

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 23-24903-CIV-JB

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RISHI KAPOOR, et al.,

Defendants.

**RECEIVER’S REPLY IN SUPPORT OF MOTION TO APPROVE THIRD PARTY
LITIGATION PROCEDURES AND CONTINGENCY FEE ARRANGEMENT**

Bernice C. Lee, as the Court-appointed Receiver (“Receiver”) over the Receivership Companies,¹ submits this reply in support of her Motion to Approve Third Party Litigation Procedures and Contingency Fee Arrangement [DE 490] (“Litigation Procedures Motion”), to address the Members of Urbin Coconut Grove Partners, LLC’s Response in Opposition to the Litigation Procedures Motion (“Opposition”) [DE 496] filed by CWL-CH, LLC, ASJAIA, LLC and VIEDEN GROVE OZ, LLC (“CG Investors”). The CG Investors (1) lack standing to be heard on the Litigation Procedures Motion; and (2) in any event, fail to identify any meritorious objection.

¹ The Receivership Companies include: Location Ventures, LLC, URBIN, LLC, Patriots United, LLC; Location Properties, LLC; Location Development, LLC; Location Capital, LLC; Location Ventures Resources, LLC; Location Equity Holdings, LLC; Location GP Sponsor, LLC; 515 Valencia Sponsor, LLC; LV Montana Sponsor, LLC; URBIN Founders Group, LLC; URBIN CG Sponsor, LLC; 515 Valencia Partners, LLC; LV Montana Phase I, LLC; Stewart Grove 1, LLC; Stewart Grove 2, LLC; Location Zamora Parent, LLC; URBIN Coral Gables Partners, LLC; URBIN Coconut Grove Partners, LLC; URBIN Miami Beach Partners, LLC; and URBIN Miami Beach II Phase 1, LLC.

BACKGROUND

The Receiver, consistent with the authority vested in her by the Court's Order Granting Plaintiff Securities and Exchange Commission's Expedited Motion for Appointment of Receiver, Asset Freeze, and Other Relief Against the Company Defendants ("Receivership Order"), has filed the Litigation Procedures Motion in order to (a) confirm her authority to assert and resolve potential litigation claims against third parties; (b) set forth clear and efficient procedures for the resolution of such claims and further Court approval in appropriate circumstances; and (c) approve the engagement of her firm, Kozyak Tropin & Throckmorton, LLP ("KTT") as counsel to pursue such claims on a contingent fee basis, based on the Receiver's determination that such an arrangement is in the best interests of the receivership estate. The Litigation Procedures Motion was filed after consultation with, and with the consent of, the Securities and Exchange Commission ("SEC").

The CG Investors are equity investors in Urbin Coconut Grove Partners, LLC, one of the several Receivership Companies. The CG Investors are not parties to the receivership case, though this Court has permitted them to be heard in connection with particular proceedings relating to the sale of the "Commodore Properties" in which the CG Investors have asserted interests based on the pre-receivership filing of notices of lis pendens against the Commodore Properties.

The CG Investors have now filed their Opposition objecting to the Litigation Procedures Motion, in which they assert (1) that the Court should not approve the Receiver's engagement of KTT on a contingent basis because of a supposed conflict of interest; (2) that the Court should not authorize payment of any contingent fees whatsoever without further court review and approval; and (3) that the Court should require complete public disclosure of all claims and prospective defendants. The CG Investors have not sought to intervene in the receivership case with respect to

the Litigation Procedures Motion, nor does their Opposition attempt to set forth any basis for why intervention would be appropriate.

DISCUSSION

1. The CG Investors Lack Standing to be Heard on the Litigation Procedures Motion.

The CG Investors are not parties to the receivership case, and have not been permitted to intervene in the receivership case.² As such, they lack standing to be heard on the Litigation Procedures Motion. *See, e.g., Stoppa v. Bal Harbour Village*, 385 F. App'x 932 (11th Cir. 2010) (non-parties generally lack standing to challenge orders in matters where they are not parties); *Commodity Futures Trading Comm'n v. Oasis Int'l Group, Ltd.*, 19-cv-886-VMC-SPF, 2022 WL 1136571, *5 (M.D. Fla. Apr. 18, 2022) (non-party claimants in CFTC receivership case lack standing: "The Federal Rules of Civil Procedure contemplate that only those designated as parties may file motions and pleadings."). On this basis alone, their Opposition is improper and need not be considered or addressed by the Court.

Even were the CG Investors to seek to intervene, such a request would be properly denied for at least two reasons. First, such intervention is barred by the Securities Exchange Act absent the SEC's consent. Section 21(g) of the Securities Exchange Act of 1934, codified at 15 U.S.C. § 78u(g), provides that "... [N]o action for equitable relief instituted by the Commission pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the Commission, even though such other actions may involve common questions of fact, unless such consolidation is consented to by the Commission." Section 78u(g) has been held to constitute a

² As noted above, while the Court has permitted the CG Investors to be heard with regard to matters relating to the sale of the Commodore Properties, the CG Investors have not been permitted to intervene in the receivership case generally.

complete bar on intervention in an SEC case without the SEC's consent. *Sec. & Exch. Comm'n v. Nadel*, No. 8:09-cv-87-T-26TBM, 2009 WL 3126266 (M.D. Fla. Sep. 24, 2009) (reaching the "inescapable conclusion Section 21(g) bars intervention"), citing *Sec. & Exch Comm'n. v. Cogley*, 2001 WL 1842476, *5 (S.D. Ohio 2001) and *Sec. & Exch. Comm'n v. Homa*, 2000 WL 1468726, *2 (N.D. Ill. 2000). *See also Sec. & Exch. Comm'n v. Freedom Env't Servs., Inc.*, No. 6:12-cv-1415, 2013WL 12155837, *2 (M.D. Fla. Feb. 1, 2013) (holding that intervention is barred by Section 21(g), that intervention under Rule 24 by private parties in SEC litigation "has generally not been granted," and that appropriate relief is available through a claims process). *Compare Sec. & Exch. Comm'n v. BKCoin Mgmt., LLC*, No. 23-20719, 2023 WL 3250917, *2 (S.D. Fla. May 4, 2023) (noting split of authority on whether Section 21(g) is an absolute bar to intervention in SEC enforcement actions).

In so holding, the *Nadel* court noted that permitting intervention would establish a "dangerous precedent" and "would undermine the efficient administration of this receivership and divert resources and the Receiver's efforts from activities intended to benefit the entire Receivership Estate." *Id.* The *Nadel* court further noted, as have other courts, that the court would "implement a claims procedure designed to afford all disaffected investors the process they are due under the law with regard to their claims interest in the estate's assets consistent with the principles of *Sec. & Exch. Comm'n v. Elliott*, 953 F.2d 1560 (11th Cir. 1992).

