

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

CASE NO. 23-22791-CV-WILLIAMS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

BRENT SEAMAN, *et al.*,

Defendants.

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**RECEIVER'S UNOPPOSED MOTION TO APPROVE  
(A) CLAIMS PROCESS AND (B) PLAN OF DISTRIBUTION**

Melanie E. Damian, as Court-Appointed Receiver (the "Receiver") of Defendants Accanito Equity, LLC, Accanito Equity II, LLC, Accanito Equity III, LLC, Accanito Equity IV, LLC, Accanito Capital Group, LLC, Surge LLC, Accanito Holdings, LLC, and Relief Defendant, Surge Capital Ventures, LLC (collectively, the "Receivership Defendants"), through undersigned counsel, hereby files this Unopposed Motion to Approve (A) Claims Process and (B) Plan of Distribution for the benefit of the investors and creditors of the Receivership Defendants (the "Motion"), and states as follows:

**INTRODUCTION**

Since her appointment on October 27, 2023, the Receiver has collected \$3,708,288.10 in funds that were in the Receivership Defendants' bank and trading accounts, in recoveries from third parties and investors who received net gains, and in disgorgement payments from relief defendants. After payment of administrative expenses, the Estate will hold approximately \$3,400,000 in cash.

In light of the present amount of funds in the Estate and the dire financial condition of many investors, the Receiver believes that commencement of the proposed claims administration process (the “Claims Process”) and plan of distribution including the initial and final distributions (“Distribution Plan”) is appropriate at this time. The Receiver proposes to conduct one Claims Process for all investors and creditors of the Estate and to make an initial distribution (the “Initial Distribution”) and a final distribution (the “Final Distribution”) to investors and other creditors with allowed claims based on the determinations made in the single Claims Process.<sup>1</sup> The Receiver proposes to distribute approximately eighty-five percent (85%) of the Estate’s available cash (\$2,890,000) in that Initial Distribution, providing investors approximately a ten percent (10%) recovery of their net losses. After the asset recovery and liquidation phases of the receivership have been concluded, the Receiver is hopeful she will be able to make an additional Final Distribution of the remaining cash in the Estate after payment of all administrative expenses that are incurred through the conclusion of the Receivership.

## **BACKGROUND**

### **I. ENTRY OF PRELIMINARY INJUNCTION AND APPOINTMENT OF RECEIVER**

On June 27, 2023, the Securities and Exchange Commission (“SEC”) filed the Complaint for Injunctive and Other Relief and Demand for Jury Trial against individual Defendant Brent Seaman (“Seaman”) and the Receivership Defendants commencing the enforcement action (the “Enforcement Action”) for violations of securities laws. *See* ECF No.1. Then the SEC filed its Unopposed Motion for Asset Freeze [ECF No. 4] and Agreed Motion and Memorandum of Law

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<sup>1</sup> The Receiver will review creditor claims on a case by case basis to determine whether she will propose any claim or set of claims be given priority and make such proposal in her motion to approve the initial distribution. At this time, the Receiver is not aware of any claimants that should be given priority over others.

for Appointment of Receiver [ECF No. 5]. The Court granted both Motions on October 27, 2023. *See* ECF No. 17 and 18, respectively. In the October 27, 2023 Appointment Order, the Receiver was appointed over the Receivership Defendants and charged with carrying out the mandates of that Order. *See* ECF No. 18.

Also on October 27, 2023, the SEC filed Plaintiff's Unopposed Motion for Entry of Judgments Against Defendants Brent Seaman; Accanito Equity LLC; Accanito Equity II, LLC; Accanito Equity III, LLC; Accanito Equity IV, LLC; Accanito Capital Group, LLC; Surge, LLC; and Accanito Holdings [ECF No. 6], attaching the following consents for entry of judgment:

- (1) Consent of Defendant Brent Seaman [ECF No. 6-1]
- (2) Consent of Defendant Accanito Equity, LLC [ECF No. 6-2]
- (3) Consent of Defendant Accanito Equity II, LLC [ECF No. 6-3]
- (4) Consent of Defendant Accanito Equity III, LLC [ECF No. 6-4]
- (5) Consent of Defendant Accanito Equity IV, LLC [ECF No. 6-5]
- (6) Consent of Defendant Accanito Capital Group, LLC [ECF No. 6-6]
- (7) Consent of Defendant Surge, LLC [ECF No. 6-7]
- (8) Consent of Defendant Accanito Holdings, LLC [ECF No. 6-8]

