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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SECURITIES AND EXCHANGE  
COMMISSION,  
  
Plaintiff,  
  
v.  
  
JOHN WAYNE ZIDAR, et al.,  
  
Defendants.

No. C00-823C

**RECEIVER’S RESPONSE TO  
OBJECTIONS TO PROPOSED  
DISTRIBUTION PLAN  
AND RECOMMENDATION ON  
PETITIONS FOR  
PARTICIPATION IN  
DISTRIBUTION PLAN**

NOTE ON MOTION CALENDAR:  
NOVEMBER 12, 2004

COMES NOW the court-appointed Receiver, Michael D. McKay, who (1) responds to objections to the Receiver’s April 26, 2004 Petition for Approval of Proposed Distribution Plan (“Distribution Plan”), and (2) provides the Court with recommendations regarding new applications for participation in the Distribution Plan. Over 200 individuals filed either an objection or a new application with the Court. However, most objections and new applications can be categorized by issue. To assist the Court’s review, this memorandum addresses each filing within the context of the following categories: (1) amendments based on informal negotiations with attorney David Smith on behalf of certain applicants; (2) responses to formal

1 objections filed by attorney David Smith regarding the Bridge Fund (“Bridge”); (3) responses to  
 2 formal objections filed by attorney David Smith regarding the Oakleaf International (“Oakleaf”)  
 3 and/or Rosewood International (“Rosewood”) funds; (4) responses to miscellaneous objections  
 4 by Attorney David Smith; (5) responses to pro se objections; (6) amendments based on informal  
 5 negotiations with pro se investors; (7) responses to potential new applicants; and (8) responses to  
 6 Higher Education Student Assistance Foundation (“HESAF”) investors.  
 7

8 We created an index that lists each objector/new applicant alphabetically and identifies  
 9 the page(s) in which we respond in this memorandum. The index is attached as Exhibit 1.  
 10

11 **I. Amendments Based on Informal Negotiations with Attorney David Smith**

12 Since April 26, 2004, the date we filed our Distribution Plan, we have worked with  
 13 attorney David Smith to review and reconcile many of his clients’ outstanding issues. Based on  
 14 those discussions, we agreed to recommend that the Court adjust the “Verified Amount”<sup>1</sup> of loss  
 15 for the following individuals:  
 16

<u>NAME</u>	<u>VERIFIED AMOUNT</u>	<u>AMENDED VERIFIED AMOUNT</u>
17 1. Bulloch, Patrick & Danielle	\$4,688.00	\$7,276.00
18 2. Burney, Helen	\$97,056.00	\$197,056.00
19 3. Carter, Ensign	\$1,294.00	\$104,830.00
20 4. Commissiong, Vera	\$2,819.00	\$4,113.00
21 5. Coniglione, Gail & Angelica	\$0.00	\$5,176.00
22 6. Garland, Salley	\$0.00	\$9,058.00
23 7. Geiger, Marc	\$6,470.00	\$7,764.00
24 8. Harvey, Robert	\$294.00	\$3,668.00
25 9. Jernigan, Elbert et al.	\$10,352.00	\$11,646.00
26 10. Johnson, David L.	\$3,668.00	\$5,768.00
27 11. Jones, Jean & Robert	\$28,174.00	\$28,699.00
28 12. Knapp, Larry & Gilda	\$140,290.00	\$173,002.00
13. Kudrna, Kenton	\$88,743.00	\$90,743.00
14. Leach, Don (Deceased)	\$307,830.00	\$367,354.00
15. Littlefield, Richard III	\$0.00	\$7,875.00

<sup>1</sup> As noted in our April 26, 2004 Petition for Approval of Proposed Distribution Plan, the Verified Amount is defined as the total amount invested less investment funds returned and commission payments.

1	16. Macdonald, George	\$10,352.00	\$15,528.00
	17. Marcinek, Sylvia	\$1,611.00	\$2,696.00
2	18. McEachern, Garry & Greta	\$55,642.00	\$58,230.00
	19. McPhail, John	\$10,940.00	\$11,465.00
3	20. Miller, Barbara et al	\$62,890.00	\$61,292.00
4	21. Ming, Roderick Llewellyn	\$1,185.00	\$1,085.00
	22. Nesbitt, Rochelle	\$3,882.00	\$5,457.00
5	23. Oglesby, James	\$56,215.00	\$54,740.00
	24. Oglesby, William	\$76,149.00	\$123,399.00
6	25. Pegeron, Carroll	\$0.00	\$7,764.00
7	26. Perry, Charlotte & Shaline	\$1,294.00	\$1,819.00
	27. Smith, Arnold	\$25,564.00	\$25,039.00
8	28. Udd, Warren	\$52,638.00	\$59,316.00
9	29. Van Epps, Charles & Sonja	\$1,080.00	\$2,374.00
	30. Watts, Charles	\$5,176.00	\$6,226.00
10	31. Wells, Neall & Connie	\$39,259.02	\$40,963.74

11 Pursuant to the Court's July 23, 2004 Order Approving Receiver's Petition for Approval  
12 of Proposed Distribution Plan ("July 23, 2004 Order"), the Receivership notified each investor of  
13 the status of his or her claim on its website ("Distribution Report"), including the Receiver's  
14 recommended Verified Amount. As a result, we recommend that the Court amend the  
15 Distribution Report and adopt the figures included in the "Amended Verified Amount" column  
16 listed above.

17  
18 Leonard and Erlene Postlethwaite initially claimed \$289,788.00, whereas we credited  
19 them for only a \$257,024.00 Claimed Loss in our Distribution Report. To clarify, we will  
20 correct the record and amend the Claimed Loss accordingly. The Postlethwaites' Verified  
21 Amount should remain unchanged.

22  
23 Florence Rini initially claimed a loss of \$5,176.00. We did not credit Rini for a May 15,  
24 2000 \$1,294.00 Oakleaf investment, because the investment was made after the Court's May 10,  
25 2000 Temporary Restraining Order, Freeze of Assets and Order Granting Other Relief (May 10,  
26 2000 T.R.O.). To clarify, we will amend the Distribution Report so that Rini's Claimed Loss  
27 reflects a \$5,176.00 claim. However, her Verified Amount should remain unchanged, because  
28

1 there is no evidence that Meliorations Management received the May 15, 2000 payment.

2 Wayne Vaughan initially claimed a loss of \$1,711.00. We did not credit Vaughan for a  
3 \$250.00 Bridge investment. To clarify, we will amend the Distribution Report so that Vaughan's  
4 Claimed Loss reflects his entire claim. However, his Verified Amount should remain  
5 unchanged, because he provides no proof of purchase for the Bridge investment.  
6

## 7 **II. Responses to Formal Objections Filed by Attorney David Smith** 8 **Regarding the Bridge Fund**

9 Attorney David Smith filed numerous objections regarding his clients' claimed  
10 investments in the Bridge. The majority of objections are based on the fact that we  
11 recommended that the Court deny a Bridge claim due to a lack of proof of purchase. The  
12 Receiver responds as follows.

### 13 **A. Background Facts Regarding the Bridge Fund**

14 John Wesley Matthews, a co-defendant in the parallel criminal case, established an  
15 investment plan called Bridge in or around January 1999. Bridge was a pyramid scheme.  
16

17 Bridge investors were solicited to make one or more loans in the amount ranging from  
18 \$125.00 to \$2,525.00 each. Some investors invested multiples of these amounts, thereby  
19 investing thousands of dollars. Investors were told that they would receive a total benefit of  
20 \$21,500.00 over the course of the investment plan.  
21

22 Between January 1999 and May 2000, approximately \$1,000,000.00 was paid into  
23 Bridge. Investor funds were used to pay earlier investors, and much of the \$1,000,000.00 was  
24 used for that purpose. Some of the money was transferred from one of Matthews' accounts to a  
25 Meliorations Management account at Washington Mutual.  
26

27 Bridge investors were instructed to send cash or blank money orders, which made it  
28 difficult for investors to account for their investments. However, it is noteworthy that many

1 individuals who invested in Bridge were able to produce evidence of a proof of purchase. Our  
2 office placed a high priority on requiring each investor to provide some form of proof of  
3 purchase (e.g., check, money order, bank statement). We did so to protect all of the investors  
4 from potential fraud. It would be relatively easy to manipulate and reproduce the contracts and  
5 certificates associated with the various investment plans. For instance, the Bridge certificate is  
6 an extremely informal document that fits on one-half on an eight-and-a-half by eleven inch sheet  
7 of paper. Attached as Exhibit 2 is a copy of a Bridge certificate. By requiring a proof of  
8 purchase, we were able to verify that each claimant actually paid into the funds that will be  
9 distributed. We could confirm, for instance, that the Bridge investment was not a gift, or paid for  
10 by somebody else. Attached as Exhibit 3 is a copy of a Bridge "Gift Certificate." We ensured  
11 accuracy by requiring a proof of purchase for each of the investment fund schemes. As a result,  
12 it would be unfair to approve Bridge claims that lack adequate documentation.  
13  
14

15 **B. Objections Deserving Recalculation of Verified Amount**

16 A few individuals filed objections that supplemented their applications with some form of  
17 a proof of purchase, and we recommend that the Court increase their Verified Amounts  
18 accordingly:  
19

20 1. **Harvey, Ingrid**

21 We verified Harvey's loss at \$2,588.00. We concur with Harvey's argument that the  
22 February 25, 1999 check to Bank of Bermuda is sufficient to verify a \$2,100.00 investment in  
23 Bridge. We recommend that the Court increase Harvey's Verified Amount to \$4,688.00.  
24

25 2. **Richardson, Annette**

26 We verified Richardson's loss at \$0.00. Richardson's objection includes a new bank  
27 statement showing two payments in the amount of \$125.00 each. We agree that this new  
28

1 evidence is a sufficient form of proof of purchase. We recommend that the Court increase  
2 Richardson's Verified Amount to \$250.00.

3 3. Shires, Michelle

4 We verified Shires' loss at \$1,294.00. Shires' objection includes a letter from Wells  
5 Fargo Bank confirming that Shires purchased money orders in the amount of \$525.00 on or  
6 around the date of her alleged investment. We recommend that the Court increase her Verified  
7 Amount to \$2,869.00. This total also reflects the fact that on August 4, 2004, we agreed with  
8 Shires' attorney to approve two other Bridge investments for \$525.00 each.

10 4. Tucker, Selena Dawn

11 We verified Tucker's loss at \$1,294.00. Tucker's objection includes a bank check in the  
12 amount of \$1,050.00, dated on or around the September 30, 1999. We agree that this is a  
13 sufficient form of proof of purchase, and we recommend that the Court increase Tucker's  
14 Verified Amount of loss to \$2,344.00.

16 The remaining Bridge objectors fall within the following two categories: (1) the claimant  
17 still has not produced a proof of purchase; or (2) the supplemental information is insufficient to  
18 satisfy our proof of purchase requirement.

20 C. Still No Proof of Purchase Despite Formal Objection

21 The following individuals object to the fact that we denied their Bridge claim in whole or  
22 in part. However, they provided no new evidence to support their claim and objection. Their  
23 applications still lack a proof of purchase, and we recommend that the Court adopt the original  
24 Verified Amount recommendation provided in our Distribution Report.

26 Beach, Julia

Beach, Marcelle

27 Bean, Andre

Bean, Cornell

1	Bean, Davien	Bean, Karen
2	Broadley, Deena	Chambers, Quenton
3	Crossdale, Oswald & Barbara	DeSilva, Sabrina
4	Dill, Wellington	Dillin, Roger & Karen
5	Frederick, Gordon	Furbert, Greta
6	Furbert, Maurice & Sheila	Furbert, Raquel
7	Furbert, Solomon	Gordon, Roydelle
8	Harris, Cleveland & Andrea	Holder, Henry
9	Holder, Kent	Holdipp, Carmen & Carolyn
10	Hollis & Simons, Denise & Brian	James, Keith
11	Joell, Eugene	Jones, Shirley
12	Martin, Jean	Morris, Neal
13	Nelson, James & Glenda	Neverson, Edwin
14	Ortego, Terry	Pearman, Anthony
15	Richards, Paul & Gisele	Salaam, Shahidah
16	Shirley, Lewis & Hazel	Simons, Horace & Karen
17	Smith, Anthony	Smith, Sr., Percy
18	Swan, Angelita	Swan, Norene Douglas
19	Swan, Tonya	Trott, Kirk & Germaine
20	Tucker, Stephen	Vaughan, Wayne
21	Vette, David & Janet	Wade, Wyndom
22	Zuill, Tammy	

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Madree Furbert's objection lacked any new proof of purchase. As a result, we

1 recommend that her Bridge claim also be denied. However, it is noteworthy that Furbert's  
2 objection appears to contain a typo. Her original submission to our office claimed a \$525.00  
3 Bridge investment, but the objection filed with the Court claims a \$5,250.00 loss. We urge  
4 Furbert to clarify this discrepancy, if the Court approves her objection and increases her Verified  
5 Amount.