The Receiver is advised that the CG Investors have not requested the SEC's consent to intervention in connection with their Opposition to the Litigation Procedures Motion, and further that the SEC does not and would not consent to their intervention. Accordingly, it would be inappropriate to confer standing on the CG Investors to litigate their objection to the Litigation Procedures Motion when they are not parties and have not been permitted to intervene.

Second, even independent of Section 21(g), the CG Investors would not be permitted to intervene because their interests are already adequately represented in the receivership case. Under Fed. R. Civ. P. 24(a)(2), a motion to intervene is subject to denial if “existing parties adequately represent” the interest claimed by the proposed intervenor. Here, the SEC and the Receiver are both already responsible for protecting the interests of all investors in the Receivership Companies, and accordingly intervention is unwarranted. This issue was addressed in *Sec. & Exch. Comm’n v. Stanford Int’l Bank, Ltd.*, 3:09-CV-0298-N, 2011 WL 13160367 (N.D. Tex. Nov. 14, 2011), where certain investors also sought to intervene to object to issues including the receiver’s employment of counsel on a contingent fee basis. *Id.* at *1. In *Stanford*, the Court expressly noted that “the SEC’s presence as Plaintiff in this action creates a presumption of adequate representation.” *Id.* at *2, citing *Baker v. Wade*, 743 F.2d 236, 241 (5th Cir. 1984) and *Johnson v. City of Dallas*, 155 F.R.D. 581, 586 (N.D. Tex. 1994). *See also Sec. & Exch. Comm’n v. A Chicago Convention Center, LLC*, No. 13 C 982, 2013 WL 12498528, *2 (N.D. Ill. Sep. 11, 2013) (SEC, which is charged by law with protecting the interests of investors, is presumed to adequately represent their interests unless there is a showing of gross negligence or bad faith); *Sec. & Exch. Comm’n v. BIC Real Estate Dev. Corp.*, No. 1:16-cv-344-LJO-JLT, 2017 WL 85789, *3-4 (E.D. Cal. Jan. 10, 2017) (where investors and SEC share goal such as maximizing recovery for investors, “a mere difference in *how* that goal may be attained is not a ‘compelling showing’ that rebuts the presumption that the SEC (and, by extension, a court-appointed receiver) adequately represents the investor’s interests”), citing *United States v. City of Los Angeles, Cal.*, 288 F.3d 391, 402-03 (9th Cir. 2002); *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 838 (9th Cir. 1996) (emphasis in original); *see also Chen v. Walsh*, No. 18-23894-CV-MIDDLEBROOKS, 2018 WL 11348600, *2-3 (S.D. Fla. Dec. 21, 2018) (representation is adequate “if no collusion is shown between the

representative and an opposing party, if the representative does not have or represent an interest adverse to the proposed intervenor, and if the representative does not fail in fulfillment of [its] duty”), citing *Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing Dist.*, 983 F.2d 211, 215 (11th Cir. 1993).

Here, as in *Stanford*, the CG Investors have not made any specific allegations explaining how the SEC (with which the Receiver conferred and which consented to the Litigation Procedures Motion before its filing) provides inadequate representation which would overcome that presumption. 2011 WL 13160367 at *2. In addition here, as in *Stanford*, the CG Investors have not made any concrete allegations – as distinguished from rank, unfounded speculation – as to actions by the Receiver that would demonstrate a conflict of interest. *Id.* at *3-4. And likewise here, as in *Stanford*, the Court has already had the opportunity to review multiple fee applications from the Receiver and her counsel, is familiar with the services provided and the amounts charged for them, and has approved the reasonableness and necessity of those services. *Id.* Accordingly, there is no basis for overcoming the presumption that investors’ interests are not being adequately represented.

Because the CG Investors lack standing as non-parties, have not requested intervention, and are not entitled to intervention, their Opposition may properly be disregarded by the Court.³

³ Moreover, because there has been no demonstration of inadequacy of representation by the SEC, there is no justification for the CG Investors’ proposed appointment of “a committee of creditors to participate in all decisions associated with the litigation that the Receiver contemplates in her motion,” which would add extraordinary and unnecessary layers of complication, delay and expense to the administration of this case.

2. The Proposed Litigation Procedures are Appropriate and Fully Consistent with Local Practice.

Nonetheless, even if the Court were to consider the CG Investors' Opposition, it does not raise any bona fide issue that would warrant denial of the Litigation Procedures Motion.

A. Receivers employing their own law firms is customary and not a conflict of interest.

The CG Investors contend that the Receiver's hiring of KTT, the firm at which she is a partner, constitutes a "glaring" conflict of interest inconsistent with the Receiver's duty to maximize recoveries for investors and other interested parties. [DE 496 at 3]. Their argument disregards that courts within this district have expressly rejected that contention. In *CCUR Aviation Fin., LLC v. South Aviation, Inc.*, No. 21-cv-60462-BLOOM/Valle, 2021 WL 6111683 (S.D. Fla. Dec. 27, 2021), the Court had appointed a receiver to administer assets of a company, and upon the receiver and her professionals' filing of fee applications, certain creditors objected, claiming among other things that the receiver's employment of her firm as counsel created a conflict of interest. *Id.* at *3. The Court disagreed:

[T]he Appointment Order allowed the Temporary Receiver to "[c]hoose, engage, and employ attorneys, accountants and other appropriate agents or professionals, as the Temporary Receiver deems advisable or necessary in the performance of her duties and responsibilities." ... [T]he Temporary Receiver did not create a conflict of interest by engaging H&K attorneys to serve as her counsel because that practice is common in this District."

Id., citing *SEC v. Lauer*, No. 03-80612-CIV, 2012 WL 12892875, at *1 (S.D. Fla. July 17, 2012), *report and recommendation adopted*, No. 03-80612-CIV, 2012 WL 128924111 (S.D. Fla. Aug. 24, 2012); *FTC v. Marcus*, No. 17-CV-60907 (S.D. Fla. Jan. 29, 2018) (ECF Nos. [135], [211]) (in both *Lauer* and *Marcus*, the Court approved the receivers' engagement of their own firms as counsel and approved payment of their fees). Likewise, in the cases cited in the Litigation Procedures Motion, Judges Altonaga and Singhal approved contingent fee arrangements with the

receivers' law firms. *S.E.C. v. TCA Fund Mgmt Group Corp.*, No. 20-cv-21964-CMA, (ECF Nos. [155], [156]) (S.D. Fla. June 21, 2021); *S.E.C. v. MJ Capital Funding, et al*, Case No. 21-61644-AHS, (ECF Nos. [179], [193]) (S.D. Fla. Mar. 21, 2023). *See* Exhibits A-D attached.