On January 9, 2024, during the prior reporting period, this Court entered the following final judgments:

- (1) Final Judgment as to Defendant Accanito Capital Group, LLC [ECF No. 43]
- (2) Final Judgment as to Defendant Accanito Equity II, LLC [ECF No. 44]
- (3) Final Judgment as to Defendant Accanito Equity III, LLC [ECF No. 45]
- (4) Final Judgment as to Defendant Accanito Equity IV, LLC [ECF No. 46]
- (5) Final Judgment as to Defendant Accanito Equity, LLC [ECF No. 47]

- (6) Final Judgment as to Defendant Accanito Holdings, LLC [ECF No. 48]
- (7) Final Judgment as to Defendant Brent Seaman [ECF No. 49]
- (8) Final Judgment as to Defendant Surge, LLC [ECF No. 50]

In addition, during the prior reporting period, the Receiver and the SEC negotiated a consent and final judgment including a disgorgement amount of \$1,717,717 plus prejudgment interest for Relief Defendant Surge Capital Ventures, LLC (“SCV”). The SEC also reached an agreement with Brent Seaman as to the final monetary judgment to be entered against him. On March 4, 2024, the SEC filed its Motion to Stay Case for 90 days while the SEC Commissioners consider the proposed judgments as to SCV and Defendant Seaman. *See* ECF Nos. 58. The Court granted the stay of the enforcement aspects of this case [ECF No. 59], pending final approval of the proposed judgments by the SEC Commissioners. That stay of the enforcement action remains in place.

**B. Appointment and Duties of Receiver**

On October 27, 2023, the Court entered the Appointment Order naming Melanie E. Damian as the Receiver over the Receivership Defendants’ assets. *See* ECF No. 18. Pursuant to the Appointment Order, the Receiver was granted all powers, rights, and control over the Receivership Defendants previously held by their former management. *See id.* at § 2. In particular, the Receiver was authorized:

- To use reasonable efforts to determine the nature, location, and value of all property interests of the Receivership Defendants.
- To take custody, control, and possession from third parties of all Receivership Property and records relevant thereto from the Receivership Defendants.
- To manage, control, operate, and maintain the Receivership Estate and hold in her possession, custody, and control all Receivership Property, pending further Order of this Court.

- To use Receivership Property for the benefit of the Receivership Estate, making payments and disbursements, and incurring expenses as may be necessary or advisable in the ordinary course of business and discharging her duties as Receiver.
- To engage and employ persons in her discretion to assist her in carrying out her duties and responsibilities hereunder.

*See id.*

## **II. THE RECEIVER'S EFFORTS TO MARSHAL AND PRESERVE ASSETS**

Pursuant to the Appointment Order, the Receiver assumed control of and preserved all claims, assets or interests of the Receivership Defendants. *See id.* In particular, the Receiver took possession of \$1,966,237.86 in funds that were frozen in Receivership Defendants' trading and bank accounts and deposited the funds in the fiduciary account she opened for the Receivership Estate. Further, the Receiver collected \$1,300,308 in disgorgement payments from relief defendants. The Receiver also recovered funds traceable to investor deposits from various third parties and investors who received net gains from the Receivership Defendants. Those recoveries total \$381,204.24 as of the filing of this Motion, with another \$72,625 to be collected within the next few months, for a total of \$453,829.24.

Since her appointment, the Receiver has used a portion of the funds recovered from Receivership Defendants' accounts to pay the Court-approved professionals' fees and costs and other expenses necessary to administer and preserve the assets of the Estate. After payment of administrative expenses of the Estate incurred to date, the Receiver's fiduciary account will have an available cash balance of approximately \$3,400,000. The Receiver proposes to distribute \$2,890,000, approximately 85% of that cash balance in accordance with this proposed Claims Process.

### **III. KNOWN INVESTORS AND CREDITORS**

Based on the Receiver's review of Receivership Defendants' bank records and a bank reconstruction obtained from the SEC, the Receiver, with the assistance of her forensic accountant, calculates that individuals and entities invested a total of \$33,619,347.67 in the Receivership Defendants. The Receiver has identified 63 investors who suffered a net loss totaling \$27,293,135.21 as a result of their investments in the Receivership Defendants. The Receiver will verify these net loss calculations during the Claims Process as described herein.

