

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO  Denver District Court  1437 Bannock St.  Denver, CO 80202</p>	<p>DATE FILED: June 27, 2023 4:51 PM  FILING ID: 9DD3F32186522  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  Division/Courtroom: 209</p>
<p style="text-align: center;"><b>RECEIVER’S RESPONSE TO REVA STACHNIW’S OBJECTION TO RECEIVER’S AMENDED PROPOSED PLAN OF DISTRIBUTION</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”), responds to Reva Stachniw’s Objection to Receiver’s Amended Proposed Plan of Distribution (“Objection”) as follows:

## **I. Introduction**

1. Ms. Stachniw timely filed a claim for a share of the funds recovered by the Receiver in this action. Her claim totaled \$5,932,395.65 and consisted of three parts: (1) \$5,444,235.16 million as damages related to funds she and her husband (who is not a claimant) allegedly invested into the Ponzi scheme; (2) \$316,735.23 as proceeds from the sale of the real property known as Glencoe Ranch; and (3) \$126,425.26 as reimbursement for payment of administrative expenses to estate (*i.e.* mortgage payments for the Glencoe Ranch).

2. In both the Receiver’s Proposed Plan of Distribution and Amended Proposed Plan of Distribution (“Proposed Plan”), the Receiver recommend denying Ms. Stachniw’s claim (as well as the claims of other convicted co-conspirators of Mark Ray) in its entirety on the grounds that this is an equity receivership and Ms. Stachniw was convicted for her part in the Ponzi scheme that led to tens of millions of dollars of losses to investors. *See* Amended Proposed Plan at 5, 14.

3. Ms. Stachniw filed Objections to both the Proposed Plan and Proposed Amended Plan. In her Objections, Ms. Stachniw argued that despite her conviction, “substantial funds and assets came to the Receivership Estate from Ms. Stachniw and Dr. Stachniw [who is not a claimant],” that “much of what they have claimed are expenses that paid to preserve assets of the Estate” and finally, that Ms. Stachniw and her husband Dr. Stachniw “invested many funds with Mark Ray and are victims of Mark Ray like those the Receiver intends to pay.” Obj. at 5-6. The

Court should disregard these arguments and approve the Proposed Plan, for the following reasons.

4. First, as detailed in the Proposed Plan, on August 26, 2022, Ms. Stachniw was convicted 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.

5. Ms. Stachniw's own criminal conduct in perpetuating this scheme alone disqualifies her from partaking in any distribution which otherwise will go to the innocent victims. At the very least, any potential distribution to Ms. Stachniw should be subordinated to the claims of the investor-victims such that she will not receive one penny until the investor-victim claims are paid in full.

6. Indeed, the Receiver's own forensic accounting analysis indicated that Ms. Stachniw's accounts at Midwest Bank, held in the name of RM Farm and Livestock, Sunshine Enterprises, and individually, had over \$582 million pass through them during the course of the Ponzi scheme. By contrast, "only" \$350 million passed through Mark Ray's accounts (Custom Consulting, MR Cattle, and individually). In total, almost 33,000 transactions went through her accounts during the scheme. *See Exhibit A* (financial schedule). There is no doubt that Ms. Stachniw was a central player in the Ponzi scheme.

7. Denying Ms. Stachniw's claim is also particularly appropriate here, as this is an equity receivership, and 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). "No 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). Because Ms. Stachniw is a convicted co-conspirator who defrauded investors out of tens of millions of dollars, it is "fair and equitable" to deny her claim in its entirety and allow the limited funds in the Receivership Estate to be used to compensate the investor-victims.