The Litigation Procedures Motion also already sets forth the reasons for such an arrangement and why it is consistent with the goal of maximizing recoveries for the receivership estate:

The Receiver submits that the proposed modification of the terms of Receiver's counsel's employment is in the best interests of the receivership estate, victim investors, and other creditors, and will minimize the potential expense and risk to the receivership estate while incentivizing efficient recoveries of any Additional Third-Party Claims. As reflected in the Receiver's Seventh Interim Report [DE 468], as of September 30, 2025, the estate's cash on hand was \$2,350,703.81.

...

The Receiver has determined it is in the best interest of the receivership estate to engage KTT on a contingency fee basis to pursue the Additional Third-Party Claims. Prosecuting these claims on an hourly basis could potentially deplete the receivership estate's funds that might otherwise be used for distributions, and the proposed fee arrangement shifts the risk away from the receivership estate.

[DE 490 at 7, 9-10]. The same considerations were found to support the employment of counsel on a contingent fee basis in *Sec. & Exch. Comm'n v. Capital Cove*, No. SACV 15-980-JLS (JCx), 2016 WL 6139939 (C.D. Cal. Mar. 23, 2016), where litigation would likely require significant legal services, and if unsuccessful, "an hourly-based arrangement would likely drain the receivership estate." *Id.* at *3.

The CG Investors have not advanced anything other than unfounded, rank speculation as to the potential abuse of the contingent fee structure to argue that the Litigation Procedures Motion is inconsistent with the Receiver's goals of maximizing the ultimate recovery for the receivership estate. The CG Investors cite to *Jackson v. Smith*, 254 U.S. 586, 588, 41 S. Ct. 200, 201 (1921) and *Phelan v. Middle States Oil Corp.*, 220 F.2d 593, 603 (2d Cir. 1955) for the uncontroversial proposition that a receiver's duty is to maximize recoveries for the estate. Neither case addresses

a receiver's engagement of counsel on a contingent basis, much less supports the CG Investors' Opposition. And indeed, *Phelan* actually confirms that the mere possibility that a receiver holds a *potential* personal interest is not a sufficient basis for finding the receiver's actions inconsistent with their duties: "It is not every possibility, however remote, of a conflict of interest between a trustee and his beneficiary which will forbid his entering into a transaction with a third person. . . . Merely vague or remote possible selfish advantages to a trustee are not sufficient to prove such an adverse interest as to bring his conduct into question." *Phelan*, 220 F.2d at 604, citing *Dabney v. Chase Nat. Bank of City of New York*, 196 F.2d 668, 675 (2d Cir. 1952).

B. Limited authority to pay contingent fees is customary and has been approved by Courts in the district.

The CG Investors also object to the proposal in the Litigation Procedures Motion that contingent fees for recoveries where the asserted claim is \$200,000 or less may be paid without further Court order, while being reported in KTT's quarterly fee applications. [DE 496 at 4-6]. The Receiver notes that this is essentially the same procedure the Court adopted in the *MJ Capital* case cited above. The Receiver will further note that in the *MJ Capital* case, the Court has approved at least twenty applications to approve settlements and award contingent fees, and several applications reflecting contingent fees paid relating to settlements that were below the court-authorized threshold,⁴ without issue as to the reasonableness of those fees. The Receiver, of course, answers to this Court, and will comply with whatever procedures or thresholds this Court deems to be appropriate. But the argument advanced by the CG Investors that this procedure is "plainly improper," and reliance on *Gisbrecht v. Barnhart*, 535 U.S. 789, 122 S.Ct. 1817 (2002) for that proposition, are unfounded.

⁴ In *MJ Capital*, the Court used a \$100,000 claim amount threshold.

Most obviously, the *Gisbrecht* case addresses fees under a statutory provision relating to the recovery of past-due Social Security benefits. It has nothing to do with the approval of fee arrangements and procedures in an SEC receivership case. And moreover, the Receiver will note that the fee arrangement between the Receiver and counsel will be subject to review by the Court in at least two ways. First, if the Receiver's motion is granted, the Court will have already approved the contingent fee structure as proposed in the Litigation Procedures Motion, and accordingly the fee structure is at least presumptively reasonable. And second, the Receiver will continue to report all recoveries and attorneys' fees paid on claims that are below the threshold for further application and approval in KTT's quarterly fee applications. Accordingly, any valid concerns with such fees being subject to Court review have already been appropriately addressed in the procedures proposed in the Litigation Procedures Motion itself.

Once again, other than unfounded, rank speculation as to the potential abuse of the procedures, the CG Investors have made no demonstration that the proposed procedures are improper and do not represent a reasonable exercise of this Court's discretion.

C. Public disclosure of potential claims and targets is inappropriate.

The CG Investors also argue that "The Court must require the present Receiver to disclose on the record all information that relates to the disposition of the additional Third Party Claims," including, apparently, the "number of individuals that she intends to pursue, the basis for the claims, the expected recovery, [and] the expected effort ..." [DE 496 at 7]. They present no legal authority to support any such requirement, and a review of the other motions and orders entered by Courts in this District approving contingent fee arrangements – none of which publicly disclose such information – belies any such requirement. *See* Exhibits A-D. The *Phelan* case cited by the CG Investors, which addressed disclosure of information in connection with the sale of estate

property, does not support an argument here that the engagement of counsel on a contingent basis is inconsistent with the Receiver's responsibilities to maximize recoveries on behalf of the receivership estate, or that public disclosure of potential litigation claims is required to do so. Indeed, the public disclosure of such information could potentially waive attorney work product protection and compromise the pursuit of such claims.⁵

D. The KTT firm has not represented adverse parties.

Finally, the CG Investors assert that "the record does not ensure that her firm has not previously represented any of the adverse parties," yet another entirely hypothetical and speculative objection [DE 496 at 7]. The Receiver and KTT performed a thorough conflict check in connection with the Receiver's appointment and KTT's engagement as counsel, and to the extent not already clear, KTT has not previously represented adverse parties that may be the subject of the litigation contemplated by the Litigation Procedures Motion.

CONCLUSION

For the foregoing reasons, the Receiver respectfully requests that the CG Investors' Opposition be overruled, and that the Court grant the Receiver's Litigation Procedures Motion.

⁵ To the extent the Court deems it necessary, the Receiver would provide additional information for the Court to consider regarding the potential claims *in camera* or under seal to protect the privileged and confidential nature of the information.