The Receiver and her counsel have confirmed each investor's identity and contact information. The Receiver has also requested documentation from all investors and received supporting documents evidencing the investment amounts from a majority of investors. She has reviewed those documents and the bank reconstruction prepared by her forensic accountant and is aware of the net loss amount for each investor. The Receiver has also compiled a list of potential creditors that claim to be lenders to the Receivership Defendants that will receive notice of this Claims Process and an opportunity to file a claim against the Estate.

### **IV. PROPOSED NOTICE AND CLAIM FORMS AND NOTICING PROCESS**

The Receiver proposes to send notice of the proposed Claims Process to potential claimants by email to the extent that she has their email addresses. *See* proposed Legal Notice of Claims Administration Process and Plan of Distribution ("Notice to Investors and Creditors"), attached hereto as **Exhibit A**. Moreover, the Receiver proposes the use of a pre-filled Proof of Claim and Release form, in substantially the form attached hereto, to be sent to claimants as a Google Form that will allow claimants to confirm, revise, and/or attest to their losses. *See* Proof of Claim and Release Form, attached hereto as **Exhibit B**. The Receiver will insert a link to the Proof of Claim and Release Form in the email notice and allow claimants to electronically submit the completed Proof of Claim and Release Form and supporting documentation through the use of Google Forms.

Therefore, the Claims Process will be streamlined and efficient, carried out by the Receiver and her counsel, without the need for a professional noticing, claims processing, and/or distribution agent.

**PROPOSED CLAIMS ADMINISTRATION PROCESS  
AND PLAN OF DISTRIBUTION**

In light of the remaining work to be done to recover additional assets of the Estate and to prosecute claims against third parties, the Receiver expects that she and her professionals will incur additional fees and costs in connection with fulfilling her duties under the Appointment Order. Therefore, the Receiver proposes sending the Initial Distribution to investors in the amount of \$2,890,000, with the remaining sum to be held by the Receiver as a reserve to cover the fees and costs that the Receiver and her professionals incur through the conclusion of the Receivership. The fund from which the proposed Initial Distribution will be made, net of Court-approved fees and costs and other administrative expenses, shall be referred to as the “Accanito Fraud Fund.”

The Receiver is hopeful that, following the proposed Initial Distribution, additional funds will be recovered as a result of the Receiver’s claims against third parties. In such event, the Receiver will file a supplemental motion for approval of the Final Distribution following the completion of the third-party recovery efforts.

**A. Proposed Definition of “Allowed Claim”  
and Basis for Distribution**

The Receiver has determined that the most equitable approach to distributing the Accanito Fraud Fund at this stage in the Receivership is through a *percentage net recovery / net-loss pro-rata* method of distribution. In particular, the Receiver proposes to make the Initial Distribution to investors who the Receiver determines (subject to final court approval) have *allowed claims* (defined below) equal to those investors’ net principal losses associated with their investments in

the Receivership Defendants. The Receiver will ensure that all approved claimants receive the same percentage recovery of their respective net losses. Based on the anticipated investor Allowed Claim amounts and the estimated cash on hand in the Estate after payment of administrative expenses incurred to date, the Receiver proposes to distribute \$2,890,000 as an Initial Distribution. Upon conclusion of the Claims Process, the Receiver will file with the Court a motion to approve the Allowed Claim amounts and the Initial Distribution, stating the exact amount of each claimant's Allowed Claim and the amount proposed to be distributed to each such claimant.<sup>2</sup>

Receivership courts have approved such *pro rata* plans, which the Receiver believes provide for the most equitable distribution to the greatest number of investors and creditors. *See infra* Section V.

#### **B. Limitation on Claims**

While the Receiver will provide notice of the proposed Claims Process and Distribution Plan to all investors and creditors of the Receivership Defendants and encourage them to submit a claim against the Receivership Estate, allowed claims will be limited as provided herein.

