of funds available for distribution.

The rising tide distribution results in a more equitable distribution as it ensures as equal a repayment of dollars invested as possible for all investors. In a Ponzi scheme, no investor gets what they initially bargained for, and the rising tide method of distribution provides the most equitable result, as it attempts to equalize funds returned as much as is possible given the available proceeds.

### III. Restrictions and Disclosures

This memorandum is intended for your use in the above-referenced matter. It should not be used for any other purpose without our prior written permission for each occasion. The validity of this memorandum is predicated on the extent to which full, honest, and complete disclosure was made in providing us with the information to perform this engagement. This document is intended for counsel's use only and does not contain disclosures required of an expert report under FRCP 26(a)(2).

This engagement has been conducted in accordance with the Statement on Standards for Forensic Services as promulgated by the American Institute of Certified Public Accountants and, as such, is considered a transactions service. Accordingly, this engagement does not constitute any type of attestation service, including but not limited to, an audit, compilation, review, or the application of agreed-upon procedures.

We reserve the right to modify the analysis and conclusions presented herein should we undertake further analysis of the information provided to date or if we are provided additional data and other information.

RAY RECEIVERSHIP - SCHEDULE A  
CLASS THREE - VENDOR CLAIMS

Claimant	Net Allowed Claim
ArcWest Architects Inc.	\$ 27,192.50
Baker Technologies	\$ 5,263.33
Beacon Integrated Technologies Inc.	\$ 147,016.38
Bona Fides Laboratory, Inc.	\$ 79,530.00
Broomhall Brothers Mechanical Contractors	\$ 682.50
CO Product Services (Eric Netherton)	\$ 2,417.77
Cultivate Denver	\$ 8,545.79
Dabble (Joshua Hindi)	\$ 11,920.00
Elite Horticulture (Elizabeth Alonzo)	\$ 5,032.00
Green CO2 Systems (Carianne Roberts)	\$ 19,228.87
Grow Generation Corp.	\$ 34,419.85
Investments ETC LLC - HRVST Labs	\$ 11,840.38
Joy Gum (Amy Ellen Nudelman)	\$ 400.03
Montem Pharmed Labs Ltd	\$ 4,335.13
Pinnacol Assurance	\$ 19,529.00
Rooster Magazine (Simon Berger)	\$ 7,100.00
springbig, Inc.	\$ 7,290.75
Summit Concentrates (Oren Dlin)	\$ 27,905.00
The Grow Foundry dba Coda Signature	\$ 4,014.20
Three Rivers Dispensary	\$ 10,000.00
Uline Shipping	\$ 5,972.27
Viola Inc.	\$ 1,970.00
West Edison Cannabis Concentrates	\$ 27,056.80
<b>TOTAL</b>	<b>\$ 443,662.75</b>

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RAY RECEIVERSHIP - SCHEDULE B  
RELATED INVESTORS

**Investors Grouped with Close Family Members and/or Businesses Owned by Investors**

**Claimant**

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**Hirshfeld Related Parties**

Hirschfeld, Chad  
Hirschfeld, Misty  
Hirschfeld, Patty  
J.D. Hirschfeld & Sons

**Hobza Family**

Hobza, Mattias  
Hobza, Lynette  
Hobson, Jude

**Lowderman Related Parties**

Lowderman, Monte and Carrie  
Lowderman Auction Company

**Luckey Related Parties**

Spring Creek Investments, LLC  
Luckey, David

**Mottale Related Parties**

Mottale, Micha  
Micha, Inc.

**Nowatzke Related Parties**

Nowatzke Cattle  
Material Processing & Handling  
Nowatzke, Barry

**Porter-Related Businesses / Porter Family**

Akin Produce  
JAB  
JGR Investments  
JP Enterprises  
Moore & Porter of Thomasville  
P&R  
PM Scotch  
Porter Children's Trust  
Porter Family Ltd Partnership  
Porter, Andrew  
Porter, Brock  
Porter, Joe  
SMP Marketing

**Mark Ray Receivership**

**Distribution Model - Rising Tide - \$556,337.25 distribution**

To receive a distribution, must have incurred a loss and made a claim; distributions limited to claimed amount.