Respectfully submitted,

KOZYAK TROPIN & THROCKMORTON, LLP
2525 Ponce de Leon Boulevard, 9th Floor
Coral Gables, Florida 33134
Tel: (305) 372-1800
Fax: (305) 372-3508
Email: dlr@kttlaw.com

By: /s/ David L. Rosendorf
David L. Rosendorf
Florida Bar No. 996823

Counsel for Bernice C. Lee, Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served this
13th day of January, 2026 via CM/ECF upon all counsel of record.

By: /s/ David L. Rosendorf
David L. Rosendorf

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 20-CIV-21964-CMA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

TCA FUND MANAGEMENT GROUP CORP.,
et al.,

Defendants.

**RECEIVER'S MOTION FOR LEAVE
TO INSTITUTE LITIGATION ON CONTINGENCY FEE BASIS**

Jonathan E. Perlman, Esq., as Receiver, moves under Section X of the Court's Order Granting Plaintiff Securities and Exchange Commission's Unopposed Expedited Motion for Appointment of Receiver [ECF No. 5] ("Order") for leave to engage counsel to initiate litigation on a contingency fee basis. In support, the Receiver states:

BACKGROUND

1. The Court's Order states that the Receiver was appointed for the purposes of "marshaling and preserving all assets of the Receivership Entities ("Receivership Assets"), and those assets of the Receivership Entities that: (a) are attributable to funds derived from investors or clients of the Receivership Entities; (b) are held in constructive trust for the Receivership Entities; (c) were fraudulently transferred by the Receivership Entities; and/or (d) may otherwise be includable as assets of the estates of the Receivership Entities." Order at 1.

2. Under paragraph 37 of the Order,

37. Subject to Receiver's obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Entities were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the

Receivership Estate, as the Receiver deems necessary and appropriate; the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order. Where appropriate, the Receiver should provide prior notice to Counsel for the Commission before commencing investigations and/or actions. *Id.* at 13, ¶37.

3. The Receiver has conducted an investigation and identified fraudulent transfer and related claims that the Court authorized, empowered and directed the Receiver to bring under paragraph 37 of the Order, subject to the obligation to expend receivership funds in a reasonable and cost effective manner (each a “Claim” and together the “Claims”). If necessary, the Receiver will provide additional information to the Court upon request regarding the substance of the Claims, under seal or in camera or in another manner that will protect the privileged and confidential nature of the information.

4. The Receiver has determined that it is not in the estate’s best interest to pay for litigation related to the Claims on an hourly basis. The Receiver, therefore, has conferred with his counsel, Genovese, Joblove & Battista, P.A. (“GJB”), which has agreed to handle the Claims on behalf of the receivership estate on a contingency-fee basis. GJB has experience in handling these types of claims with favorable results, and the contingency fee arrangement will minimize the out-of-pocket administration expense and risk to the receivership estate.

5. The Receiver proposes that as a reasonable attorney’s fee, GJB receive:

- a. 27.5% of any recovery obtained on a Claim pre-suit;
- b. 30% of any recovery obtained on a Claim post-filing but pre- answer; and
- c. 33% of any recovery obtained after an answer is filed.

6. Payment of any fees would be subject to approval of this Court. The costs of litigation will be reimbursed by the Receivership Estate, also subject to this Court’s approval.

GJB's engagement on similar terms has been approved by courts in the Southern District of Florida in similar receivership cases.

RELIEF REQUESTED AND MEMORANDUM OF LAW

7. The Receiver believes it is in the best interest of the receivership estate to engage GJB on a contingency-fee basis to pursue the Claim. Prosecuting the Claims on an hourly basis could potentially deplete the receivership estate's cash on hand and other resources that might otherwise be used for distributions. Proceeding on a contingency fee basis is consistent with the Order's directive "to expend receivership funds in a reasonable and cost-effective manner."

8. This Court has broad powers and discretion to appoint a receiver, to award compensation and reimburse expenses incurred by the receiver in the performance of his duties, and to determine the appropriate action to be taken in the administration of the receivership. *See Securities & Exchange Commission v. Elliott*, 953 F. Supp. 1560 (11th Cir. 1992).

9. In accordance with the Order, the Receiver has consulted with Counsel for the Commission concerning the relief sought in this motion. The Commission does not object to the proposed relief, and does not take a position on the underlying merits of the Claims.

10. Any compensation to the Receiver and any fees or reimbursement of costs to GJB will be subject to the approval of this Court.

11. The Receiver respectfully requests that the Court grant the motion without delay so that the Receiver can expeditiously pursue the Claims for the benefit of the receivership.

CONCLUSION

WHEREFORE, the Receiver requests the Court (i) grant this motion, (ii) grant leave to initiate litigation of the Claims in accordance with paragraph 37 of the Order, (iii) grant leave to

engage GJB on a contingency fee basis for the purpose of pursuing the Claims, and grant such other and further relief as the Court deems appropriate.

CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7.1(A)3

Pursuant to Local Rule 7.1(a) 3, undersigned counsel hereby certifies that they have conferred with counsel for the Commission, as set forth above and is authorized to represent that the Commission does not object to the relief sought in the motion.

Respectfully submitted this 18th day of June 2021.

GENOVESE JOBLOVE & BATTISTA, P.A.
Attorneys for Jonathan E. Perlman, Receiver
100 Southeast 2nd Street, Suite 4400
Miami, Florida 33131
Tel: (305) 349-2300;
Fax: (305) 349-2310

By: /s/ Michael A. Friedman, Esq.
Michael A. Friedman Esq., FBN 71828

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2021, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all parties registered to receive electronic notice and or some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: /s/ Michael A. Friedman, Esq.
Michael A. Friedman Esq., FBN 71828

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 20-CIV-21964-CMA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

TCA FUND MANAGEMENT GROUP CORP.,
et al.,

Defendants.

**ORDER GRANTING RECEIVER’S MOTION FOR LEAVE
TO INSTITUTE LITIGATION ON CONTINGENCY FEE BASIS**

THIS MATTER came before the Court upon the motion of Jonathan E. Perlman, Esq., as Receiver, for Leave to Institute Litigation on a Contingency Fee Basis [ECFD No. ___] (the “Motion”), which seeks leave of Court under Section X of the Court’s Order Granting Plaintiff Securities and Exchange Commission’s Unopposed Expedited Motion for Appointment of Receiver [ECF No. 5] (“Order”) to engage counsel to initiate litigation on a contingency fee basis. The Court having reviewed the Motion and being otherwise duly advised, it is

ORDERED AND ADJUDGED as follows:

1. The Motion is **GRANTED**.
2. The Receiver may pursue the fraudulent transfer and related Claims referenced in the Motion subject to the other applicable provisions of the Order.
3. The Receiver may engage counsel on a contingency fee basis as set forth in the Motion. Payment of compensation and reimbursement of expenses is subject to further approval of this Court.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, this _____ day
of _____ 2021.