The claim of an investor or a creditor will be allowed (an "Allowed Claim"), such that the investor will be *entitled* to receive a distribution from the Accanito Fraud Fund based on that investor's loss of principal investment or the amount still owed to that creditor, provided that the investor or creditor sufficiently demonstrates to the satisfaction of the Receiver through documentation and/or sworn statements, among other things:

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<sup>2</sup> While potential claimants will only need to submit one claim in the Claims Process, the Receiver may propose to increase the Initial Distribution if additional funds are recovered prior to filing the motion to approve the Allowed Claim amounts and the Initial Distribution.



- (i) that such investor transferred funds *directly* to a Receivership Defendant in connection with an investment in Receivership Defendants or that such creditor provided funds, goods, and/or services to Receivership Defendants;
- (ii) that such investor or creditor (a) was not a member or insider of any Receivership Defendant, (b) was not a member or insider of any corporate entity owned in full or in part by a Receivership Defendant, and (c) did not knowingly assist any Receivership Defendant to effectuate, perpetuate, or promote Receivership Defendants' investment scheme or have knowledge of its fraudulent nature at the time of the investment, loan, or other transaction underlying the claim;

AND

- (iii) that the total amount that such investor transferred to Receivership Defendants or the value of funds, goods, or services that such creditor provided, exceeds the total amount that Receivership Defendants transferred back to such investor or paid to such creditor.

The Receiver may consider other factors in determining whether a claim is an Allowed Claim.<sup>3</sup> If an investor or creditor cannot prove all three of the foregoing factors to the Receiver's satisfaction, that claimant's claim will be disallowed and such investor or creditor will receive no distribution. If an investor or creditor makes the requisite showing regarding his or her claim and the Receiver determines that such claim is an Allowed Claim, the Receiver will calculate the amount of such Allowed Claim by subtracting the total amount of all transfers that such investor

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<sup>3</sup> Notwithstanding these factors for determining whether a claim should be allowed, the Receiver will analyze each claim individually and the circumstances surrounding each investor's investment in or transfers to, and relationship with, Receivership Defendants and the corporate entities owned by Receivership Defendants, and reserves the right to object to and seek to disallow any claim.

or creditor received from Receivership Defendants and/or any entity owned in part or wholly by a Receivership Defendant from the total amount of transfers that such investor made to Receivership Defendants or from the total amount that such creditor claims they are owed, irrespective of the success or failure of the particular investment or terms providing for interest or fees in any agreement underlying the debt. Investors with Allowed Claims will only be entitled to receive a *pro rata* distribution based on the *net loss* from their investment or the principal amount owed. Moreover, the Receiver will not include within her calculation of a claimant's Allowed Claim or distribution any interest or profit that was promised to such investor or creditor. And, creditors with an Allowed Claim will only receive a distribution of the principal or net amount owed; no interest, late fees, or penalties will be allowed.

For example, an investor who demonstrates that he invested a total of \$100,000 in Receivership Defendants and received back from Receivership Defendants a total of \$60,000 in purported returns on such investment would, subject to the Receiver's final determination and the Court's approval, have an Allowed Claim in the amount of \$40,000.

### **C. Proposed Eligibility of Claimants**

The Receiver proposes that only those investors or creditors for whom there exists documentation of an investment in, or funds, goods, and/or services provided to, Receivership Defendants should be eligible to file a claim in this Receivership. All such investors or creditors, as determined based on the Receiver's forensic analyses and the list of potential investors and creditors maintained in the Receivership Defendants' business records, will receive the claims package (as defined below) including an approved form of Notice to Investors and Creditors, Proof

of Claim and Release Form, and a calculation of estimated claim.<sup>4</sup> The Receiver will use her best efforts to notify all such investors and creditors by (i) sending claims packages by email, and, if no email address is available, by first class mail or Federal Express to their last known addresses, (ii) posting the Notice to Investors and Creditors and the Proof of Claim and Release Form on the website of the Receivership (<https://www.accanitoreceivership.com>), and (iii) filing the Notice to Investors and Creditors and Proof of Claim and Release Form with the Court.

#### **D. Proposed Claims Documentation**

Based on the definition of Allowed Claim, the Receiver proposes to effectuate a claims administration and distribution process as follows. The Receiver will deliver to all known investors and creditors two Court-approved documents: (i) a Notice to Investors and Creditors (the proposed form of which is attached hereto as Exhibit A); and (ii) a Proof of Claim and Release Form (the proposed form of which is attached hereto as Exhibit B). The documents attached as Exhibits A and B shall be referred to collectively as the “Claims Package”.