6  
7 D. Supplemental Information Insufficient to Establish Proof of Purchase

8 The following individuals provided new information to confirm their Bridge investments.  
9 However, we conclude that the information is insufficient to satisfy the proof of purchase  
10 requirement.

11 1. Bowen, Melvin

12 We verified Bowen's loss at \$0.00. His objection provides an unsigned letter from  
13 Rojean Robinson, who claims to have invested \$125.00 in Bridge on behalf of Bowen. Attached  
14 as Exhibit 4 is a copy of the Robinson letter. Robinson apparently was a colleague of Member  
15 Representative Llewellyn Ming. Ming received approximately \$206,000.00 in commissions  
16 from this fraud. We respectfully question the veracity of information provided by Ming and/or  
17 Robinson. Without an adequate form of proof of purchase, we recommend that the Court  
18 approve the recommended Verified Amount for Bowen in our Distribution Report, or \$0.00.

19 2. Drawdy, Lester & Drawdy, Lester, Jr.

20 We verified a loss of \$0.00 for each claimant. Both individuals provided copies of  
21 money orders. However, the money orders are illegible and cannot be verified. Attached as  
22 Exhibit 5 is a copy of the money orders. As a result, we recommend that the Court approve the  
23 recommended Verified Amount in the Distribution Report, or \$0.00.  
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1                   3. Kipps, Shelley

2                   We verified Kipps' loss at \$0.00. Her objection is supported by the Robinson letter. See  
3 Exhibit 4. Robinson claims to have invested \$525.00 in Bridge on behalf of Kipps. As noted  
4 above, Ming received approximately \$206,000.00 in commissions from these fraudulent schemes  
5 and we respectfully question the veracity of information provided by Ming and/or Robinson.  
6 Without an adequate form of proof of purchase, we recommend that the Court approve the  
7 recommended Verified Amount in our Distribution Report, \$0.00.  
8

9                   4. Ming, Roderick

10                  We verified Ming's loss at \$1,185.00. Actually, the Verified Amount of loss should be  
11 \$1,085.00. We approved a \$1,294.00 Oakleaf investment less \$209.00 in funds returned. This  
12 totals \$1,085.00. Ming's objection is supplemented by a July 28, 1999 note that he wrote to his  
13 father, Llewellyn Ming, in which he claims to have paid \$3,150.00 in Bridge. Again, Ming  
14 received approximately \$206,000.00 in commissions from these fraudulent schemes. We  
15 respectfully question the veracity of information provided by Ming. Without an adequate form  
16 of proof of purchase, we recommend that the Court deny the Bridge claim, and correct the  
17 Verified Amount to \$1,085.00, an amount supported by the defendants' financial records.  
18  
19

20                  5. Perinchief, Edwin

21                  We verified Perinchief's amount of loss at \$0.00. His objection is supported by the  
22 Robinson letter. See Exhibit 4. Robinson claims to have invested \$1,525.00 in Bridge on behalf  
23 of Perinchief. As noted, Ming received approximately \$206,000.00 in commissions from these  
24 fraudulent schemes and we respectfully question the veracity of information provided by Ming  
25 and/or Robinson. Without an adequate form of proof of purchase, we recommend that the Court  
26 approve the recommended Verified Amount for Perinchief in our Distribution Report, or \$0.00.  
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6. Place, Pearline

We verified Place's amount of loss at \$0.00. Her objection is supported by the Robinson letter. See Exhibit 4. Robinson claims to have invested \$250.00 in Bridge on behalf of Place. As noted, Ming received approximately \$206,000.00 in commissions from these fraudulent schemes and we respectfully question the veracity of information provided by Ming and/or Robinson. Without an adequate form of proof of purchase, we recommend that the Court approve the recommended Verified Amount in our Distribution Report, or \$0.00.

7. Swan & Douglas, Kenton & Noreen

Swan and Douglass originally claimed a loss of \$125.00, however, we verified their loss at \$0.00. They now claim an additional \$125.00 loss. The objection is supported by the Robinson letter. See Exhibit 4. Robinson claims to have invested \$250.00 in Bridge on behalf of Swan and Douglas. Again, Ming received approximately \$206,000.00 in commissions from these fraudulent schemes and we respectfully question the veracity of information provided by Ming and/or Robinson. Without an adequate form of proof of purchase, we recommend that the Court approve the recommended Verified Amount in our Distribution Report, or \$0.00.

8. Tucker, Craig

We verified Tucker's loss at \$0.00. His objection is supported by the Robinson letter. See Exhibit 4. Robinson claims to have invested \$525.00 in Bridge on behalf of Tucker. As noted, Ming received approximately \$206,000.00 in commissions from these fraudulent schemes and we question the veracity of information provided by Ming and/or Robinson. We question the veracity of information provided by Ming and/or Robinson. Without an adequate form of proof of purchase, we recommend that the Court approve the recommended Verified Amount in our Distribution Report, or \$0.00.



1 We denied the following claims because they lacked proper documentation, most often a  
2 proof of purchase. The following analysis responds to individual objections.

3 B. Objections Deserving Recalculation of Verified Amount

4 1. Augustus, Alfred & June

5 Our office confirms that the Augustuses provide proper proofs of purchase as follows: a  
6 March 23, 1999 \$12,940 investment in Oakleaf, and several Bridge investments totaling  
7 \$4,750.00. The Augustuses claimed to have lost \$5,250.00 in Bridge, yet their proofs of  
8 purchase totaled \$4,750.00.  
9

10 We originally reduced the Augustus' Verified Amount due to the fact that the defendants'  
11 records indicate that the Augustuses received a \$15,478.00 payment on or about April 12, 2000.  
12 Attached as Exhibit 6 is a copy of a Meliorations check payable to the Augustuses. The  
13 Augustuses deny the assertion that they received this payment. We concede that the defendants'  
14 records cannot confirm that this payment cleared the defendants' account prior to the Court's  
15 May 10, 2000 T.R.O.  
16

17 As a result, if the Court approves the Augustus' objection, we recommend that the Court  
18 increase the Augustus' Verified Amount to \$17,690.00.  
19

20 2. Bell and Moore, Sherry & Kimberly

21 Bell and Moore claimed a \$1,294.00 Oakleaf investment. We verified an investment of  
22 \$0.00 because their documentation lacked a proof of purchase. The objection filed by Bell and  
23 Moore on September 17, 2004 still lacks a proof of purchase.  
24

25 However, we reviewed the defendants' records once again, and the records confirmed a  
26 \$1,294.00 deposit on behalf of Bell and Moore on April 1, 1999. Also, the records provided by  
27 Bell and Moore include a June 22, 2004 letter from their Member Representative, in which the  
28

1 representative acknowledges paying Sherry Bell \$208.00 in rollover surplus. Attached as  
2 Exhibit 7 is a true and correct copy of the June 22, 2004 letter.

3 As a result, we recommend that the Court amend the Distribution Plan and increase Bell  
4 and Moore's Verified Amount to \$1,086.00 (\$1294.00 - \$208.00).

5  
6 3. Boylan, Sandra

7 Boylan claims a \$1,294.00 Rosewood investment. We verified an investment of \$0.00  
8 because her proof of purchase, a bank statement, simply showed six small cash withdrawals  
9 totaling \$2,020.00 around the time of her investment. No combination of these withdrawals  
10 amounts to any multiple of an Oakleaf or Rosewood investment. As a result, we concluded that  
11 this documentation did not provide a sufficient proof of purchase.

12  
13 However, upon additional review, the defendants' financial records confirm a \$1,294.00  
14 deposit on behalf of "Sandra Boycan" [sic] dated December 16, 1999. Even though Boylan still  
15 has not produced a proof of purchase, we recommend that the Court amend the Distribution Plan  
16 and increase Boylan's Verified Amount to \$1,294.00.

17  
18 4. Butterfield, Charles & Linda

19 The Butterfields claim a \$1,294.00 Rosewood investment. We denied their claim  
20 because the investment was paid for by "LRS Marketing," an entity run by Llewellyn Ming, a  
21 Member Representative. There are no records indicating that the Butterfields previously paid  
22 LRS Marketing. The objection filed by the Butterfields on September 17, 2004 still lacks a proof  
23 of purchase.

24  
25 However, upon additional review of the defendants' financial records, we found a  
26 \$1,294.00 deposit on behalf of "Charles and Linda Buttlerfield" [sic]. Even though the  
27 Butterfields still have not produced a proof of purchase, we recommend that the Court amend the  
28

1 Distribution Plan and increase the Butterfields' Verified Amount to \$1,294.00.

2 5. Byars, Hansel

3 Byars claims three Oakleaf investments of \$12,940.00, \$12,940.00, and \$38,820.00, for a  
4 total of \$64,700.00. We denied his June 25, 1999 \$12,940.00 investment for lack of a proof of  
5 purchase.

6  
7 However, upon additional review of the defendants' financial records, we found a  
8 \$12,940.00 deposit on behalf of "Hansel Byars," dated June 25, 1999. Even though Byars still  
9 has not produced a proof of purchase, we recommend that the Court amend the Distribution Plan  
10 and increase Byars' Verified Amount to \$64,700.00.

11 6. Clayton, Gary Wayne

12 Clayton claims three Oakleaf investments of \$2,588.00, \$58,230.00, and \$10,352.00, for  
13 a total of \$76,346.00. We denied his May 28, 1999 \$2,588.00 investment due to a lack of proof  
14 of purchase.

15  
16 However, upon additional review of the defendants' financial records, we found a  
17 \$2,588.00 deposit on behalf of "G & J Clayton" on May 28, 1999. Even though Clayton still has  
18 not produced a proof of purchase, we recommend that the Court amend the Distribution Plan and  
19 increase Clayton's Verified Amount to \$76,346.00.

20 7. McPhail, II, John

21  
22 McPhail claims two Oakleaf investments of \$2,588.00 and \$11,173.00, and a \$525.00  
23 Bridge investment. We denied his April 19, 1999 \$2,588.00 Oakleaf investment and his \$525.00  
24 Bridge investment due to a lack of proof of purchase. McPhail is not objecting to the denial of  
25 his Bridge claim.

26  
27 However, upon additional review of the defendants' financial records, we found a  
28

1 \$2,588.00 deposit on behalf of “John S. McPhail, II” on April 19, 1999. Even though McPhail  
2 still has not produced a proof of purchase, we recommend that the Court amend the Distribution  
3 Plan and increase McPhail’s Verified Amount to \$13,761.00.

4 8. Patel, Purshoham & Lalita

5 The Patels claim two \$1,294.00 Oakleaf investments. We denied their October 1999  
6 \$1,294.00 investment due to a lack of proof of purchase.

7  
8 However, upon additional review of the defendants’ financial records, we found a  
9 \$1,294.00 deposit on behalf of “Lalita Patel, Purshottam N.” [sic] on October 18, 1999. Even  
10 though the Patels still have not produced a proof of purchase, we recommend that the Court  
11 amend the Distribution Plan and increase the Patels’ Verified Amount to \$2,588.00.  
12

13 9. Patel, Shilla

14 Patel claims two \$1,294.00 Oakleaf investments. We denied her October 1999 \$1,294.00  
15 investment due to a lack of proof of purchase.

16 However, upon additional review of the defendants’ financial records, we found a  
17 \$1,294.00 deposit on behalf of “Shilla Patel” on October 12, 1999. Even though Patel still has  
18 not produced a proof of purchase, we recommend that the Court amend the Distribution Plan and  
19 increase Patel’s Verified Amount to \$2,588.00.  
20

21 10. Ross, Jennifer

22 Ross claims Oakleaf investments of \$2,588.00, \$2,588.00, \$3,882.00, \$1,294.00, and  
23 \$1,080.00. We denied her April 1999 \$1,294.00 investment due to a lack of proof of purchase.

24  
25 However, upon additional review of the defendants’ financial records, we found a  
26 \$1,294.00 deposit on behalf of “Jennifer Ross” on April 5, 1999. Even though Ross still has not  
27 produced a proof of purchase, we recommend that the Court amend the Distribution Plan and  
28

1 increase Ross' Verified Amount to \$11,432.00.