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: All counsel of record

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-21964-CIV-ALTONAGA/Goodman

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

TCA FUND MANAGEMENT
GROUP CORP., *et al.*,

Defendants.

**ORDER GRANTING RECEIVER'S MOTION FOR LEAVE
TO INSTITUTE LITIGATION ON CONTINGENCY FEE BASIS**

THIS CAUSE came before the Court upon Receiver Jonathan E. Perlman, Esq.'s Motion for Leave to Institute Litigation on Contingency Fee Basis [ECF No. 155], filed on June 18, 2021. The Receiver seeks leave of Court under Section X of the Court's May 11, 2020 Appointment Order [ECF No. 5] to engage counsel to initiate litigation on a contingency fee basis. The Court having reviewed the Motion and being otherwise fully advised, it is

ORDERED AND ADJUDGED as follows:

1. The Motion [ECF No. 155] is **GRANTED**.
2. The Receiver may pursue the fraudulent transfer and related Claims referenced in the Motion subject to the other applicable provisions of the Order.
3. The Receiver may engage counsel on a contingency fee basis as set forth in the Motion. Payment of compensation and reimbursement of expenses are subject to further approval of the Court.

CASE NO. 20-21964-CIV-ALTONAGA/Goodman

DONE AND ORDERED in Miami, Florida, this 21st day of June, 2021.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record

EXHIBIT C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 21-61644-CIV-SINGHAL

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MJ CAPITAL FUNDING, LLC,
MJ TAXES AND MORE, INC., and
JOHANNA M. GARCIA,

Defendants.

_____ /

**RECEIVER’S MOTION TO APPROVE THIRD PARTY LITIGATION
PROCEDURES AND CONTINGENCY FEE ARRANGEMENT**

Coralí Lopez-Castro, as the Court-appointed Receiver (“Receiver”) over MJ Capital Funding, LLC (“MJ Capital”), MJ Taxes and More, Inc. (together, the “MJ Defendants”), Pavel Ruiz MJCF LLC and UDM Remodeling, LLC (collectively, the “Receivership Entities”) hereby moves for entry of an Order approving procedures for additional third-party litigation and a related contingency fee arrangement.

BACKGROUND

A. The SEC Action and MJ Capital Scheme.

1. On August 9, 2021, the Securities and Exchange Commission (“SEC”) filed a complaint [DE 1] against the MJ Defendants and Johanna M. Garcia (“Garcia”) initiating the above referenced case, and later filed an amended complaint [DE 130].

2. On August 12, 2021, the Court entered the Order appointing the Receiver over the MJ Defendants (the “Receivership Order”) [DE 17], and on October 14, 2021, the Court expanded the receivership to include Pavel Ruiz MJCF LLC and UDM Remodeling, LLC [DE 79].

3. Garcia, Pavel Ruiz, other board members, owners, account representatives, managers, team leaders and other promoters, including their affiliates and subsidiaries, perpetuated an investment scheme through the use of the Receivership Entities. They falsely represented that money would be used for, and 120% to 180% annual returns would be paid from the proceeds of, Merchant Cash Advance (“MCA”) transactions. In reality, very little money was used for MCA transactions; instead, funds were used to pay alleged “returns” to investors, “commissions” and “referral fees” to promoters, and for the benefit of insiders and promoters. Many of the investment agreements were for small amounts ranging from a few thousand to ten thousand dollars. The Receiver estimates that over 400 promoters induced thousands of investors to invest more than \$200 million dollars in the MJ Capital scheme.

B. The Recovered Assets and Claims Review Process.

4. Shortly after the entry of the Receivership Order, the Receiver conducted several meetings with, and issued subpoenas to, individuals and companies who received significant funds from the Receivership Entities. During this period, the Receiver concentrated on obtaining the voluntary surrender of funds and other assets to maximize the recovery to the receivership estate and victim investors without the costs and risks associated with litigation. Through voluntary surrender and agreed-upon turnover orders, the Receiver has recovered more than \$7 million dollars from more than 20 individuals and companies.

5. In addition, the Receiver conducted extensive investigations with respect to potential claims against, and investor loss related to, Wells Fargo Bank, N.A. (“Wells Fargo”). After attending mediation and engaging in extensive negotiations, on or about December 23, 2022, the Receiver finalized a proposed settlement with Wells Fargo and various class action plaintiffs (the “Wells Fargo Settlement”) under which Wells Fargo will fund \$26.625 million (the “Wells

Fargo Fund”). The Receiver filed a motion to approve the Wells Fargo Settlement and related relief on December 30, 2022 [DE 172]. If the Wells Fargo Settlement is approved by the Court in this case and the class action against Wells Fargo (Case No. 21-61749-AHS) and becomes effective, the Receiver estimates the Wells Fargo Fund will provide over \$19.5 million in distributions to victim investors. The Receiver was able to secure substantial benefit to the victims by working with class counsel, who were handling the litigation on a contingency fee.

6. Concurrently with recovering assets on a cost-effective basis to provide distributions, the Receiver has focused on reviewing filed proofs of claim to determine the amount of allowed claims entitled to receive distributions. By February 21, 2022, the Receiver formulated a claims submission and review process, and filed a *Motion to (I) Establish Bar Date for Claims; (II) Approve Form and Manner of Notice; (III) Approve Proof of Claim Form; and (IV) Approve Claim Submission and Administration Procedures* [DE 113]. By March 21, 2022, the Court approved the Receiver’s proposed process, and set the claims bar date for July 19, 2022.

7. Claimants filed 12,957 timely proofs of claim and tens of thousands of pages of supporting documents by the claims bar date. Since the claims bar date, the Receiver and her professionals have been reviewing the timely filed claims and documents and reconciling the claimed amounts with the limited books and records of the Receivership Entities. Given the volume of claims, this process will take a considerable amount of time. Before the Receiver’s appointment, the Receivership Entities did not use any formal bookkeeping or accounting system, and their books and records do not include any comprehensive investor list or database. The claims review and reconciliation process will safeguard victim investors against duplicative and improper claims and prevent those who profited from the MJ Capital scheme from recovering from the receivership estate and Wells Fargo Fund.