The Legal Notice will apprise the potential claimants of how the Accanito Fraud Fund was created, who is eligible to submit a claim in order to receive an initial and potential subsequent distribution from the fund, the process by which eligible claimants can submit a claim, and the process by which the Receiver will determine which eligible claimants have allowed claims and thus are entitled to receive a distribution from the fund. *See* Exhibit A. The Proof of Claim and Release Form will solicit, among other information: (a) details regarding the claimant’s identity and contact information; (b) details regarding the amount, timing, and transfer of the claimant’s investment in Receivership Defendants or details regarding the debt(s) of any Receivership

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<sup>4</sup> Proof of Claim and Release Forms will be sent to all known investors and creditors who must file a claim to be eligible for subsequent distributions.

Defendant to the claimant, and the amount and timing of any transfers from the claimant to any Receivership Defendant; and (c) details regarding the amount, timing and transfer of any monies received by the claimant from Receivership Defendants and/or their affiliates. *See* Exhibit B. The Proof of Claim and Release Form also will require the claimant to, *inter alia*, certify the accuracy of the information provided and certify that each of the three factors of an Allowed Claim, set forth above, are satisfied. *Id.*

To the extent possible, the Receiver will provide, along with the Claims Package, the Receiver's estimate of each prospective claimant's Allowed Claim, and will give each claimant the option of certifying its acceptance of the Receiver's calculations. If the potential claimant does not certify acceptance, such claimant must submit its own claim amount with supporting documentation.

#### **E. Proposed Distribution to Investors and Creditors with Allowed Claims**

The Receiver and her counsel will review all Proof of Claim and Release Forms received from investors and creditors as of the Claims Bar Date (defined below) and determine the total amount of Allowed Claims.<sup>5</sup> The Receiver then will determine what percentage of the total Allowed Claims is represented by the proposed Initial Distribution amount.

#### **F. Proposed Sequence and Timing of Claims Process**

The Receiver proposes that the Claims Process proceed in accordance with the following schedule:

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<sup>5</sup> The Receiver, in her sole discretion, may process and review claims received after the Claims Bar Date but before the Appeal Deadline and make a determination on whether or not to allow such claims.

- a. Claims Process and Distribution Plan Approval: The date upon which this Court grants this Motion and approves the Receiver's proposed Claims Process and Distribution Plan shall be referred to herein as the "Plan Approval Date";
- b. Receiver's Sending Out Claims Packages: The Receiver would send the Claims Package to known investors and creditors of Receivership Defendants via email, and/or first-class mail or Federal Express to the extent email addresses are not known, within ten (10) days after the Plan Approval Date;
- c. Claims Bar Date: Investors and creditors would then have until thirty (30) days after the Plan Approval Date (the "Claims Bar Date") to return the completed Proof of Claim and Release to the Receiver. Any completed Proof of Claim and Release Form not returned by Google Forms submission, email, or trackable physical mail delivery postmarked by the Claims Bar Date would be barred, and claims submitted after the Claims Bar Date will not be allowed except for good cause shown, to be determined in the Receiver's sole discretion;
- d. Receiver's Initial Determination of Allowed Claims: The Receiver will have until twenty (20) days after the Claims Bar Date ("Receiver's Initial Determination Date") to approve or reject, in whole or in part, all claims received. In the event the Receiver decides to reject any claim, in whole or in part, the Receiver would apprise the claimant, via first class mail and/or email of the rejection of the claim, the basis for that rejection, and the process for appealing such rejection.
- e. Claimant's Request for Reconsideration of Initial Determination: Any claimant whose claim is rejected by the Receiver, in whole or in part, may request that the Receiver reconsider that rejection by sending the Receiver a letter seeking a reconsideration,