2 11. Ross, Joan C.

3 On August 20, 2004, our office informed attorney David Smith that we would  
4 recommend to the Court that Ross' claimed amount be increased by \$11,646.00, for a total of  
5 \$62,112.00. We also agreed that Ross' Verified Amount be increased to \$53,412.00. This  
6 represents the \$62,112.00 claim less two payments of \$468.00 and a return on investment of  
7 \$7,764.00.  
8

9 Ross' formal objection does not dispute the two \$468.00 payments. Ross, however,  
10 argues that she did not receive \$7,764.00. On her February 14, 2003 questionnaire, Ross  
11 represented that she received a return on her investment of \$7,764.00. Attached as Exhibit 8 is a  
12 copy of Ross' questionnaire. Accordingly, we deducted this amount when calculating her  
13 Verified Amount. Ross now argues that she mistakenly completed the questionnaire and that she  
14 did not receive that amount as a return on her investment.  
15

16 The defendants' financial records do not confirm a \$7,764.00 payout. However, Ross  
17 disclosed this payout in response to a straightforward question, and we recommend that Ross  
18 explain this error prior to amending the Receiver's Distribution Report.  
19

20 If she can do so, we recommend that the Court increase Ross' Verified Amount to  
21 \$53,412.00; an amount that reflects the \$11,646.00 in additional proofs of purchase that were  
22 provided on August 3, 2004.  
23

24 12. Schelske, Leroy

25 Schelske claimed an eight-unit investment in Rosewood and Oakleaf for himself and his  
26 family members. He also claimed a \$1,000.00 investment in Sandpiper. However, he originally  
27 only produced a proof of purchase for one unit. As a result, we approved the single \$1,294.00  
28

1 Oakleaf investment. The defendants' financial records confirmed the \$1,000.00 Sandpiper  
2 investment. Thus, we recommended a Verified Amount of \$2,294.00 less \$490.00 in  
3 commission payments, for a total of \$1,804.00. Schelske does not object to a reduction based on  
4 commission payments.

5 On September 1, 2004, Schelske provided additional Oakleaf certificates and/or contracts  
6 on behalf of Ida Schelske, Taylor Kirby, Garrett Schelske, Kevin Schelske, Kirby Schelske and  
7 Ashley Schelske. Accordingly, we reviewed the defendant's financial records again and  
8 confirmed that investments were placed on behalf of these individuals. On September 7, 2004,  
9 we told Schelske that we would recommend that the Court increase his Verified Amount.  
10

11 Schelske still has not produced a proof of purchase for the claimed \$2,525.00 Bridge  
12 investment. Again, it is noteworthy that many Bridge investors produced all of their proofs of  
13 purchase. As a result, it would be inappropriate to approve a Bridge claim that lacks proper  
14 documentation. We recommend that the Court increase Schelke's Verified Amount to  
15 \$9,568.00. This represents seven Oakleaf investments and one \$1,000.00 Sandpiper investment,  
16 less \$490.00 in commissions.  
17

### 18 C. Duplicate Claims

#### 19 1. Ross, Arthur E.

20 Ross claims a January 14, 1999 \$2,588.00 Oakleaf investment. We denied his claim due  
21 to a lack of proof of purchase. In support of his objection, Ross provides a letter from claimant  
22 Joan Ross, noting that the \$5,176.00 draft that she provided in support of her own claim  
23 constituted payment for two units for her and two units for E. Arthur Ross (\$2,588.00 each).  
24 Attached as Exhibit 9 is a copy of the Ross letter. The whole amount of \$5,176.00 has already  
25 been processed under Joan Ross' name. To verify the amount of \$2,588.00 on E. Arthur Ross'  
26  
27  
28

1 claim would constitute a double recovery. We recommend that E. Arthur Ross resolve this  
2 matter separately with Joan Ross once she receives her distribution.

3 2. Trott, Jeannine

4 Trott claims a May 3, 2000 \$6,470.00 Rosewood investment. We verified the amount of  
5 \$0.00 due to the fact that her proof of purchase shows that the name “Jeannine Trott” is written  
6 over the name “Delores Thompson.” Attached as Exhibit 10 is a copy of the wire transfer  
7 request. Trott also produced a letter noting that Delores Thompson is her mother, as well as a  
8 bank transaction report listing “Jeannine Thompson” as the customer requesting the wire transfer  
9 in question.  
10

11 Delores Thompson filed her own claim for the amount of \$6,470.00 using the same proof  
12 of purchase, and we verified her claim for the full amount of \$6,470.00. It would constitute  
13 double recovery to verify \$6,470.00 for Trott. We urge the Court to deny her objection.  
14

15 D. Documentation Still Lacks Proof of Purchase Despite Objection

16 1. Finch, Jimmy

17 Finch claims four Oakleaf investments for a total of seven units, or \$9,058.00. Although  
18 Finch did not produce a proof of purchase for any of his investments, we verified \$7,764.00  
19 because the defendant’s records confirmed six units. We could not verify his January 20, 2000  
20 \$1,294.00 investment in the defendants’ financial records, and did not approve that part of his  
21 claim.  
22

23 Finch alleges that he paid only cash for all of his investments per instructions from his  
24 Member Representative, and that an Oakleaf certificate is sufficient proof of his purchase.  
25 However, the defendants’ financial records indicate that he used a cashier’s check to pay for his  
26 April 14, 2000 one-unit investment, and a money order to pay for his November 26, 1999 one-  
27  
28

1 unit investment. Attached as Exhibit 11 is a true and correct copy of a portion of an Excel  
2 spreadsheet prepared by the Internal Revenue Service. The spreadsheet listed all deposits and  
3 withdrawals related to the Meliorations Management account at Washington Mutual.

4 To ensure accuracy, we required each claimant to produce a proof of purchase, and we  
5 did not verify investments without a proof of purchase or confirmation in the defendants'  
6 financial records. We did so to protect other investors from potential fraud. We urge the Court  
7 to adopt our recommendation and not increase Finch's Verified Amount.  
8

9 2. Gross, Robert E.

10 Gross filed two claims: a claim on behalf of Regroup Solutions and a personal claim.  
11 Gross claims that Regroup Solutions made two investments, including a \$1,294.00 investment in  
12 January 1999 and a \$102,226.00 investment in March 1999. He also claims a \$304.00 rollover  
13 payment in March 2000 related to the \$102,226.00 investment. Gross did not produce sufficient  
14 proof of purchase for either investment.  
15

16 In support of the \$102,226.00 investment, he provided a statement from the Royal Bank  
17 of Scotland noting a transfer to an entity called Vistana Florida. He does not provide any  
18 evidence that this money was transferred to Meliorations Management, and the Meliorations  
19 records do not confirm this deposit. It is noteworthy that Gross was a Member Representative.  
20 He acknowledges receiving \$4,000.00 in commission payments. However, the defendants'  
21 records show that Gross received \$14,230.00 in commissions. Attached as Exhibit 12 are true  
22 and correct copies of Meliorations Management checks payable to Gross. Member  
23 Representatives often accepted commission payments in the form of Oakleaf or Rosewood  
24 investments instead of cash. It is not clear whether that was the case here. Gross argues that a  
25 Letter of Wishes acknowledging his desire to rollover a \$102,226.00 investment provides  
26  
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1 sufficient evidence that he actually paid for the investment.

2 Gross claims two personal investments, including a \$1,294.00 Oakleaf investment and a  
3 \$525.00 Bridge investment. He provides a sufficient proof of purchase (cancelled check) for the  
4 Oakleaf investment, but he does not provide a proof of purchase for the Bridge investment.

5 As a result, we were able to verify his claim for \$1,294.00. However, his commission  
6 payments exceed the investment, and therefore, we recommended a Verified Amount of \$0.00 in  
7 our Distribution Report. Gross provides no new evidence in his objection, and we recommend  
8 that the Court approve our original recommendation and confirm a Verified Amount of \$0.00.  
9

10 3. Lang, Linda

11 Lang filed a claim for two investments: a \$3,882.00 Oakleaf investment and a \$2,100.00  
12 Bridge investment. The defendants' bank records confirm Lang's investment. In fact, Lang  
13 received a \$7,194.00 fund return payment on her Oakleaf investment. Attached as Exhibit 13 is  
14 a true and correct copy of a Meliorations Management check made payable to Lang. Lang does  
15 not dispute this payment.  
16

17 Lang acted as a Member Representative. She acknowledges receiving \$36,001.00 in  
18 commission payments. As a result, Lang's Verified Amount is \$0.00 because her commission  
19 payments and return on investment exceed her initial investments by \$37,213.00. Lang does not  
20 dispute these facts.  
21

22 Lang's mother, Julia Mary Levene, also filed a claim for \$68,619.00. She provided the  
23 necessary documentation to approve the entire amount. She has since passed away. Lang is  
24 serving as the Administrator of Levene's estate. A California Superior Court held that Lang is to  
25 receive the residue of Levene's estate. Attached as Exhibit 14 is a true and correct copy of the  
26 court order. Accordingly, we attributed Levene's claim to Lang. As noted above, Lang earned  
27  
28

1 and received an excess of \$37,213.00 on the defendants' schemes.

2 To benefit all investors, we offset amounts claimed by net gains due to commission  
3 payments or returns on investment. For instance, a husband's commission payments are  
4 deducted from the joint claim that is filed by both spouses. Here, Lang acted as a Member  
5 Representative on behalf of the defendants and their fraudulent investment plans. Lang would  
6 receive a windfall if the excess of her commission payments is not deducted from the residue she  
7 is due to receive from her mother's claim.  
8

9 If the commission payments are not deducted, Lang will receive the pro rata equivalent of  
10 Levene's \$68,619.00, and she will be allowed to retain the \$35,113.00 in commission payments  
11 that we did not deduct from her claim. Lang would be the only claimant who both retained  
12 commission payments and received a pro rata distribution.  
13

14 As the court knows, this is a case where "equality is equity," and the restitution  
15 distribution should be handled so that similarly-situated investors will be treated alike. *See*  
16 *United States v. Real Property Located at 13328 and 13324 State Highway*, 89 F.3d 551, 554  
17 (9th Cir. 1996) (citing *Cunningham v. Brown*, 265 U.S. 1 (1924); *see also Commodity Futures*  
18 *Trading Comm'n v. Topworth Int'l, Ltd.* 205 F.3d 1107 (9th Cir. 2000); *United States v.*  
19 *Durham*, 86 F.3d 70 (5th Cir. 1996)). We acknowledge that Levene did not earn commissions,  
20 and if she was still alive, we would not recommend reducing her Verified Amount. However,  
21 the reality is that Levene is deceased and Lang is the only heir to receive the residue of Levene's  
22 estate. As a result, it is reasonable for the Court to use its discretion and ensure that Lang is not  
23 allowed to receive a windfall due to this unique set of events.  
24  
25

26 4. Leach, Margaret (for Leach, Don, Deceased)

27 Leach objects to the fact that we denied a February 23, 2000 \$248,800.00 Rosewood  
28

1 investment. The payment allegedly was wired into Meliorations Management Teem's Bahamas  
2 Prosper International League Limited ("P.I.L.L.") account. In support of her objection, Leach  
3 produced a statement from GT Finance showing a \$250,000.00 withdrawal on February 24,  
4 2000, an e-mail from Steven Moreland to the late Don Leach acknowledging the receipt of  
5 Leach's funds, and a wire transfer request form.

6  
7 We could not confirm that Leach's \$248,800.00 transfer was deposited into the  
8 defendants' P.I.L.L. account. This is noteworthy because the late Don Leach made two other  
9 transfers into the P.I.L.L. account in question, on November 4, 1999, and December 14, 1999,  
10 and we were able to verify these transfers in the defendants' financial records. We also question  
11 the veracity and reliability of the Moreland e-mail, since he was one of the lead defendants in the  
12 parallel criminal case, and he is currently serving his prison sentence.

13  
14 In the absence of proof that the late Don Leach's funds were deposited into the  
15 defendants' bank accounts, we urge the Court to sustain the Receiver's recommendation and not  
16 increase the Verified Amount. However, due to informal negotiations with the Leaches'  
17 attorney, we agree that the Verified Amount should be adjusted for other reasons. We urge the  
18 Court to approve Leach for a Verified Amount of \$367,354.00.

19  
20 5. Mitchell, Angelo

21 We verified \$45,586.00 of \$66,290.00 on this claim. The unapproved transactions are  
22 separate \$10,352.00 Rosewood transactions on February 21, 2000, and March 23, 2000.  
23 Mitchell did not produce proofs of purchase for these investments, and we could not verify  
24 payment in the defendants' financial records.