C. Additional Third-Party Litigation and Proposed Settlement Procedures.

8. The Receivership Order authorizes and directs the Receiver to bring legal actions as the Receiver deems necessary or appropriate in discharging her duties. *See* Receivership Order, ¶ 7.H. Leave of court, however, is required to commence certain litigation. *See id.* ¶ 26.

9. Paragraph 36 of Receivership Order states:

Subject to the requirement, in Section VIII above, that leave of this Court is required to resume or commence certain litigation, the Receiver is authorized, empowered and directed to investigate, prosecute, defend, intervene in or otherwise participate in, compromise, and/or adjust actions in any state, federal or foreign court or proceeding of any kind as may in his discretion , and in consultation with Commission counsel, be advisable or proper to recover and/or conserve Receivership Property.

See id. ¶ 36.

10. Paragraph 37 of the Receivership Order further states:

Subject to his obligation to expend receivership funds in a reasonable and cost-effective manner, the Receiver is authorized, empowered and directed to investigate the manner in which the financial and business affairs of the Receivership Defendants were conducted and (after obtaining leave of this Court) to institute such actions and legal proceedings, for the benefit and on behalf of the Receivership Estate, as the Receiver deems necessary and appropriate; the Receiver may seek, among other legal and equitable relief, the imposition of constructive trusts, disgorgement of profits, asset turnover, avoidance of fraudulent transfers, rescission and restitution, collection of debts, and such other relief from this Court as may be necessary to enforce this Order. Where appropriate, the Receiver should provide prior notice to Counsel for the Commission before commencing investigations and /or actions.

See id. ¶ 37.

11. The Receiver has investigated, and will continue to investigate, claims that can be brought against promoters, investors, and other individuals and companies who received funds from the Receivership Entities that may be recoverable as fraudulent transfers, or based on other claims and remedies, such as unjust enrichment and/or constructive trust (each an “Additional Third-Party Claim” and collectively the “Additional Third-Party Claims”). Potential defendants

include, but are not limited to, individuals and companies who failed to voluntarily surrender assets to the Receiver.

12. There are a substantial number of individuals and related companies who received commissions, fees, or other payments for referring investors to the MJ Defendants, and a number of investors who received more money than they invested. These commissions, fees, or other referral payments, as well as money received by investors in excess of their initial investments are avoidable and recoverable for the benefit of the receivership estate and, ultimately, victims.

13. Pursuant to Paragraph 36 of the Receivership Order, the Receiver is presently authorized and empowered to prosecute and compromise actions or proceedings. Additionally, she may settle claims according to her best business judgment without further leave of Court or additional notice. Consistent with the Receivership Order, and in order to prosecute, and potentially compromise, the Additional Third-Party Claims in an efficient cost effective manner, the Receiver proposes the following procedures:

- a. The Receiver, in her discretion, may: (i) issue demand letters to individuals and companies against whom the Receiver has Additional Third-Party Claims in which the Receiver will offer to settle such claims for the repayment of liability, and not seek prejudgment interest; (ii) initiate litigation against defendants of Additional Third-Party Claims, with or without having issued demand letters to the defendants, which lawsuits will set forth the full amount of liability against each defendant as well as other available relief including, but not limited to, attorneys' fees and costs, prejudgment interest and postjudgment interest; and (iii) settle any Additional Third-Party Claim prior to or after issuing a demand letter or filing a lawsuit, and take into account any relevant factor, including collectability, which will be subject

to proof and documentation satisfactory to the Receiver.

- b. In the event the Receiver settles any Additional Third-Party Claim for which the Receiver's asserted liability is \$100,000 or less, the Receiver is authorized to settle such claim and enter into, and perform under, a settlement agreement, and no further court approval will be required.
- c. In the event the Receiver settles any Additional Third-Party Claim for which the Receiver's asserted liability is greater than \$100,000, the Receiver is permitted to receive settlement funds upon the settling party's execution of the settlement agreement and hold such funds pending Court approval, and after seek court approval. The Receiver is permitted to file motions to approve settlement agreements under seal and on an omnibus basis, and the Receiver will provide a copy to the SEC.

Further, to minimize expenses associated with Additional Third-Party Claim lawsuits filed in this District, the Receiver requests that they all be managed and adjudicated by this Court, who is familiar with the underlying facts. The Receiver believes this will maximize efficiency, prevent unnecessary duplication of judicial labor, and avoid inconsistent rulings which could potentially lead to disparate treatment of similarly situated prospective defendants. Accordingly, the Receiver believes it is appropriate for all Additional Third-Party Claim lawsuits to be transferred to this Court as similar actions, and the Receiver will file a notice of similar action with each complaint.

14. The Receiver's objective in pursuing Additional Third-Party Claims is to maximize the net recovery to the receivership estate. The Receiver will use her business judgment in pursuing such claims, and remains focused on the objective of maximizing recovery. This may include seeking exceptions to the procedures described above if warranted. The Receiver may request

tolling agreements for statutes of limitation and statutes of repose. The Receiver, after consultation with the SEC, may also seek to engage counsel on a contingency basis to pursue the Additional Third-Party Claims which is discussed next.

D. The Proposed Contingency Fee.

15. Pursuant to court order, the Receiver hired the law firm of Kozyak Tropin & Throckmorton, LLP (“KTT”) to represent her in the performance of her duties [DE 35]. The Receiver and her counsel agreed to substantial discounts from their usual hourly rates in connection with this engagement. The Receiver and her counsel are billing at hourly rates of \$150-\$350, compared to usual hourly rates of \$250-\$800.

16. The Receiver, after consultation with the SEC, has determined it is in the estate’s best interest to have counsel pursue the Additional Third-Party Claims on a contingency fee basis. The Receiver has conferred with KTT, who has agreed to handle the Additional Third-Party Claims on behalf of the receivership estate on a contingency fee basis. KTT has experience in handling these types of claims with favorable results, and the contingency fee arrangement will minimize administration expense and risk to the receivership estate. Based on the Receiver’s investigations to date, a number of promoters have depleted their ill-gotten gains and are not high net worth individuals.

17. The Receiver proposes that as a reasonable attorney’s fee, KTT receive, as of February 1, 2023 forward (the “Contingency Fee Arrangement”):

- a. 27.5% of any gross recovery realized, generated, received or obtained on any Additional Third-Party Claim pre-suit;
- b. 30% of any gross recovery realized, generated, received or obtained on any Additional Third-Party Claim after filing suit but prior to the filing of an answer;

and

- c. 33% of any gross recovery realized, generated, received or on an Additional Third-Party Claim after an answer is filed.

18. In the event the Receiver settles any Additional Third-Party Claim for which the Receiver's asserted liability is \$100,000 or less, KTT is authorized to receive its attorney's fees under the Contingency Fee Arrangement without further court approval, and KTT will report all recoveries and attorney's fees paid relating to such claims in its quarterly fee applications.