As of 3/14/2023

A B C D = B + C E: MIN(A,D) F = -(C / B) G = L - F (G > 0) H = B \* G J = C + H K = J / B

L: Rising Tide Recovery Percentage **68.97%**  
 DATE FILED: 20190314 4:49 PM  
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 CASE NUMBER: 2019CV33770

Master MR Inv ID	Claims Group	Total Claims Submitted (Actual Damages)	Total Invested	Receipts to Date	Net Loss / (Gain)	Net Allowed Claim	Initial Recovery Percentage	Incremental Recovery Percentage	Rising Tide Distribution	Total Receipts + Rising Tide Distribution	Overall Recovery Percentage
208	Alexander Investments	\$ 182,450	\$ 470,000	\$ (305,100)	\$ 164,900	\$ 164,900	64.91%	4.05%	\$ (19,036.62)	\$ (324,137)	68.97%
27	Carter-Squire, Helen S.	474,103	11,073,261	(10,599,158)	474,103	474,103	95.72%	0.00%	\$ -	(10,599,158)	95.72%
30	Cheshire, Andrew	154,330	489,535	(474,278)	15,256	15,256	96.88%	0.00%	\$ -	(474,278)	96.88%
31	Clark, Darrell	87,020	44,000	(33,540)	10,460	10,460	76.23%	0.00%	\$ -	(33,540)	76.23%
32	Cockrell, Roy	391,764	1,978,457	(1,710,704)	267,752	267,752	86.47%	0.00%	\$ -	(1,710,704)	86.47%
34	Colyer, Katie	100,000	210,000	(132,000)	78,000	78,000	62.86%	6.11%	\$ (12,827.00)	(144,827)	68.97%
36	Cornelius, Jane	35,000	25,000	-	25,000	25,000	0.00%	68.97%	\$ (17,241.31)	(17,241)	68.97%
45	Darby, Rusty	130,308	4,536,636	(4,455,064)	81,572	81,572	98.20%	0.00%	\$ -	(4,455,064)	98.20%
46	Darby, Tandy	125,518	6,489,018	(6,335,165)	153,853	125,518	97.63%	0.00%	\$ -	(6,335,165)	97.63%
48	Dimola, Frank	88,455	1,657,756	(1,546,424)	111,332	88,455	93.28%	0.00%	\$ -	(1,546,424)	93.28%
49	Drinkall, Delvin L.	250,000	14,522,366	(14,459,575)	62,791	62,791	99.57%	0.00%	\$ -	(14,459,575)	99.57%
59	Farley, John	127,434	1,656,404	(1,639,672)	16,732	16,732	98.99%	0.00%	\$ -	(1,639,672)	98.99%
64	Finney, Ty	114,087	5,414,237	(5,303,425)	110,812	110,812	97.95%	0.00%	\$ -	(5,303,425)	97.95%
70	Gordon, Chris	80,554	292,999	(261,899)	31,100	31,100	89.39%	0.00%	\$ -	(261,899)	89.39%
211	Hindi, Joshua	68,170	56,250	-	56,250	56,250	0.00%	68.97%	\$ (38,792.95)	(38,793)	68.97%
79	Hirschfeld, Chad	3,017,237	49,569,733	(48,042,469)	1,527,264	1,527,264	96.92%	0.00%	\$ -	(48,042,469)	96.92%
83	Hobza, Lynette & Jude	316,866	550,000	(316,286)	233,714	233,714	57.51%	11.46%	\$ (63,023.07)	(379,309)	68.97%
100	Kolterman, Nate and Lynn	1,500,000	97,485,144	(96,264,515)	1,220,629	1,220,629	98.75%	0.00%	\$ -	(96,264,515)	98.75%
108	Litaker, Howard E., Jr.	3,880	120,000	(113,720)	6,280	3,880	94.77%	0.00%	\$ -	(113,720)	94.77%
110	Lowderman, Monte and Carrie	282,950	21,502,031	(21,235,405)	266,626	266,626	98.76%	0.00%	\$ -	(21,235,405)	98.76%
111	Luckey, David (Spring Creek Investments)	6,231,056	44,364,959	(37,867,516)	6,497,444	6,231,056	85.35%	0.00%	\$ -	(37,867,516)	85.35%
120	McMillion, Brett	73,159	183,000	(149,331)	33,669	33,669	81.60%	0.00%	\$ -	(149,331)	81.60%
121	Medling, Craig	196,715	5,126,478	(4,929,764)	196,715	196,715	96.16%	0.00%	\$ -	(4,929,764)	96.16%
123	Middlebrooks, Jason	424,597	952,721	(638,288)	314,433	314,433	67.00%	1.97%	\$ (18,758.00)	(657,046)	68.97%
127	Moore, Randall	50,000	208,000	(160,595)	47,405	47,405	77.21%	0.00%	\$ -	(160,595)	77.21%
129	Mottale, Micha (Micha, Inc.)	898,638	2,724,900	(2,237,912)	486,988	486,988	82.13%	0.00%	\$ -	(2,237,912)	82.13%
133	Nowatzke, Barry (Nowatzke Cattle)	797,378	44,359,148	(44,150,146)	209,002	209,002	99.53%	0.00%	\$ -	(44,150,146)	99.53%
136	Ozzello, David	3,965,142	38,467,782	(34,854,170)	3,613,612	3,613,612	90.61%	0.00%	\$ -	(34,854,170)	90.61%
215	Perkins, Brett	66,600	457,200	(397,800)	59,400	59,400	87.01%	0.00%	\$ -	(397,800)	87.01%
216	Perkins, Graham	76,600	470,000	(401,400)	68,600	68,600	85.40%	0.00%	\$ -	(401,400)	85.40%
139	Perkins, Jakob	75,128	1,294,871	(1,219,743)	75,128	75,128	94.20%	0.00%	\$ -	(1,219,743)	94.20%
217	Perkins, Jeff	268,979	8,419,210	(8,062,107)	357,103	268,979	95.76%	0.00%	\$ -	(8,062,107)	95.76%
146	Prince, Clay	18,239	456,000	(437,761)	18,239	18,239	96.00%	0.00%	\$ -	(437,761)	96.00%
147	Prince, Jamie	94,405	1,100,000	(1,005,595)	94,405	94,405	91.42%	0.00%	\$ -	(1,005,595)	91.42%
154	Rosales, Jose G. and April W.	203,600	210,000	(46,400)	163,600	163,600	22.10%	46.87%	\$ (98,427.00)	(144,827)	68.97%
219	Seel, Greg	25,935	45,500	(15,470)	30,030	25,935	34.00%	34.97%	\$ (15,909.18)	(31,379)	68.97%
166	Spellings, Beverly	169,979	240,000	(113,222)	126,778	126,778	47.18%	21.79%	\$ (52,294.89)	(165,517)	68.97%
184	Visin, Lisa Van	100,000	99,000	(5,000)	94,000	94,000	5.05%	63.91%	\$ (63,275.59)	(68,276)	68.97%
188	Williams, Chris	57,000	200,000	(136,400)	63,600	57,000	68.20%	0.77%	\$ (1,530.48)	(137,930)	68.97%
191	Yun, Young Don	451,000	2,987,333	(1,905,000)	1,082,333	451,000	63.77%	5.20%	\$ (155,221.16)	(2,060,221)	68.97%
144	Porter, Joe	18,147,345	292,290,600	(267,555,196)	24,735,404	18,147,345	91.54%	0.00%	\$ -	(267,555,196)	91.54%
<b>Total</b>		<b>\$ 39,921,621</b>	<b>\$ 662,799,529</b>	<b>\$ (619,517,212)</b>	<b>\$ 43,282,317</b>	<b>\$ 35,644,106</b>			<b>\$ (556,337.25)</b>	<b>\$ (620,073,549)</b>	