- which must be sent by email dated, or by trackable physical mail postmarked, within twenty (20) days after the Receiver's Initial Determination Date, and which must state the basis of the claim and the claimant's response to the Receiver's notice of rejection.
- f. Receiver's Final Determination: The Receiver has until thirty (30) days after the Receiver's Initial Determination Date (which is ten (10) days after the claimants' deadline to request reconsideration of initial determination) (the "Receiver's Final Determination Date") to reconsider any request by any claimant whose claim was initially rejected by the Receiver and to apprise the claimant, via first class mail and/or email, of the Receiver's Final Determination of the claim.
- g. Claimant's Appeal of Receiver's Final Determination: Any claimant whose claim was finally rejected by the Receiver may appeal the Receiver's rejection of the claim to the Court by filing with the Court a written appeal of the Receiver's Final Determination, which must be filed with this Court by mailing such appeal to the Clerk of Court for the District Court for the Southern District of Florida and postmarked within twenty (20) days after the Receiver's Final Determination Date (the "Appeal Deadline"), and which must state the basis of the claim, provide supporting documentation, and set forth the claimant's response to the Receiver's Final Determination.
- h. Receiver's Response to Appeals: The Receiver's Response to all appeals filed with this Court shall be due within fifteen (15) days after the Appeal Deadline. Following this deadline, the Court may make a final determination or may set the matter for hearing. A final determination by the Court is final for all purposes. There shall be no further appeal of such determination or proceedings.

- i. Receiver’s Motion to Approve Initial Distribution: The Receiver shall file her motion to approve the Initial Distribution, which motion would apprise the Court of the status of approved and rejected claims, the status of pending appeals, if any, the Receiver’s expectation regarding administrative fees and costs, and proposed initial distribution calculations and methodology, by no later than 125 days after the Plan Approval Date.

The foregoing schedule is reflected in the following summary timetable:

Day 0	Plan Approval Date
Day 10	Receiver to send out Notice/Proof of Claim and Release Forms
Day 30	Claims Bar Date
Day 50	Receiver’s Initial Determination Date
Day 70	Claimant Deadline to Appeal Initial Determination to Receiver
Day 80	Receiver’s Final Determination Date
Day 100	Claimant Deadline to Appeal Final Determination to the Court
Day 115	Receiver’s Deadline for Response to Appeals
Day 125	Receiver’s Deadline for Motion to Approve Initial Distribution

**V. LEGAL ARGUMENT**

The Receiver believes that the foregoing proposed Claims Process and Distribution Plan will provide a fair, equitable, and efficient method for distributing the proceeds of the Accanito Fraud Fund to defrauded investors and creditors. Generally, the District Court has broad powers and wide discretion to grant relief in an equity receivership, including in approval and implementation of a claims process and plan of distribution. *See SEC v. Infinity Group Co.*, 226 Fed. Appx. 217, 218 (3d Cir. 2007) (“District Courts have wide equitable discretion in fashioning

distribution plans in receivership proceedings, and we review the District Court's order only for abuse of that discretion.") (citations omitted); *SEC v. Forex Asset Mgmt., LLC*, 242 F.3d 325, 331 (5<sup>th</sup> Cir. 2001) (finding that a district court has wide latitude when it exercises its inherent equitable power to approve a plan to distribute receivership assets and that such approval is reviewed for abuse of discretion).

Specifically, this District Court has approved the use of the net loss method of determining allowed claim amounts and the *pro rata* distribution proposed by the Receiver herein. *United States Commodity Future Trading Comm'n v. Hunter Wise Commodities, LLC, et al.*, Case No. 1:12-81311-CIV-Middlebrooks (S.D. Fla.) at ECF No. 312 (Claims Process Motion) and ECF No. 314 (Claims Process Order approving the use of the net loss method of calculating allowed claim amounts and a *pro rata* distribution to claimants); *see also United States Commodity Future Trading Comm'n v. All In Publishing, LLC, et al.*, Case No. 1:18-cv-23992-JEM (S.D. Fla.) at ECF No. 242 (Claims Process Motion) and ECF No. 249 Claims Process Order approving the use of the net loss method of calculating allowed claim amounts and a *pro rata* distribution to claimants); *see also United States Commodity Future Trading Comm'n v. Daniel Fingerhut, et al.*, Case No. 1:20-cv-21887-DPG (S.D. Fla.) at ECF No. 301 (Claims Process Motion) and ECF No. 307 (Claims Process Order approving the use of the net loss method of calculating allowed claim amounts and a *pro rata* distribution to claimants).