19. Requests for payment of a contingency fee for any Additional Third-Party Claim for which the Receiver's asserted liability is greater than \$100,000 will be included in the respective motion to approve settlement of such claims or sought by other appropriate motion or application.

20. KTT will maintain a separate category in its billing records for all time expended in connection with the prosecution of the Additional Third-Party Claims.

21. The out-of-pocket expenses associated with all Additional Third-Party Claims, including but not limited to the cost of any expert witness(es) or other consulting fees and costs, will be reimbursed by the receivership estate following Court approval of the Receiver's application for such expenses.

22. The Receiver submits that the proposed modification of the terms of Receiver's counsel's employment is in the best interests of the receivership estate, victim investors and other creditors, and will minimize the potential expense and risk to the receivership estate while incentivizing efficient recoveries of any Additional Third-Party Claims.

LEGAL ARGUMENT

A. The Court Should Approve the Proposed Procedures for the Additional Third-Party Claims.

23. “The district court has broad powers and wide discretion to determine relief in an equity receivership.” *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (citations omitted). “This discretion derives from the inherent powers of an equity court to fashion relief.” *Id.* “[A] district court’s power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad.” *S.E.C. v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986). “A district judge supervising an equity receivership faces a myriad of complicated problems in dealing with the various parties and issues involved in administering the receivership.” *Id.* at 1038. “Reasonable administrative procedures, crafted to deal with the complex circumstances of each case, will be upheld.” *Id.* “A district judge simply cannot effectively and successfully supervise a receivership and protect the interests of its beneficiaries absent broad discretionary power.” *Broadbent v. Advantage Software, Inc.*, 415 F. App’x 73, 78 (10th Cir. 2011). “[A]ny action by a trial court in supervising an equity receivership is committed to his sound discretion and will not be disturbed unless there is a clear showing of abuse.” *Bendall v. Lancer Mgmt. Grp., LLC*, 523 F. App’x 554, 557 (11th Cir. 2013) (quoting *S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 373 (5th Cir.1982)).

24. The Court’s wide discretion includes considering and approving procedures to recover improper transfers and other claims for the benefit of the receivership estate. Several district courts in Florida have approved a receiver’s proposed procedures for third party claims. *See, e.g., S.E.C. v. Kinetic Investment Group, LLC, et al*, Case No. 20-cv-00394-MSS-SPF, DE 181 (M.D. Fla. Feb. 24, 2021) (granting receiver’s motion to approve procedure to issue pre-suit demand letters and prosecute and compromise claims); *S.E.C. v. TCA Fund Management Group Corp., et al*, Case No. 20-cv-21964-CMA, DE 226 (M.D. Fla. April 8, 2022) (authorizing receiver to pursue collection of certain defendants and approving proposed process for demand letters and

prosecution and settlement of claims); *C.F.T.C. v. Oasis International Group, Limited, et al.*, Case No. 19-cv-00886-VMC-SPF, DE 247 (M.D. Fla. 2020) (approving receiver’s pre-suit demand and settlement procedure).

25. The Receiver has obtained the voluntary surrender of more than \$7 million dollars from individuals and companies who received significant funds from the Receivership Entities without litigation or compromise. In addition, the Receiver supported and participated in the Wells Fargo Settlement which, if approved by the Court and otherwise becomes effective, the Receiver estimates will provide an additional distribution of \$19.5 million dollars to victim investors. At this point in the receivership, the Receiver believes that she needs to proceed with issuing demand letters and/or filing lawsuits against anticipated defendants of the Additional Third-Party Claims.

26. The Receiver’s paramount priority is to identify assets that can be efficiently recovered for the benefit of the receivership estate. She believes the proposed procedures described in the Motion provide an efficient and cost-effective method to further this goal with respect to the Additional Third-Party Claims. The Receiver submits that equity would not be served if promoters who received commissions and other payments for bringing in investors, investors who received profits on top of their investments, and others who received funds without providing adequate value are permitted to retain recoverable transfers.

B. The Court Should Approve the Proposed Contingency Fee Arrangement.

27. As discussed above, “the district court has broad powers and wide discretion to determine relief in an equity receivership[,]” including with respect to approving fee structures and awarding compensation and reimbursement of expenses incurred by the receiver in the performance of her duties. *Elliott*, 953 F.2d at 1566. Further, Chief Judge Altonaga has approved the same tiered contingency fee arrangement for receiver’s counsel in *S.E.C. v. TCA Fund*

Management Group Corp. See Case No. 20-cv-21964-CMA, DE 156 (M.D. Fla. June 21, 2021)

28. The Receiver has determined, in consultation with the SEC, it is in the best interest of the receivership estate to engage KTT on a contingency fee basis to pursue the Additional Third-Party Claims. Prosecuting these claims on an hourly basis could potentially deplete the receivership estate's funds that might otherwise be used for distributions, and the proposed fee arrangement shifts the risk away from the receivership estate. The SEC does not object to the Contingency Fee Arrangement set forth above.

WHEREFORE, the Receiver respectfully requests that the Court enter an order granting the Motion substantially in the same form as the proposed order attached hereto as **Exhibit A**: (a) granting the Motion; (b) authorizing leave of Court for the Receiver to pursue the Additional Third-Party Claims; (c) approving the proposed procedures for the Additional Third-Party Claims described herein; (d) approving the Contingency Fee Arrangement, payment procedures and related relief for litigation expenses described herein; and (e) granting the Receiver such other and further relief as the Court deems just and proper.

Respectfully submitted,

KOZYAK TROPIN & THROCKMORTON, LLP
2525 Ponce de Leon Boulevard, 9th Floor
Coral Gables, Florida 33134
Tel: (305) 372-1800/Fax: (305) 372-3508
Email: bwidlanski@kttlaw.com
Email: dlr@kttlaw.com

By: /s/ Benjamin J. Widlanski
Benjamin J. Widlanski, Esq.
Florida Bar No. 1010644
David L. Rosendorf, Esq.
Florida Bar No. 99682

Counsel for Corali Lopez-Castro, Receiver

CERTIFICATION OF CONFERENCE WITH COUNSEL

The undersigned counsel for the Receiver certifies that he has conferred with counsel for the SEC, and certifies that the SEC has no objection to the relief sought in the Motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the clerk of the Court using CM/ECF, and the foregoing document has been served this 2nd day of February, 2023: (i) via CM/ECF upon all counsel of record; (ii) via electronic mail on Johanna M. Garcia (johannaredondo@yahoo.com); and (iii) via first class U.S. mail on Johanna M. Garcia, 7814 S.W. 8 Court, North Lauderdale, Florida 33068.