RAY RECEIVERSHIP - SCHEDULE D - AMENDED  
CLASS SEVEN: NET WINNERS, NO TRANSACTIONS, AND CO-CONSPIRATORS

	Individual Claimant	Claim Submitted	Net Invested / (Received)	Total Invested	Total Received
<b>Claims by Parties with Net Gain</b>					
	Bacon, Richard	65,317	(35,683)	28,000	(44,683)
	Bynum, Alex	125,000	(4,808)	530,336	(535,144)
	Colyer, Kyle	50,000	(269,320)	178,680	(448,000)
	Curry, Patrick	217,550	(127,600)	-	(127,600)
	Dilday, Mari	49,053	(23,947)	170,000	(193,947)
	Freeman, Sam	250,000	(20,000)	-	(20,000)
	Kao, David	30,000	(33,397)	351,004	(384,401)
	McDaniel, Chris	51,050	(10,638)	75,000	(85,638)
	McGregor, Eric	587,000	(1,538,389)	4,474,331	(6,012,720)
	Papermaster, Benjamin	35,492	(43,261)	-	(43,261)
	Ray, David C. Ray or Editha	62,000	(361,439)	1,658,686	(2,020,125)
	Sharp, Kacey	1,506	(52,494)	350,000	(402,494)
	Stephens, Roye	899,096	(16,477)	2,150,300	(2,166,777)
<b>Claims by Purported Investors (No Transactions)</b>					
	Davidson, Chad	50,000	-	-	-
<b>Claims by Co-Conspirators</b>					
	Stachniw, Reva	5,444,235	-	-	-
	Rivera, Xavier	41,000	-	-	-