25  
26 Mitchell alleges that his Rosewood certificates are sufficient to verify the investments.  
27 To ensure accuracy, we require that all claims be supported by a proof of purchase. Doing so  
28

1 protects other investors from potential fraud. We urge the Court to sustain the Receiver's  
2 recommendation and not increase the Verified Amount on this claim.

3 6. Orazi, William & Carol

4 We verified an amount of \$1,828.02 out of \$199,272.50 claimed due to the fact that the  
5 Orazis received approximately \$198,741.98 in commissions as Member Representatives. The  
6 Orazis do not object to the commission payment deduction.

7  
8 The Orazis object to the Receiver's recommendation to disallow their November 18,  
9 1998 \$24,586.00 investment. In support of their objection, the Orazis produce an Oakleaf  
10 certificate for 19 units and a Letter of Wishes. Their objection still does not contain a proof of  
11 purchase.

12  
13 To ensure accuracy, we require that all claims be supported by a proof of purchase.  
14 Doing so protects other investors from potential fraud. We urge the Court to sustain the  
15 Receiver's recommendation and not increase the Verified Amount on this claim.

16 7. Outerbridge, Carla

17 We verified an amount of \$0.00 on this claim because Outerbridge's proof of purchase is  
18 a check for \$1,262.40 Bermuda dollars made payable to "LRS Marketing," an entity run by  
19 Member Representative Llewellyn Ming. There is no evidence that Outerbridge's funds were  
20 deposited into the defendants' accounts, and we were not able to verify her payment in the  
21 defendants' financial records.

22  
23 To ensure accuracy, we require that all claims be supported by a proof of purchase to  
24 protect other investors from potential fraud. We urge the Court to agree with the Receiver's  
25 recommendation and not increase the Verified Amount on this claim.  
26  
27  
28

1                   8. Rini, Florence

2                   We verified \$3,673.00 out of \$4,967.00 on Rini's claim. The unapproved transaction is a  
3 May 15, 2000 \$1,294.00 Oakleaf placement. The Court issued a May 10, 2000 T.R.O. Rini's  
4 proof of purchase check is dated May 15, 2000, five days after this Court's May 10, 2000 T.R.O.  
5 There is no evidence that Rini's funds were ever deposited into the defendants' bank accounts.  
6 And Rini has provided no cancelled check or other evidence that this payment was processed.

7                   Rini argues that she should be compensated simply because she attempted to forward  
8 payment to Meliorations Management. We disagree. To ensure accuracy, we require that all  
9 claims be supported by a proof of purchase to protect other investors from potential fraud, and  
10 we recommended to the Court that only investors whose funds were commingled with other  
11 investors' funds in the defendants' accounts should be eligible for the pro rata distribution. We  
12 urge the Court to sustain the Receiver's recommendation and not increase the Verified Amount  
13 on this claim.  
14

15                   9. Robson, William & Evelyn

16                   We verified \$15,528.00 out of \$177,278.00 on the Robsons' claim. The unapproved  
17 transaction is an April 2000 \$161,750.00 wire transfer made via Abana Exitosa, an entity  
18 associated with Member Representatives Richard Young and Pete Huskey. In support of their  
19 objection, the Robsons produce an April 14, 2000 letter from Abana Exitosa to Meliorations  
20 Management containing a breakdown of names and amounts being transferred (three other  
21 individuals were involved in this transaction). Our office already had this documentation and  
22 took it under consideration prior to submitting the Distribution Report.  
23  
24

25                   It is noteworthy that the Robsons' claim also includes a May 25, 2000 letter from Abana  
26 Exitosa to Meliorations seeking confirmation that Meliorations received the alleged transfer.  
27  
28

1 The money apparently had not been received nearly six weeks later. There is no indication that  
2 Meliorations ever responded to this inquiry.

3         Additionally, the Robsons produce an August 25, 2004 letter from Mr. Young and Mr.  
4 Huskey noting their belief that the Robsons' funds were transferred into the Meliorations'  
5 P.I.L.L. account. However, in that same letter, Mr. Young and Mr. Huskey explain that they  
6 never received any confirmation that Meliorations received the transfer. Attached as Exhibit 15  
7 are true and correct copies of the above-mentioned correspondence.  
8

9         We could not find evidence of the wire transfer in the defendants' financial records. And  
10 even the Robsons' new records cannot confirm whether Meliorations ever received the money.  
11 Moreover, Messrs. Young and Huskey were Member Representatives who received over  
12 \$56,000.00 in commissions. We respectfully question the reliability of their representations.  
13

14         Without some proof that the Robsons' funds were, in fact, deposited into the defendants'  
15 accounts, we urge the Court to sustain the Receiver's recommendation and not to increase the  
16 Verified Amount on this claim.  
17

#### 18 **IV. Responses to Miscellaneous Formal Objections by Attorney David Smith**

##### 19 **A. Objector Disputes Receipt of Commissions and/or Return on Investment**

##### 20 **1. Abrahams, Margaret S.**

21         Abrahams claimed a loss of \$82,466.00 on behalf of Marcelona Investments. We  
22 approved a Verified Amount of \$7,466.00 in our Distribution Report. This reflects the fact that  
23 we deducted a \$75,000.00 investment return.  
24

25         Abrahams disputes the \$75,000.00 return. Attached as Exhibit 16 are true and correct  
26 copies of documents evidencing a \$25,000.00 payment and a \$50,000.00 payment to Abrahams.  
27 Indeed, the documents confirming the \$25,000.00 payment include a Withdrawal Worksheet in  
28

1 which Abrahams requests a withdrawal of her Dexia funds. As a result, we urge the Court to  
2 reject Abrahams' objection and approve the Verified Amount in our Distribution Report.

3 2. Coniglione, Joseph, Frank, Gail & Angelica

4 Seven different Conigliones filed separate claims with our office. Attorney David Smith  
5 filed one formal objection on behalf of five separate claims. We will address each claim in turn.  
6

7 a. Frank & Angelica Coniglione

8 We deducted \$982.00 from the \$2,588.00 claim filed by Frank and Angelica Coniglione.  
9 Attached as Exhibit 17 is a true and correct copy of a \$982.00 Meliorations Management check  
10 to Angelica Coniglione. We oppose the objection on behalf of Frank and Angelica Coniglione  
11 and urge the Court to approve our proposed Verified Amount of \$1,606.00.  
12

13 b. Joseph Coniglione

14 We deducted \$59,650.00 from the \$112,578.00 claim filed by Joseph Coniglione as a  
15 result of payments he received as either commission payments or investment returns. During our  
16 review of Coniglione's objection, we found three additional payments totaling \$1,140.00 that  
17 were not initially identified in the defendants' financial records. Attached as Exhibit 18 are true  
18 and correct copies of Meliorations Management checks to Joseph Coniglione totaling  
19 \$60,545.00.  
20

21 As a result, we urge the Court to amend the Distribution Report and approve a reduced  
22 Verified Amount totaling \$52,033.00 for Joseph Coniglione.  
23

24 c. Gail Coniglione

25 We denied Gail Coniglione's \$12,940.00 claim because she received a \$15,470.00 return  
26 on her investment. Attached as Exhibit 19 is a true and correct copy of the \$15,470.00 payment  
27 from Meliorations Management. As a result, we urge the Court to adopt our recommendation  
28

1 and approve a Verified Amount of \$0.00.

2 d. Joseph & Gail Coniglione

3 We approved Joseph and Gail Coniglione for a Verified Amount of \$51,760.00, which  
4 accounts for an August 13, 1999 Oakleaf investment. They did not provide a proof of purchase  
5 for two investments: a June 26, 1998 \$3,882.00 Oakleaf investment and a February 4, 1999  
6 \$1,525.00 Bridge investment. The Conigliones claim that the June 26, 1998 Oakleaf investment  
7 was in the amount of \$9,058.00, rather than \$3,882.00. In fact, the seven-unit certificate they  
8 produced represents the rollover of an original three-unit investment totaling \$3,882.00.

9 Attached as Exhibit 20 is a true and correct copy of a 1998 Oakleaf contract and 1999 Letter of  
10 Wishes, which show that the investment was made for the smaller sum. Nonetheless, the  
11 Congliones did not produce a proof of purchase for the original investment. It is possible that  
12 this investment was the result of a commission payment compensation or a gift.  
13  
14

15 As a result, we oppose Joseph and Gail Coniglione's objection and urge the Court to  
16 adopt our recommended Verified Amount totaling \$51,760.00.  
17

18 e. Gail & Angelica Coniglione

19 Gail and Angelica Coniglione claimed a \$23,292.00 loss in Oakleaf. We denied this  
20 claim because they did not produce a proof of purchase. Gail and Angelica did not claim a loss  
21 in Bridge. However, in their objection, they claim to produce a Welcome Note confirming an  
22 investment in Bridge. We could not locate that document in either their original claim or in  
23 their objection, and the Welcome Note is not sufficient proof of purchase for the Bridge claims.  
24 Even so, we agreed informally with the investors' attorney to increase the Verified Amount by  
25 \$5,176.00 because the defendants' records confirm the deposit for Oakleaf. Accordingly, we  
26 urge the Court to reject this objection and approve a Verified Amount of \$5,176.00.  
27  
28

1  
2 3. Dagg, Gordon & Lynnore

3 Dagg claims that his deceased sister Lynnore Dagg invested \$104,936.00 in Oakleaf and  
4 Vista International. We approved a Verified Amount of \$88,574.00, because the defendants'  
5 financial records indicate that Ms. Dagg received \$16,362.00 in a return on her investment.  
6 Attached as Exhibit 21 are true and correct copies of the cancelled checks endorsed by Dagg.  
7 Accordingly, we recommend that the Court deny Dagg's objection and approve our recommend  
8 Verified Amount of \$88,574.00.  
9

10 4. Hall, Donna

11 We recommended a Verified Amount of \$0.00 because the claimant received returns on  
12 her investments that exceeded her initial investments. We oppose Hall's objection and urge the  
13 Court to adopt our original recommendation.  
14

15 The defendants' financial records confirm that Hall received payments from Meliorations  
16 Management totaling \$183,789.00. Attached as Exhibit 22 are true and correct copies of the  
17 cancelled checks endorsed by Hall. Hall initially claimed the following losses: (1) \$169,160.00  
18 in Oakleaf, (2) \$1,294.00 in Rosewood, (3) \$1,000.00 in Sandpiper, and (4) \$500.00 in Bridge.  
19 The amount of loss claimed totals \$171,954.00. We can verify each investment except the  
20 following: (1) the April, 2000 \$1,294.00 Rosewood investment, (2) the \$500.00 Bridge  
21 investment, and (3) a July 19, 1998 \$3,882.00 Oakleaf investment. With no further analysis,  
22 Hall's claim would be reduced by \$5,676.00 for a Verified Amount of \$166,278.00.  
23  
24

25 As noted above, Hall received \$183,789.00 from Meliorations Management, an amount  
26 that exceeds the verified loss. Hall received \$34,611.00 in Meliorations Management checks  
27 made payable to Hall. Meliorations Management also made payments to P.I.L.L. account  
28

1 number 27953 totaling \$149,178.00. Copies of the P.I.L.L. checks are attached at the end of  
2 Exhibit 22. This account was Donna and Richard Hall's personal account as evidenced by the  
3 instructions she provided Meliorations Management in a February 23, 2000 Letter of Wishes.  
4 Attached as Exhibit 23 is a true and correct copy of the Letter of Wishes.

5 For clarification, the defendants' financial records indicate that Hall received a \$5,495.00  
6 commission payment, and we listed that amount in the Distribution Report. However, after  
7 reviewing a copy of the check, we discovered that it was made out to a different Hall. As a  
8 result, we do not contend that Hall received commission payments. Nonetheless, this fact does  
9 not change our analysis. Due to the fact that Hall's returns exceed her claimed losses, we  
10 recommend that the Court reject her objection and approve our proposal in the Distribution  
11 Report.  
12  
13

14 5. Jennings & Smith, Elliott & Zamir

15 On January 23, 2003, our office received two questionnaires: one from Elliott Jennings  
16 and another from Elliott Jennings and Zamir Smith. The Jennings questionnaire notes a  
17 \$41,408.00 return on an investment for Oakleaf. The Jennings and Smith questionnaire notes a  
18 \$23,292.00 return on an investment for Oakleaf. Attached as Exhibit 24 are true and correct  
19 copies of the questionnaires.  
20

21 Both returns exceed the amount of loss claimed. As a result, we recommend a verified  
22 amount of \$0.00. In his formal objection, Jennings provides a September 3, 2004 letter in which  
23 he claims that he completed the questionnaires incorrectly.  
24

25 The defendants' records do not confirm whether Jennings and/or Smith received these  
26 funds. We do not recommend doing so, but if the Court accepts Jennings' explanation, we  
27 recommend that the Court approve a Verified Amount totaling \$29,762.00. This monetary  
28

1 amount represents two Oakleaf investments that are supported by documentation. It does not  
2 include the claimed Bridge investment due to a lack of proof of purchase. Jennings and Smith do  
3 not dispute the fact that their Bridge investment cannot be approved.