By: /s/ Benjamin J. Widlanski
Benjamin J. Widlanski

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 21-61644-CIV-SINGHAL

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MJ CAPITAL FUNDING, LLC,
MJ TAXES AND MORE, INC., and
JOHANNA M. GARCIA,

Defendants.

ORDER

THIS CAUSE is before the Court on the Receiver's Motion to Approve Third-Party Litigation Procedures and Contingency Fee Arrangement (DE [____]) filed on February 2, 2023. Having considered the motion, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Receiver's Motion to Approve Third-Party Litigation Procedures and Contingency Fee Arrangement (DE [____]) is **GRANTED**.
2. The Receiver may pursue the Additional Third-Party Claims as defined and referenced in the motion, and the following procedures are approved:
 - a. The Receiver, in her discretion, may: (i) issue demand letters to individuals and companies against whom the Receiver has Additional Third-Party Claims in which the Receiver will offer to settle such claims for the repayment of liability, and not seek prejudgment interest; (ii)

initiate litigation against defendants of Additional Third-Party Claims, with or without having issued demand letters to the defendants, which lawsuits will set forth the full amount of liability against each defendant as well as other available relief including, but not limited to, attorney's fees, prejudgment interest and postjudgment interest; and (iii) settle any Additional Third-Party Claim prior to or after issuing a demand letter or filing a lawsuit, and take into account any relevant factor, including collectability, which will be subject to proof and documentation satisfactory to the Receiver.

- b. In the event the Receiver settles any Additional Third-Party Claim for which the Receiver's asserted liability is \$100,000 or less, the Receiver is authorized to settle such claim and enter into, and perform under, a settlement agreement, and no further court approval will be required.
- c. In the event the Receiver settles any Additional Third-Party Claim for which the Receiver's asserted liability is greater than \$100,000, the Receiver is permitted to receive settlement funds upon the settling party's execution of the settlement agreement and hold such funds pending Court approval, and after seek court approval. The Receiver is authorized to file motions to approve settlement agreements under seal and on an omnibus basis, and the Receiver will provide a copy to the SEC.
- d. The Receiver will file a Notice of Similar Action for each Additional Third-Party Claim lawsuit filed in this District for the judges involved to

consider.

3. The motions to approve settlement agreements filed under seal by the Receiver will remain sealed during the pendency of the receivership. Upon the conclusion of the receivership, the Clerk of the Court shall unseal the motions.
4. The Receiver may engage counsel under the Contingency Fee Arrangement described in the Motion. In the event the Receiver settles any Additional Third-Party Claim for which the Receiver's asserted liability is \$100,000 or less, Kozyak Tropin & Throckmorton, LLP ("KTT") is authorized to receive its attorney's fees under the Contingency Fee Arrangement without further court approval, and KTT will report all recoveries and attorney's fees paid relating to such claims in its quarterly fee applications. Requests for payment of contingency fees for Additional Third-Party Claim for which the Receiver's asserted liability is greater than \$100,000 will be included in motions to approve settlement of such claims, or sought by other appropriate motion or application. Expenses associated with Additional Third-Party Claims will be reimbursed by the receivership estate following Court approval of the Receiver's application for such expenses.

DONE and ORDERED in Chambers at Fort Lauderdale, Florida, this ____ day of _____, 2023.

RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

Copies furnished to counsel of record via CM/ECF

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 21-61644-CIV-SINGHAL

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MJ CAPITAL FUNDING, LLC,
MJ TAXES AND MORE, INC., and
JOHANNA M. GARCIA,

Defendants.

ORDER

THIS CAUSE is before the Court on Receiver's Motion to Approve Third-Party Litigation Procedures and Contingency Fee Arrangement (DE 179) filed on February 2, 2023. Having considered the motion, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that the Receiver's Motion to Approve Third-Party Litigation Procedures and Contingency Fee Arrangement (DE [179]) is **GRANTED** as follows:

1. The Receiver may pursue the Additional Third-Party Claims as defined and referenced in the motion, and the following procedures are approved:
 - a. The Receiver, in her discretion, may: (i) issue demand letters to individuals and companies against whom the Receiver has Additional Third-Party Claims in which the Receiver will offer to settle such claims for the repayment of liability, and not seek prejudgment interest; (ii) initiate litigation against defendants of

- Additional Third-Party Claims, with or without having issued demand letters to the defendants, which lawsuits will set forth the full amount of liability against each defendant as well as other available relief including, but not limited to, attorney's fees, prejudgment interest and post-judgment interest; and (iii) settle any Additional Third-Party Claim prior to or after issuing a demand letter or filing a lawsuit, and take into account any relevant factor, including collectability, which will be subject to proof and documentation satisfactory to the Receiver.
- b. In the event the Receiver settles any Additional Third-Party Claim for which the Receiver's asserted liability is \$100,000 or less, the Receiver is authorized to settle such claim and enter into, and perform under, a settlement agreement, and no further court approval will be required.
 - c. In the event the Receiver settles any Additional Third-Party Claim for which the Receiver's asserted liability is greater than \$100,000, the Receiver is permitted to receive settlement funds upon the settling party's execution of the settlement agreement and hold such funds pending Court approval, and after seek court approval. The Receiver is authorized to file motions to approve settlement agreements under seal and on an omnibus basis, and the Receiver will provide a copy to the SEC.
 - d. The Receiver will file a Notice of Similar Action for each Additional Third-Party Claim lawsuit filed in this District for the judges involved to consider.
2. The motions to approve settlement agreements filed under seal by the Receiver will remain sealed during the pendency of the receivership. Upon the conclusion of the receivership, the Clerk of the Court shall unseal the motions.

3. The Receiver may engage counsel under the Contingency Fee Arrangement described in the Motion. In the event the Receiver settles any Additional Third-Party Claim for which the Receiver's asserted liability is \$100,000 or less, Kozyak Tropin & Throckmorton, LLP ("KTT") is authorized to receive its attorney's fees under the Contingency Fee Arrangement without further court approval, and KTT will report all recoveries and attorney's fees paid relating to such claims in its quarterly fee applications. Requests for payment of contingency fees for Additional Third-Party Claim for which the Receiver's asserted liability is greater than \$100,000 will be included in motions to approve settlement of such claims, or sought by other appropriate motion or application. Expenses associated with Additional Third-Party Claims will be reimbursed by the receivership estate following Court approval of the Receiver's application for such expenses.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 20th day of March 2023.



RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

Copies furnished to counsel of record via CM/ECF