A receiver has discretion to fashion a distribution method that maximizes the number of investors and creditors who receive a distribution. *See SEC v. Huber*, 702 F.3d 903, 907 (7<sup>th</sup> Cir. 2012). Specifically, a receiver may opt to utilize the "net loss method of distribution to maximize the overall utility of the customers." *Id.* In *Infinity Group*, the Third Circuit affirmed the District Court's approval and implementation of a plan of distribution that provided for a *pro rata*



distribution of receivership proceeds, based on net loss, to all innocent victims of the defendant's Ponzi scheme because that plan was determined to be the fairest approach to the greatest number of customers. *See id.* at 218-19. The net loss approach is preferred over other approaches when it would provide a recovery for the largest number of customers. *See, e.g., Byers*, 637 F. Supp. 2d at 182 (approving the net loss approach and rejecting the rising tide method because 45% of customers would not receive additional compensation); *see also U.S. Commodity Futures Trading Comm'n v. Barki, LLC*, No. 3:09 CV 106-MU, 2009 WL 3839389 at \*2 (W.D.N.C. Nov. 12, 2009) (approving the net investment/net loss method over the rising tide approach).

The Receiver is proposing a plan providing for a pooled *pro rata* distribution, rather than a distribution of the assets of each Receivership Defendant to the investors/creditors of that Defendant. Receivership courts have approved such a plan, when those entities were intertwined and utilized to perpetrate one fraud and/or their funds were commingled. *See, e.g., CFTC v. All In Publishing, LLC, et al.*, at ECF Nos. 242 and 249 and *CFTC v. Daniel Fingerhut, et al.*, at ECF Nos. 301 and 307 (both examples of claims process orders entered in this District approving pooling of funds and *pro rata* distribution to claimants where the receivership entities were involved in a unified scheme to defraud and the receiver could not determine which specific entity had defrauded each claimant); *SEC v. Amerifirst Funding, Inc.*, 2008 WL 919546 \*2-4 (N.D. Tex. 2008) (approving pooling of funds and *pro rata* distribution to all customers of all entities involved in a unified scheme to defraud where the receivership entities were intertwined and their funds were commingled) (citing *SEC v. Forex Asset Mgmt., LLC*, 242 F.3d 325, 331-32 (5th Cir. 2001) (affirming a pooled *pro rata* distribution because it was “a logical way to divide the money” and finding that the absence of commingling between various receivership entities does not render such a distribution inequitable)); *see also SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 88-89 (2d Cir.

2002) (“Courts have favored *pro rata* distribution of assets where . . . the funds of the defrauded victims were commingled and where victims were similarly situated with respect to their relationship to the defrauders.”).

The Receivership Defendants were, in fact, intertwined and perpetrated one fraudulent scheme. And, all investor and creditor funds were commingled amongst the Receivership Defendants’ various business bank accounts and/or subsequently transferred to Defendant Seaman, insiders, and third parties for payment of the Seamans’ expenses and other misappropriation of funds. Therefore, the Receiver’s pooling of the assets recovered for all of the Receivership Defendants’ investors and creditors and the pooled *pro rata* distribution proposed herein are both logical and equitable.

Accordingly, the Receiver submits that this Court should exercise its discretion to approve the proposed Claims Process and Distribution Plan as detailed herein.

#### **VI. CERTIFICATION OF CONFERRAL**

Undersigned counsel hereby certifies that he has conferred with counsel for the SEC, counsel for Defendant Brent Seaman, and counsel for Relief Defendants Jana Seaman and Valo Holdings Group, LLC regarding the relief requested herein. Counsel for the SEC, counsel for Mr. Seaman, and counsel for Ms. Seaman and Valo Holdings confirmed that they have no objection to the requested relief.

#### **VIII. CONCLUSION**

WHEREFORE, for the foregoing reasons, the Receiver respectfully requests that this Court enter an order: (1) approving the Claims Process and Distribution Plan proposed herein; (2) authorizing the Receiver to mail a Claims Package (in the form proposed herein) to all Eligible

Claimants (as defined herein); and (3) granting such other relief as this Court deems just and appropriate.

Respectfully submitted this 14<sup>th</sup> day of August, 2024.

Respectfully submitted,

/s/Kenneth Dante Murena  
Kenneth Dante Murena, Esq.  
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*Counsel for Melanie E. Damian,  
Court-Appointed Receiver*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic transmission via this Court's CM/ECF filing system on August 14, 2024 on all counsel or parties who have appeared in the above-styled action.

/s/Kenneth Dante Murena  
Kenneth Dante Murena,  
*Counsel for Melanie E. Damian,  
Court-Appointed Receiver*