8. Second, on February 27, 2023, United States District Court Chief Judge Brimmer entered on Order of Forfeiture against Ms. Stachniw for \$6,013,370, over Ms. Stachniw's objections similar to her arguments here. That Order, and the motion, response and reply, are attached here as **Exhibit B**. Not only did Judge Brimmer reject her arguments, but this Order of Forfeiture further underlines the futility of Ms. Stachniw's objection: any payment from the Estate to Ms. Stachniw will ultimately go to the investor-victims in the form of a forfeiture payment to the U.S. Government. This is precisely where the Estate funds Ms. Stachniw is trying to recover are going already – all the funds in the Estate (minus Receiver fees, etc. as outlined in the Order Appointing Receiver) are earmarked for distribution to innocent victims of the Ponzi Scheme per the Proposed Plan.

9. Third, as the Court is aware, on August 20, 2020, the Receiver (jointly with the Colorado Securities Commissioner) filed a motion to add to the Receivership Estate approximately \$8.1 million of investor funds that Ms. Stachniw and her husband had transferred from her Midwest Bank account to retirement accounts, as well as a motion to add Myron Stachniw, Reva Stachniw's husband, as a relief defendant.

10. This motion was predicated on the Receiver's discovery that (1) between November 2017 and August 2018, Ms. Stachniw transferred approximately \$8.9 million out of her personal Midwest checking account (Midwest Account 4657) to retirement accounts in her name and her husband's name at Merrill Lynch and National Financial Services, LLC ("Retirement Accounts"). See **Exhibit C** (letter from M. Lausten detailing analysis).

11. Further, the receiver determined that during this same time period (November 2017 to August 2018), more than \$51 million flowed through Ms. Stachniw's Midwest Account 4657 and of this, only \$309,000 came from funds external to other Ponzi scheme bank accounts. See *id.* In other words, Ms. Stachniw used investor funds exclusively accessible to her to enrich herself and her husband to the tune of nearly \$9 million dollars.

12. The Receiver and the Stachniws reached a settlement on this motion whereby the Receiver and the Securities Commissioner agreed to allow the Stachniws to retain \$1.7 million in the Retirement Accounts and to transfer the rest to the Estate, which the Court approved on October 20, 2020. Thus, Ms. Stachniw has already received the benefit of any reasonable doubt as to any money she paid into the Scheme or the Estate and as to the source of those funds.

13. Fourth, Ms. Stachniw has not demonstrated (and almost certainly cannot demonstrate) that the source of any of the money for which she is seeking recovery from the

Estate were her independent funds rather than money from the investor-victims. Because of the massive amount of Ponzi-scheme related funds that flowed through her bank account(s), Ms. Stachniw's personal funds (if any) are inextricably intertwined and impossibly comingled with funds stolen from the investor-victims. For example, while Ms. Stachniw seeks payment of the proceeds from the sale of Glencoe Ranch, she has not demonstrated that she purchased that real property with money that was not Ponzi scheme money. This is the same for any mortgage payments or car/insurance payments she made.

14. Fifth, the vast bulk of her claim is for reimbursement of an alleged \$4,295,325.16 loan she made to Universal Herbs, LLC in July 2016, pursuant to a promissory note. But she has provided no proof that such funds were ever actually transferred to Universal Herbs or Mark Ray via wire transfer or check. Further, due to the co-mingling of the Ponzi scheme proceeds with her and her husband's non-Ponzi-scheme related monies, if any, it is difficult if not impossible to determine if any of the money she allegedly invested in the Ponzi scheme was her own money, and not money received from other investors.

WHEREFORE, the Receiver asks that the Court deny Ms. Stachniw's claim in its entirety and approve the Proposed Amended Plan of Distribution.

Dated: June 27, 2023.

FOSTER GRAHAM MILSTEIN & CALISHER, LLP.

By: /s/ John A. Chanin

John A. Chanin, #20749

Katherine A. Roush, #39267

ATTORNEYS FOR THE COURT-APPOINTED RECEIVER,  
GARY SCHWARTZ

**CERTIFICATE OF SERVICE**

I hereby certify that on June 27, 2023, a true and correct copy of the foregoing was electronically filed and served on all parties of record via the Colorado Court E-Filing System.

                  /s/ Lucas Wiggins                    
Lucas Wiggins