4                   6. Kuipers, Baron John

5                   The Kuiperses filed claims on behalf of two entities: Rama Universal Holdings  
6 (“Rama”) and Universal Synergy (“Universal”). The Kuiperses claimed a loss of \$204,497.00  
7 under Rama and a loss of \$142,408.00 under Universal. We approved a Verified Amount of loss  
8 totaling \$128,402.00 for Rama and a Verified Amount of loss totaling \$106,183.00 for  
9 Universal. The Kuiperses also filed a personal claim for a \$250.00 Bridge investment. The  
10 Bridge claim lacks sufficient documentation to approve the loss.  
11

12                   The Kuipers object to our analysis for both the Rama and the Universal claims. We will  
13 address each of the objections separately.  
14

15                                   *a. Unapproved Transactions on Behalf of Rama Universal Holdings*

16                   Claimants contend that a May 16, 2000 \$244,355.45 transfer and a May 17, 2000  
17 \$7,469.58 transfer into the defendants’ bank account, the Private International Development  
18 Banc (P.I.D.B.) account, should be included in their Verified Amount. We disagree. Investors  
19 believed that the P.I.D.B. was an actual financial institution, whereas it was merely an account.  
20

21                   The questionnaire filed on behalf of Rama lists three deposits in P.I.D.B.: \$188,969.40,  
22 \$244,355.45, and \$7,469.58. Attached as Exhibit 25 is a true and correct copy of page six of the  
23 claimant’s questionnaire. However, the claimants’ questionnaire clarifies that the current  
24 balance on the P.I.D.B. account is only \$188,969.40. Moreover, an August 28, 2000 letter from  
25 Robert Schwalger of P.I.D.B. notes that the Rama balance is \$188,969.40. Attached as Exhibit  
26 26 is a true and correct copy of the August 28, 2000 Schwalger letter. This evidence seems to  
27  
28

1 indicate that the current Rama P.I.D.B. account balance does not include either the \$244,35.45  
2 investment or the \$7,469.58 investment.

3 We approved a Verified Amount for Rama totaling \$128,402.00, which represents (1)  
4 the \$188,969.00 P.I.D.B. balance, (2) a July 9, 1999 \$2,588.00 Oakleaf investment, (3) a  
5 November 29, 1999 \$5,176.00 Rosewood investment, and (3) a March 16, 2000 \$7,764.00  
6 Oakleaf investment, less \$76,095.00 in commissions.

7  
8 Due to the fact that the claimant's own questionnaire acknowledges a balance less than  
9 the amounts of the alleged transfers to P.I.D.B., we recommend that the Court approve the  
10 Verified Amount listed in our Distribution Report.

11 *b. Unapproved Transactions on Behalf of Universal Synergy*

12  
13 Claimants also object to the Receiver's recommendation not to credit transfers into  
14 Universal's P.I.D.B. account as follows: (1) a \$23,307.00 payment, (2) a \$185,041.00 payment,  
15 and (3) a \$45,324.00 payment. We did not approve these transfers, because the defendants'  
16 records indicate that the payments were made on behalf of Ken Neal (\$185,041.00), Beverly  
17 Wilson (\$45,324.00), and Brent Brooks and Margo Shum (\$23,307.00).

18  
19 We verified a loss of only \$106,183.00, an amount representing all investments into  
20 Oakleaf and Rosewood on behalf of Universal. It does not include investments made on behalf  
21 of the above-mentioned third parties.

22  
23 The claimants' questionnaire notes that the most current Universal P.I.D.B. balance is  
24 \$142,408.00, which is confirmed by the August 28, 2000 Schwalger letter attached as Exhibit 26.  
25 Attached as Exhibit 27 is a true and correct copy of the claimant's questionnaire. If the most  
26 recent P.I.D.B. balance is \$142,408.00, it would be impossible to approve the losses claimed on  
27 behalf of the third parties because their losses (\$253,672.00) exceed the \$142,408.00 current  
28

1 balance.

2 We initially told the claimants' attorney that we would not contest the third party claims  
3 provided that they produce evidence that Universal was acting as an agent for the third parties.  
4 However, after further review, it is impossible to approve the third party losses because, as  
5 noted, the amounts claimed are greater than the claimant's current P.I.D.B. balance.  
6

7 On October 7, 2004, the claimant filed an Amended Objection. In that objection, the  
8 claimants provide notarized letters from Neal and Wilson claiming that Universal Synergy  
9 invested funds on their behalf.

10 Even if the Court finds this documentation proper and sufficient, we object to increasing  
11 the Verified Amount because doing so would approve an amount of loss that exceeds the amount  
12 claimed. Given the current P.I.D.B. balances, it appears that the Neal and Wilson funds have  
13 since been returned or have been dissipated in some other manner. We urge the court to approve  
14 the Verified Amount in our Distribution Report.  
15

16 c. The Bridge Claim  
17

18 Claimants further object to our recommendation not to approve the Bridge claim. We  
19 disagree. As noted in my August 12, 2004 letter to attorney David Smith, claimants failed to  
20 produce a proof of purchase for this investment. Attached as Exhibit 28 is a true and correct  
21 copy of the Receiver's August 12, 2004 letter to David Smith. That is still the case.  
22

23 d. Referral Payments  
24

25 Finally, claimants allege that the amount of their commission payment deduction should  
26 be offset by \$10,607.50, which they paid in "sub-commissions" to other individuals. We  
27 disagree.  
28

Claimants admit acting as Member Representatives and receiving commission payments,

1 but they do not disclose the amount earned. We reduced their Verified Amount by \$76,095.00  
2 based on the defendants' financial records. Attached as Exhibit 29 are true and correct copies of  
3 payment evidence to Rama and Synergy. It is clear that Meliorations Management paid  
4 commission payments to the Kuiperses. The Kuiperses claim to have paid sub-referral fees to  
5 individuals who helped recruit new investors. The claimants do not produce evidence that these  
6 sub-referral fees were paid directly by Meliorations to their sub-agents. The Kuiperses benefited  
7 from these commission payments because their "sub-agents" recruited other individuals for the  
8 Kuiperses, and the Kuiperses received the bulk of the commission payments. We submit that  
9 their Verified Amount should not be increased by \$10,607.50, the amount of alleged "sub-agent"  
10 payments.  
11

12  
13 As noted, we originally approved a Verified Amount of \$128,402.00 for Baron John  
14 Kuipers/Rama and a Verified Amount of \$106,183.00 for Baron John Kuipers/Universal. Given  
15 the ambiguity provided in both the records and the claimants' objection, we urge the Court to  
16 approve our original Distribution Report recommendation and reject the claimants' petition to  
17 increase the Verified Amount.  
18

19 7. Lambert & Franks, Joanne & Jennifer

20 Lambert and Franks deny receiving two \$209.00 rollover surplus payments related to  
21 their Oakleaf investments. Attached as Exhibit 30 are true and correct copies of two checks  
22 payable to Lambert and Franks in the amount of \$209.00 each. The checks, numbered 9251 and  
23 9252, cleared the Meliorations account on May 5, 2000. We oppose and contest their objection.  
24

25 Lambert and Franks also believe that they should receive a distribution in the amount  
26 originally guaranteed by Zidar and his co-defendants. They argue that they should receive the  
27 equivalent of a 120 percent return on a two-year investment in Oakleaf. Of course, this is not  
28

1 possible, given the fact that the Receivership Assets are not large enough to cover projected  
2 earnings for each and every investor.

3 This is a case where “equality is equity,” and the restitution distribution should be  
4 handled so that similarly-situated investors will be treated alike. *See United States v. Real*  
5 *Property Located at 13328 and 13324 State Highway*, 89 F.3d 551, 554 (9th Cir. 1996) (citing  
6 *Cunningham v. Brown*, 265 U.S. 1 (1924); *see also Commodity Futures Trading Comm’n v.*  
7 *Topworth Int’l, Ltd.* 205 F.3d 1107 (9th Cir. 2000); *United States v. Durham*, 86 F.3d 70 (5th  
8 Cir. 1996)). The Court adopted this philosophy when it approved the Receiver’s distribution  
9 plan proposal on July 23, 2004. As a result, the objectors’ argument should be rejected.  
10

11 We approved the Lambert and Franks investment for the full amount invested, less the  
12 two \$209.00 payments, or \$69,983.00. We recommend that the Court adopt our original  
13 recommendation.  
14

15 8. Miller, Barbara, Kenneth, Ryan & Maxwell

16 The Millers originally claimed a loss totaling \$67,582.00. We approved the Millers for a  
17 Verified Amount of loss totaling \$62,890.00. On August 13, 2004, we informed the Millers’  
18 attorney that we will recommend to the Court to adjust the Millers’ Verified Amount downwards  
19 to \$55,126.00 due to the missing 4-unit Oakleaf investment and the \$3,050.00 Bridge  
20 investments.  
21

22 The Millers provided proofs of purchase totaling \$59,356.00, and the defendants’  
23 financial records confirm a \$5,176.00 May 14, 1999 Oakleaf investment. As a result, the  
24 verified loss is \$64,532.00. The Bridge claims are the only unapproved transactions.  
25

26 In her objection, Barbara Miller acknowledges receiving \$2,000.00 in commissions.  
27 Attached as Exhibit 31 are true and correct copies of commission checks totaling \$3,240.00.  
28

1 Initially, we believed that the Millers received payments from Meliorations Management totaling  
2 \$4,230.00, but we only located checks totaling \$3,240.00. As a result, we suggest adjusting the  
3 Millers' Verified Amount so that it totals \$61,292.00.

4 9. Munkasey, Michael and Uncapher, Stephen

5 Munkasey claimed a \$1,294.00 Oakleaf investment on behalf of Uncapher. We denied  
6 the claim due to the fact that Uncapher's claim lacked a proof of purchase. Munkasey and/or  
7 Uncapher objects to our finding.  
8

9 They argue that Uncapher's claim should be approved because he provides both a  
10 contract and a certificate. As you know, our office placed a high priority on requiring each  
11 investor to provide some form of proof of purchase (*e.g.*, check, money order, bank statement).  
12 We did so to protect all of the investors from potential fraud.  
13

14 We recommend that the Court deny Munkasey and/or Uncapher's objection and approve  
15 the Verified Amount in our Distribution Report.

16 Munkasey also claimed a loss of \$93,168.00. We approved a Verified Amount of  
17 \$81,262.00 due to the fact that Munkasey received \$13,200.00 in commissions. Munkasey  
18 disputes the amount of commissions being deducted from his claim. Attached as Exhibit 32 is a  
19 true and correct copy of a February 11, 2000 \$13,200.00 payment to Munkasey. We urge the  
20 Court to deny Munkasey's objection and to approve the Verified Amount in our Distribution  
21 Report.  
22

23 10. Postlethwaite, Leonard & Erlene

24 The Postlethwaites claimed a loss of \$289,788.00. In an August 25, 2004 letter to the  
25 Postlethwaites' attorney, we agreed that our Distribution Report should be amended to reflect  
26 this claim. We were able to confirm proofs of purchase and other documentation for all claimed  
27  
28

1 investments.

2           However, the Postlethwaites earned \$957,075.10 in commissions. Attached as Exhibit 33  
3 are true and correct copies of the Meliorations Management checks that were endorsed by the  
4 Postlethwaites. As a result, we urge the Court to reject their objection and approve our  
5 recommended distribution of \$0.00.

6  
7           11. Adderley, Anthony

8           On October 27, 2004, Anthony Adderley filed a Petition for Leave to Amend Claim.  
9 Adderley apparently wants to add a new, additional claim to an approved application.

10           The Court-imposed deadline for filing objections was October 7, 2004. The Court-  
11 imposed deadline for filing new applications was September 29, 2004. Adderley's petition is  
12 late under either circumstance, and it does not appear that Adderley has a good faith reason for  
13 submitting a late claim.

14  
15           We never received a questionnaire regarding Adderley's claimed losses. Therefore, it  
16 was difficult to know and understand the extent of his investments and alleged losses. However,  
17 based on the documents provided by Adderley's attorney on May 12, 2003, we approved losses  
18 in Bridge and Oakleaf totaling \$25,376.00.

19  
20           Adderley now claims an additional \$25,000.00 loss in Dexia. He finally produces the  
21 questionnaire and other supporting documents. The questionnaire was executed by Adderley on  
22 March 11, 2004. Adderley waited over seven months to forward this information to the Court  
23 and to the Receiver.

24  
25           We acknowledge that Adderley's submissions indicate that Adderley invested \$25,000.00  
26 in Dexia. However, we recommend that the Court not approve this claim due to the fact that  
27 Adderley identifies this claim for the first time nearly 18 months after he first contacted the  
28

1 Receivership.

2 **V. Responses to Pro Se Objections**

3 The following arguments are in response to objections filed pro se by individual  
4 investors.

5 A. Objections to Court-Approved Pro Rata Distribution Method

6 The following individuals do not object to our analysis or findings regarding their  
7 specific claims. Rather, they object to the pro rata distribution formula that was approved by the  
8 Court on July 23, 2004. We oppose their objections.

9 This is a case where “equality is equity,” and the restitution distribution should be  
10 handled so that similarly-situated investors will be treated alike. *See United States v. Real*  
11 *Property Located at 13328 and 13324 State Highway*, 89 F.3d 551, 554 (9th Cir. 1996) (citing  
12 *Cunningham v. Brown*, 265 U.S. 1 (1924); *see also Commodity Futures Trading Comm’n v.*  
13 *Topworth Int’l, Ltd.* 205 F.3d 1107 (9th Cir. 2000); *United States v. Durham*, 86 F.3d 70 (5th  
14 Cir. 1996)). Each of the following individuals is in the same situation as all other investor  
15 victims.

16	Angol, Peter	Bassett, Laureen
17	Berry, Darrell	Broadley, Deena
18	Day, Charlene	Hargrave, Karen
19	Holland, Gordon & Marie	Johnson, Terri Ruth
20	Lay, Lorene	Piner, Ray
21	Skreen, Barbara Ann Holland	Smith, Alan E.
22	Smith, Patricia L.E.	Ungvarsky, Edward & Susan
23	Van Deventer, Edwin & Lois	Wales, Leroy & Kimberlee

1 Woloschuk, Barbara Marie

Woloschuk, Eleanor

2 Woloschuk, Leslie

3 Karen Hargrave's September 6, 2004 letter to the Court requires a direct response.

4 Hargrave objects to the pro rata distribution formula on the basis that she invested \$59,985.00 in  
5 a personal brokerage or trading account at a "bank which had funds with ANZ Bank of New  
6 Zealand." She claims that her funds were never invested in any of the investment schemes in  
7 question. We disagree.  
8

9 In actuality, Hargrave sent money to P.I.D.B., which was a bank account opened by the  
10 lead defendants at the ANZ Bank. Although the investors thought that they were opening private  
11 accounts at an off-shore bank, their deposits were commingled with the other investors' deposits  
12 in one bank account.  
13

14 Hargrave further alleges that since P.I.D.B. was an account at the ANZ Bank, her  
15 situation is similar to that of the investors whose deposits were frozen at the ANZ New York  
16 Bank. The Court's July 23, 2004 order ruled that the ANZ Bank New York funds shall be  
17 returned in whole since the frozen funds were not commingled with other investors' funds. The  
18 defendants' internal records confirm that Hargrave's funds were deposited into P.I.D.B. on May  
19 17, 2000. This confirms that her funds were commingled. The balance of this account makes up  
20 part of the Receivership Assets, and all investors with verified investments should share the  
21 Receivership Assets in an equitable manner. We urge the Court to approve Hargrave's  
22 distribution at the rate incorporated in the pro rata distribution; a rate and amount equal to all  
23 other investors.  
24  
25  
26  
27  
28

1           B. Objections Deserving Recalculation of Verified Amount

2                   1. Benkert, Michael

3           Michael Benkert objected to our Distribution Report in an August 18, 2004 letter to the  
4 Court. We agree that Benkert's Verified Amount should be adjusted upwards.

5           Both Benkert's file and the defendants' internal records confirm that Benkert's Verified  
6 Amount should be increased from \$14,810.00 to \$17,936.00.

7           Initially, we did not confirm some of Benkert's investments because two of the checks  
8 presented as proofs of purchase were drawn on the account of a third party (Universal  
9 Maintenance and Full Service Maintenance). Since then, however, we were able to verify that  
10 these checks were a valid proof of purchase on Benkert's behalf.

11           Accordingly, we petition the Court to increase Benkert's Verified Amount from  
12 \$14,810.00 to \$17,936.00.

13                   2. Long Jr., Charles

14           We respond to Long's September 6, 2004 letter to the Court. Long disputes a \$30,000.00  
15 commission deduction.

16           Long submitted a claim for \$42,702.00. However, Long's Verified Amount is \$0.00  
17 because the commission payments he received as a Member Representative exceed the amount  
18 of his original investment by \$15,693.00. He now apparently claims to have invested  
19 \$58,395.00, yet his original claim and proofs of purchase amount to no more than \$42,702.00.

20           Long admits that he acted as a Member Representative and received commission  
21 payments of \$27,905.00.

22           Defendant Elizabeth Ann Phillips' records indicate that she made a \$30,000.00 transfer to  
23 Long's P.I.L.L. account on April 19, 1999. Consequently, the amount of \$30,000.00 was  
24  
25  
26  
27  
28

1 subtracted from Long's claim. Long produced a P.I.L.L. account statement from May 28, 1999,  
2 to July 25, 2000, and a declaration of Pierre Gauthier, Managing Director of P.I.L.L., noting that  
3 the transfer of \$30,000.00 never took place. Upon further review, despite what is contained in  
4 Phillips' records, we acknowledge that the \$30,000.00 transfer cannot be confirmed. As a result,  
5 we withdraw our recommendation that the Court deduct \$30,000.00 from Long's claim.  
6

7 Accordingly, we recommend that the Court amend Long's Verified Amount and approve  
8 a pro rata distribution based on a Verified Amount of \$14,797.00.

9 3. Porcher, Arthur

10 We oppose and contest the August 26, 2004 objection letter filed by Porcher.

11 Mr. Porcher claims that he bought eight units of Oakleaf. However, the questionnaire  
12 and paperwork he filed with our office indicates that he invested in only six units of Oakleaf. On  
13 March 20, 1999, Mr. Porcher bought one unit of Oakleaf at \$1,294.00. A year later, on March  
14 20, 2000, he bought five more units of Oakleaf at a cost of \$6,470.00. Attached as Exhibit 34 is  
15 Porcher's proof of purchase for both investments. His total investment equals \$7,764.00, or six  
16 units. He has not provided any evidence that he invested \$10,352.00, or bought eight units of  
17 Oakleaf.  
18  
19

20 Also, Mr. Porcher claims that he did not receive \$2,740.00 in commission payments. We  
21 disagree. Actually, Mr. Porcher, upon further review, received \$3,230.00 in commissions. As a  
22 result, we petition the Court to adjust his Verified Amount downward.  
23

24 Specifically, Mr. Porcher received the following commission payments:

- 25 (1) Meliorations check number 4895 totaling \$745.00 cleared on March 10, 1999;  
26 (2) Meliorations check number 5156 totaling \$1,995.00 cleared on April 1, 1999;  
27 (3) Meliorations check number 5314 totaling \$245.00 cleared on May 18, 1999; and  
28

1 (4) Meliorations check number 5488 totaling \$245.00 cleared on June 9, 1999.

2 Attached as Exhibit 35 are true and correct copies of these checks.

3 Mr. Porcher further claims that he received no return on his investment. Yet, he reported  
4 a \$254.00 payment in his questionnaire. Attached as Exhibit 36 is a true and correct copy of his  
5 questionnaire. Also, Meliorations check number 8993 cleared the bank on April 11, 2000.  
6 Attached as Exhibit 37 is a true and correct copy of the check.  
7

8 As a result, we petition the Court to amend Mr. Porcher's Verified Amount downward to  
9 reflect the \$508.00 in commission payments that the Receiver mistakenly omitted from the  
10 Distribution Report. Accordingly, Mr. Porcher's Verified Amount should be \$4,280.00 rather  
11 than \$4,770.00.  
12

13 4. Russell, William

14 Russell filed an objection to our Distribution Report on September 10, 2004.

15 Russell's provides no proofs of purchase or certificates. However, we confirmed his July  
16 28, 1999 \$30,012.19 deposit in the defendants' financial records. We also identified a return on  
17 investment totaling \$24,272.50. Russell denies receiving an \$18,272.50 payment. Upon further  
18 review, we agree with Russell. We mistakenly identified a payment to Linda Russell as a  
19 payment to William Russell.  
20

21 The defendants' records indicate that Russell received a \$6,460.00 payment on or around  
22 May 31, 2000. Attached as Exhibit 38 are true and correct copies of records confirming the  
23 payment.  
24

25 Russell now claims two one-unit investments in Rosewood dated February 5, 2000, and  
26 April 1, 2000. Russell does not provide proofs of purchase for any of his investments. However,  
27 the defendants' financial records confirm two \$1,294.00 deposits by William Russell on  
28

1 February 5, 2000, and April 1, 2000.

2 As a result, we recommend that the Court increase Russell's Verified Amount by  
3 \$20,400.50, for a total Verified Amount of \$26,140.19.

4 C. Objections Not Deserving Recalculation of Verified Amount

5 1. Hope, Charles

6 We oppose the objection filed by Hope. Hope claims to have lost money due to several  
7 investments with Mr. William Cravens, a defendant in the parallel criminal proceeding. First,  
8 Hope claims that Cravens directed him to invest \$20,000.00, and that the funds were placed into  
9 the World Cultural Center account at the ANZ Bank in Samoa. In an F.B.I. interview, Hope  
10 stated that he received \$11,200.00 in return on that investment. Attached as Exhibit 39 is page 2  
11 of Exhibit 11 attached to Hope's Objection. Documents provided by Hope show that Cravens  
12 was President of World Cultural Center. Attached as Exhibit 40 is a copy of a letter confirming  
13 Cravens' position attached as Exhibit 1 to the Hope objection.  
14  
15

16 Second, he claims that he is owed \$2,536,066.00 due to a private real estate business  
17 venture with Cravens. Hope claims to have assigned real property to Cravens under a Contract  
18 for Assignment of Assets. Attached as Exhibit 41 is a true and correct copy of the Contract  
19 attached as Exhibit 5 to the Hope objection. The purpose was to use the real property as  
20 collateral to secure loans. Hope alleges that all of his monies are part of the World Cultural  
21 Center account that was seized by the government at the ANZ Bank Samoa.  
22  
23

24 There is no indication that this second business transaction had any connection to the  
25 World Cultural Center or any of the other *Zidar* schemes. Actually, Cravens signed the Contract  
26 for Assignment of Assets as the General Manager of the La Jolla Funding Group. Moreover, he  
27 does not seek the recovery of lost funds, because he lost nothing in this transaction. He did not  
28

1 convey the real property to Cravens. Rather, he seeks to earn the money he believes is owed him  
2 as a return on his contract. Hope simply seeks the benefit of his bargain. Given the fact that  
3 there is no evidence that any of this alleged return on investment was ever commingled with  
4 other *Zidar* funds, Hope should not receive restitution from Receivership Assets.

5 This is a case where “equality is equity,” and the restitution distribution should be  
6 handled so that similarly-situated investors will be treated alike. *See United States v. Real*  
7 *Property Located at 13328 and 13324 State Highway*, 89 F.3d 551, 554 (9th Cir. 1996)  
8 (affirming allocation of proceeds of disgorged property pro rata to victims of a fraudulent  
9 investment scheme, regardless of whether claimants can trace their funds, because “the equities  
10 demand that all victims of the fraud be treated equally”) (citing *Cunningham v. Brown*, 265 U.S.  
11 1 (1924); *see also Commodity Futures Trading Comm’n v. Topworth Int’l, Ltd.* 205 F.3d 1107  
12 (9th Cir. 2000); *United States v. Durham*, 86 F.3d 70 (5th Cir. 1996)). The Court adopted this  
13 philosophy when it approved the Receiver’s Distribution Plan on July 23, 2004.

14 Here, Hope attempts to trace his investment gains to the seized World Cultural Center  
15 bank account. He cannot do so. There is no record within the World Cultural Center account  
16 that references his real estate assignment to Cravens and/or the La Jolla Funding Group. Even  
17 so, the above-cited caselaw establishes that it is inappropriate to trace funds when the amount  
18 recovered is insufficient to cover the losses suffered by all investors. As the Court knows, the  
19 investors in this case have lost approximately \$75 million, and the amount to be redistributed is  
20 approximately \$24.5 million. Since tracing would not make each person whole, the court  
21 appropriately adopted the equitable alternative, a pro rata distribution.

22 As a result, we urge the Court to adopt our initial recommendation and award Hope  
23 restitution based on a Verified Amount of \$8,800.00. This amount reflects the initial \$20,000.00  
24  
25  
26  
27  
28

1 investment with the World Cultural Center less funds returned.

2 2. Porter, Guy S.

3 We oppose and contest the August 30, 2004 objection letter filed by Porter.

4 Mr. Porter denies receiving a \$6,251.00 payment on February 24, 2000. We disagree.

5 Attached as Exhibit 42 is a true and correct copy of a check payable to Guy Porter in the amount  
6 of \$6,251.00.  
7

8 We approved the Porter investment for the full amount invested less the \$6,251.00  
9 payment, or a net of \$6,779.00.

10 **VI. Amendments in Response to Informal Negotiations with Pro Se Investors**

11 Several investors contacted us with additional evidence regarding their claims after we  
12 filed our Distribution Plan. We agreed to accept the additional documentation submitted by  
13 some investors. Accordingly, we recommend that the Court amend the Verified Amounts for the  
14 following investors:  
15

<u>NAME</u>	<u>VERIFIED AMOUNT</u>	<u>AMENDED VERIFIED AMOUNT</u>
16 Benkert, Michael	\$14,810 .00	\$17,936.00
17 Martinelli, Eleanor & Robert	\$38,820 .00	\$41,408.00
18 Oglesby, Roger	\$6,544.00	\$11,794.00
19 Beatty, Jennifer	\$0.00	\$2,588.00

20 **VII. Responses to Potential New Applicants**

21 The Court's July 23, 2004 Order prohibited our office from accepting or considering any  
22 new investor claims after August 2, 2004. On September 16, 2004, the Court amended the July  
23 23rd Order and directed our office to accept new claims filed between August 2, 2004 and  
24 September 29, 2004. The Court also ordered our office to provide recommendations to the Court  
25 on whether the new claimants provided a good faith reason for not responding to the Receiver's  
26 December 6, 2002 query in a timely manner.  
27  
28

1 The following analysis responds to the Court's request by individual applicant.

2 1. Brown, Doreen

3 Violet Dunn filed a petition on behalf of Doreen Brown with the Court on September 16,  
4 2004. Brown, who did not file an application with the Receiver, seeks the Court's approval to  
5 participate in the restitution plan. We do not oppose Brown's petition.

6 Brown claims an April 6, 2000 \$1,294.00 investment in the Rosewood scheme. In  
7 support of her petition, Brown produced a contract and proof of purchase for \$1,294.00.

8 Dunn's letter to the Court does not provide a reason why Brown filed her petition late.  
9 Dunn states that Brown did not receive our initial mailing, but it is difficult to ascertain whether  
10 Brown has a good faith reason for submitting a late claim.  
11

12 If the Court incorporates Brown's claim into the Distribution Report, we recommend  
13 approving Brown for a Verified Amount of \$1,294.00.  
14

15 2. Chorus, Yolanda

16 Chorus filed a petition with the Court on August 31, 2004. Chorus, who did not file an  
17 application with the Receiver, seeks the Court's approval to participate in the restitution plan.  
18 We do not oppose Chorus' petition.  
19

20 Chorus claims that, on or around May 8, 2000, she wired \$10,352.00 to the World  
21 Cultural Center-Samoa ("W.C.C.") account at the ANZ Bank of Samoa. In support of her  
22 petition, Chorus produces a copy of a wire transfer confirmation dated May 8, 2000 from Sky  
23 Management, Inc., and a copy of a money order for \$10,352.00, payable to Jameson  
24 International. Chorus also produces a contract for the purchase of eight units at the price of  
25 \$10,352.00.  
26

27 The defendants' internal records confirm that Sky Management wired \$10,352.00 to the  
28

1 World Cultural Center account on or around May 8, 2000. This is the only deposit on that date  
2 that matches the payor and the amount, and it can be properly attributed to Chorus.

3 Chorus' letter to the Court states that Chorus had no knowledge about the Receivership  
4 until about August 10, 2004 and that she "was not informed of any procedures that followed." It  
5 is difficult to ascertain whether Chorus has a good faith reason for submitting a late claim.  
6

7 If the Court incorporates Chorus' claim, we recommend approving Chorus for a Verified  
8 Amount of \$10,352.00.

9 3. Clemence, Julie

10 Clemence filed a petition with the Court on September 17, 2004. Clemence, who did not  
11 file an application with the Receiver, seeks the Court's approval to participate in the restitution  
12 plan. We do not oppose Clemence's petition.  
13

14 Clemence claims a September 16, 1999 \$6,470.00 investment in the Oakleaf scheme. In  
15 support of her petition, Clemence produced a certificate for five units, a contract, and proofs of  
16 purchase totaling \$6,470.00. The defendants' internal records confirm this investment.  
17

18 Clemence's letter to the Court notes that Clemence submitted a questionnaire and  
19 supporting documentation to a Victim-Witness Coordinator at the United States Attorney's  
20 Office. Clemence fails to explain why she did not send her claim to the Receivership. It is  
21 difficult to ascertain whether Clemence has a good faith reason for submitting a late claim.  
22

23 If the Court incorporates Clemence's claim into the Distribution Report, we recommend  
24 approving Clemence for a Verified Amount of \$6,470.00.

25 4. D'Mello, Lynnette

26 D'Mello filed a petition with the Court on August 26, 2004. D'Mello, who did not file an  
27 application with the Receiver, seeks the Court's approval to participate in the restitution plan.  
28

1 We do not oppose D'Mello's petition.

2 D'Mello claims that, on or around December 4, 1999, January 18, 2000, and February 29,  
3 2000, she invested \$1,294.00, \$6,470.00, and \$6,470.00, respectively, for a total of \$14,234.00,  
4 in Rosewood International. In support of her petition, D'Mello produced a December 1999 bank  
5 draft, January and February 2000 wire transfer requests, and Rosewood certificates for all of the  
6 investments. D'Mello also produced contracts for her December and January purchases. The  
7 defendants' internal records confirm all of D'Mello's deposits.  
8

9 D'Mello's letter to the Court notes that she had no knowledge of the Receivership until  
10 August 2004. It is difficult to ascertain whether D'Mello has a good faith reason for submitting a  
11 late claim.  
12

13 If the Court incorporates D'Mello's claim into the Distribution Report, we recommend  
14 approving D'Mello for a Verified Amount of \$14,234.00.  
15

16 5. Dobis, Elizabeth

17 Dobis filed a petition with the Court on September 10, 2004. Dobis, who did not file an  
18 application with the Receiver, seeks the Court's approval to participate in the restitution plan.

19 We do not oppose Dobis' petition.

20 Dobis claims a March 15, 2000 \$25,880.00 investment in the Rosewood scheme. In  
21 support of her petition, Dobis produced a certificate for 20 units, a contract, and proofs of  
22 purchase for \$25,880.00. The defendants' internal records confirm this investment.  
23

24 Dobis' letter to the Court notes that Dobis recently learned of the Receivership by a  
25 fellow investor, and that she does not recall receiving any correspondence from our office.

26 If the Court incorporates Dobis' claim into the Distribution Report, we recommend  
27 approving Dobis for a Verified Amount of \$25,880.00.  
28

1                   6. Dunn, Violet

2                   Dunn filed a petition on September 16, 2004. Dunn, who did not file an application with  
3 the Receiver, seeks the Court's approval to participate in the restitution plan. We do not oppose  
4 Dunn's petition.

5                   Dunn claims a January 25, 2000 \$12,940.00 investment and a February 18, 2000  
6 \$2,588.00 investment in the Rosewood scheme. In support of her petition, Dunn produced  
7 certificates for twelve units, two contracts, and proofs of purchase totaling \$15,528.00. The  
8 defendants' internal records confirm the investments.

9                   Dunn's letter to the Court notes that Dunn was just recently made aware of the  
10 Receivership by a fellow investor, and that she does not recall receiving any correspondence  
11 from this office.  
12

13                   If the Court incorporates Dunn's claim into the Distribution Report, we recommend  
14 approving Dunn for a Verified Amount of \$15,528.00.  
15

16                   7. Ferrera, Fernanda

17                   Ferrera filed a petition on September 10, 2004. Ferrera, who did not file an application  
18 with the Receiver, seeks the Court's approval to participate in the restitution plan. We do not  
19 oppose Ferrera's petition.  
20

21                   Ferrera claims a January 12, 2000 \$1,294.00 investment in the Rosewood scheme. In  
22 support of her petition, Ferrera produced a certificate for one unit, a contract, and a proof of  
23 purchase for \$1,294.00. The defendants' internal records confirm the investment.  
24

25                   Ferrera's letter to the Court notes that she recently learned of the Receivership. Since  
26 Ferrera had no prior knowledge of the Receivership, she likely has a good faith reason for  
27 submitting a late claim.  
28

1 If the Court incorporates Ferrera's claim into the Distribution Report, we recommend  
2 approving Ferrera for a Verified Amount of \$1,294.00.

3 8. Gargin, Eleanor

4 Dennis Gargin filed a petition on behalf of his mother, Eleanor Gargin, on October 7,  
5 2004, after the Court-imposed deadline of September 29, 2004. As noted in the Court's  
6 September 16, 2004 order, all new claims filed after September 29, 2004 will be denied.  
7

8 By way of background, Gargin claims to have invested \$51,546.00 in the Oakleaf in  
9 February 1999 (one unit, or \$1,294.00), in July of 1999 (38 units, or \$49,172.00), and February  
10 2000 (\$1,080.00 added at rollover). In addition, Gargin claims a \$10,000.00 investment in  
11 Sandpiper. In support of her petition, Gargin produced proofs of purchase totaling \$2,374.00.  
12 The defendants' financial records confirm that Gargin deposited \$1,294.00 in February of 1999,  
13 \$49,172.00 and \$10,000.00 in July of 1999, and \$1,080.00 in February 2000.  
14

15 Gargin's letter alleges that she sent her claim to the Receiver's office in February of  
16 2003. Our office did not receive an application from Gargin. It is difficult to conclude that this  
17 applicant has a good faith reason for filing this application late.  
18

19 The petition filed by Gargin also apparently contains a claim on behalf of Phil Lasko.  
20 However, the cover letter to the Court does not discuss Lasko's claim, and it does not explain  
21 why this claim had not been previously filed.  
22

23 Regardless, Lasko claims to have invested \$2,588 in Oakleaf International in January  
24 1999. In support of his claim, Lasko produces certificates and proofs of purchase totaling  
25 \$2,588.00. As a result, we would have approved his claim had he timely filed a petition with our  
26 office.  
27

28 However, our office did not receive an application from Lasko and, therefore, we

1 recommend that the Court deny this claim.

2 If the Court incorporates Gargin's claim into the Distribution Report, we recommend it  
3 do so by approving Gargin for a Verified Amount of \$2,588.00.

4 9. Gentry, Charles

5 Gentry filed a petition with the Court on September 16, 2004. Gentry, who did not file an  
6 application with the Receiver, seeks the Court's approval to participate in the restitution plan.

7 Gentry claims investments totaling \$416,098.00 in Rosewood and Dexia. However, he  
8 acknowledges an investment return of \$225,000.00. Also, he provided a proof of purchase for  
9 only \$284,884.00 of the claimed investments. Therefore, we would recommend that the Court  
10 approve a Verified Amount of \$66,874.00 (an amount representing \$284,884.00 less the  
11 \$225,000.00 return).  
12

13  
14 It is noteworthy that Gentry indicates in his petition to the Court that he traveled to  
15 Seattle to testify in the criminal case. Therefore, it is reasonable to assume that Gentry should  
16 have been aware of the parallel civil case and restitution process. Also, in a July 29, 2004  
17 correspondence to my office, Gentry's representative acknowledges the fact that his application  
18 is late, but he provides no reason for this circumstance. It appears that Gentry lacks a good faith  
19 reason for filing a late petition.  
20

21 If the Court incorporates Gentry's claim into the Distribution Report, we recommend it  
22 do so by approving Gentry for a Verified Amount of \$66,874.00.  
23

24 10. Greene, Donna

25 Greene filed a petition on September 16, 2004. Greene, who did not file an application  
26 with the Receiver, seeks the Court's approval to participate in the restitution plan.

27 Greene claims one-unit investments in the Oakleaf scheme on June 28, 1999, August 3,  
28

1 1999, and September 2, 1999. In support of her petition, Greene produced three certificates,  
2 three contracts, and proofs of purchase totaling \$3,882.00. The defendants' internal records  
3 confirm these investments.

4 Greene's letter to the Court notes that she had not received any correspondence from the  
5 Receivership in two years, which implies that she received the original correspondence.  
6 Moreover, Greene encloses the original questionnaire, which was sent to all investors in  
7 December 2002. It appears that Greene does not have a good faith reason for submitting a late  
8 claim.  
9

10 If the Court incorporates Greene's claim into the Distribution Report, we recommend  
11 approving Greene for a Verified Amount of \$3,882.00.  
12

13 11. Groff-Feldman, Barbara

14 Groff-Feldman filed a petition with the Court on September 3, 2004. Groff-Feldman,  
15 who did not file an application with the Receiver, seeks the Court's approval to participate in the  
16 restitution plan. We oppose Groff-Feldman's petition.  
17

18 By way of background, Groff-Feldman claims that between April 1999 and February 15,  
19 2000, she invested approximately \$41,000.00 in the Oakleaf and Sandpiper schemes. Groff-  
20 Feldman claims that most of her records were destroyed during a flood, and she was only able to  
21 produce documentation, including proof of purchase, for \$34,020.00. However, the defendants'  
22 internal records support Groff-Feldman's claim that she invested about \$41,000.00.  
23

24 The defendants' internal records also show that Groff-Feldman acted as a Member  
25 Representative and received commission payments of at least \$6,990.00, some of which were  
26 used to purchase additional units. Groff-Feldman did not declare any commission payments on  
27 her questionnaire. It appears that Groff-Feldman's claim be reduced by \$6,990.00, should she be  
28

1 included in the distribution.

2 Groff-Feldman first contacted the Receivership in the winter of 2003, and at that time, the  
3 Receiver's staff advised her to file a claim as soon as possible. Groff-Feldman failed to file a  
4 claim until now. In addition, she encloses the original questionnaire originally sent to investors  
5 in December 2002. We conclude that Groff-Feldman does not have a good faith reason for  
6 submitting a late claim. However, should the Court disagree with our finding, we recommend a  
7 Verified Amount of \$34,010.00.  
8

9 12. Gudmunson, Sheldon

10 Gudmunson filed a petition with the Court on September 13, 2004. Gudmunson, who did  
11 not file an application with the Receiver, seeks the Court's approval to participate in the  
12 restitution plan.  
13

14 Gudmunson claims that on February 2, 2000, he invested \$9,058.00 in the Rosewood  
15 scheme for himself (two units), his wife JoAnn (two units), and his children Gracia (one unit),  
16 Andrew (one unit), and Maari (one unit), for a total of seven units. In support of his petition,  
17 Gudmunson produced contracts for seven units. Gudmunson failed to produce proofs of  
18 purchase, despite the Receiver's instructions to do so in a September 2, 2004 e-mail to  
19 Gudmunson. However, we were able to confirm his investments in the defendants' internal  
20 records.  
21

22 Gudmunson's letter to the Court notes that he just recently learned of the Receivership,  
23 but that he also previously submitted a claim. We did not receive Gudmunson's claim. In  
24 addition, Gudmunson enclosed our original questionnaire, signed and dated January 28, 2003. It  
25 appears that Gudmunson failed to file his claim until now and that he lacks a good faith reason  
26 for submitting a late claim.  
27  
28

1 If the Court incorporates Gudmunson's claim into the Distribution Report, we  
2 recommend approving Gudmunson for a Verified Amount of \$9,058.00.

3 13. Harthcock, Chad & Rachel

4 Chad and Rachel Harthcock filed a petition with the Court on September 13, 2004. The  
5 Harthcocks, who did not file an application with the Receiver, seek the Court's approval to  
6 participate in the restitution plan. We do not oppose the Harthcocks' petition.  
7

8 The Harthcocks claim a September 30, 1999 \$2,588.00 investment and a February 5,  
9 2000 \$12,940.00 investment in the Rosewood scheme. In support of their petition, the  
10 Harthcocks produced certificates for 12 units, two contracts, and proofs of purchase totaling  
11 \$15,528.00. The defendants' internal records confirm the investments.  
12

13 The Harthcocks' letter to the Court notes that they had not received information  
14 regarding the Receivership in a long time. This indicates an awareness of our work, but it is  
15 unclear whether the Harthcocks received a direct mailing. If not, they likely have a good faith  
16 reason for submitting a late claim.  
17

18 If the Court incorporates the Harthcocks' claim into the Distribution Report, we  
19 recommend approving the Harthcocks for a Verified Amount of \$15,528.00.

20 14. Hur, Hwan

21 Hur filed a petition with the Court on September 24, 2004. Hur, who did not file an  
22 application with the Receiver, seeks the Court's approval to participate in the restitution plan.  
23 Hur claims to have invested \$20,704.00 in Rosewood in February 2000. The documents  
24 provided by Hur support this claim. Hur provides a bank statement that confirms a \$20,704.00  
25 withdrawal on February 22, 2000.  
26

27 However, it is noteworthy that Hur's submission to the Court also includes the Receiver's  
28

1 original questionnaire mailed on December 6, 2002. Hur's September 24, 2004 letter to the  
2 Court provides no explanation why Hur failed to timely file an application. As a result, it is  
3 difficult to conclude that this applicant has a good faith reason for filing a late application.

4 If the Court incorporates Hur's claim into the Distribution Report, we recommend it do  
5 so by approving Hur for a Verified Amount of \$20,704.00.

6  
7 15. Law, Larry

8 Law filed a petition with the Court on September 17, 2004. Law, who did not file an  
9 application with the Receiver, seeks the Court's approval to participate in the restitution plan.  
10 We do not oppose Law's petition.

11 Law claims a June 8, 1999 \$25,880.00 investment in the Oakleaf scheme. In support of  
12 his petition, Law produced a contract for 20 units and proof of purchase. The defendants'  
13 internal records confirm this investment.

14 In his letter to the Court, Law notes that he first learned of the Receivership in August  
15 2004. If so, Law likely has a good faith reason for filing a late claim.

16 If the Court incorporates Law's claim into the Distribution Report, we recommend  
17 approving Law for a Verified Amount of \$25,880.00.

18  
19 16. Lesnett, Brit

20 Lesnett filed a petition with the Court on September 3, 2004. Lesnett, who did not file an  
21 application with the Receiver, seeks the Court's approval to participate in the restitution plan  
22 now. We do not oppose the petition.

23 Lesnett claims a June 28, 1999 investment in the Oakleaf investment scheme. Lesnett  
24 provided the proper paperwork including a certificate, contract and proofs of purchase totaling  
25 \$42,702.00  
26  
27  
28

1 In an August 19, 2004 e-mail to the Receiver, Lesnett noted that she had recently learned  
2 of the Receivership from her in-laws. If indeed Lesnett had no prior knowledge of the  
3 Receivership, she likely has a good faith reason for submitting a late claim.

4 If the Court incorporates Lesnett's claim into the Distribution Report, we recommend  
5 approving Lesnett for a Verified Amount of \$42,702.00.

6  
7 17. Linardos, Tom

8 Linardos filed a petition with the Court on September 10, 2004 regarding the Receiver's  
9 Distribution Report. Linardos, who did not file an application with the Receiver, seeks the  
10 Court's approval to participate in the restitution plan. We do not oppose Linardos' petition.

11 Linardos claims a March 2, 2000 \$46,584.00 investment in the Rosewood scheme. In  
12 support of his petition, Linardos produced a certificate for 36 units, a contract, and proof of  
13 purchase for \$46,584.00. The defendants' internal records confirm the investment.

14 In Linardos' letter to the Court, he notes that he moved in the fall of 2000 and believes  
15 that is the reason why he never received correspondence from the Receivership. Since Linardos  
16 had no prior knowledge of the Receivership, he likely has a good faith reason for submitting a  
17 late claim.  
18

19  
20 If the Court incorporates Linardos' claim into the Distribution Report, we recommend  
21 approving Linardos for a Verified Amount of \$46,584.00.

22  
23 18. MacNeil, Barbara

24 MacNeil filed a petition with the Court on August 21, 2004. MacNeil, who did not file  
25 an application with the Receiver, now seeks the Court's approval to participate in the restitution  
26 plan. We do not oppose MacNeil's petition.

27 MacNeil claims that her brother-in-law, Kurt Wittmayer, helped her invest \$13,970.00 in  
28

1 P.I.D.B. As noted on page 37, P.I.D.B. was merely an account that the Zidar defendants created  
2 at the ANZ Bank in Samoa. The defendants fraudulently represented that the P.I.D.B. was a  
3 separate, distinct financial institution, and they encouraged prospective investors to deposit funds  
4 in this account.

5 The defendants' internal records confirm that MacNeil invested \$13,970.00 in the  
6 P.I.D.B. account on or around April 7, 2000. We do not object to MacNeil's request to  
7 participate in the pro rata distribution and would have approved MacNeil's claim had she timely  
8 filed a petition with our office.

9 Wittmayer filed a claim for MacNeil, and we denied Wittmayer's claim because he  
10 received commission payments in excess of the losses claimed.

11 Wittmayer corresponded with the United States Attorney's Office and my office  
12 regarding this process as early as 2002. It is reasonable to conclude that MacNeil was aware of  
13 this process as a result of Wittmayer's efforts on her behalf. One could conclude that she should  
14 have filed a timely petition.

15 However, it appears from her petition that MacNeil believed Wittmayer was taking the  
16 appropriate steps to recoup her pro rata loss. If that is the case, MacNeil likely has a good faith  
17 reason for filing a late claim.

18 If the Court incorporates MacNeil's claim into the Distribution Report, we recommend  
19 approving MacNeil for a Verified Amount of \$5,532.12.

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24 19. Mansfield, William & Patricia

25 The Mansfields filed a petition with the Court on September 7, 2004. The Mansfields,  
26 who did not file an application with the Receiver, seek the Court's approval to participate in the  
27 restitution plan. We do not oppose their petition.

1 The Mansfields claim Bridge and Oakleaf investments. However, they did not complete  
2 the application questionnaire that was originally required of all investors. So, it is difficult to  
3 evaluate some of their claims. Nonetheless, they provided the proper paperwork for five out of  
4 six claimed Bridge investments. They did not provide documentation for a \$525.00 May 30,  
5 2000 Bridge investment. The defendants' records also indicate that the Mansfields received a  
6 \$254.00 Oakleaf payout on February 11, 2000. Attached as Exhibit 43 is a true and correct copy  
7 of a Meliorations Management Check made payable to William Mansfield.  
8

9 In an August 27, 2004 note, the Mansfields explained that they recently learned of the  
10 Receivership. Since the Mansfields had no prior knowledge of the Receivership, they likely  
11 have a good faith reason for submitting a late claim.  
12

13 If the Court incorporates the Mansfields' claim into the Distribution Report, we  
14 recommend approving them for a Verified Amount of \$17,944.00.  
15

16 20. Mark, Gerald

17 Mark filed a petition with the Court on August 30, 2004. Mark, who did not file an  
18 application with the Receiver, seeks the Court's approval to participate in the restitution plan.  
19 We do not oppose Mark's petition.

20 Mark claims a January 3, 2000 \$25,880.00 investment in the Rosewood scheme. In  
21 support of his petition, Mark produced a certificate and proof of purchase totaling \$25,880.00.  
22

23 Mark's letter to the Court does not explain why he filed a late claim. It is difficult to  
24 ascertain whether Mark has a good faith reason for submitting a late claim.

25 If the Court incorporates Mark's claim into the Distribution Report, we recommend  
26 approving him for a Verified Amount of \$25,880.00.  
27  
28

1                   21. McCormick, Dean R.

2                   McCormick filed a petition on August 21, 2004. McCormick, who did not file an  
3 application with the Receiver, now seeks the Court's approval to participate in the restitution  
4 plan. We do not oppose McCormick's petition.

5                   McCormick claims that his friend, Kurt Wittmayer, helped him invest \$5,984.00 in the  
6 P.I.D.B. As noted above (pp. 37, 55), the P.I.D.B. was merely an account that the Zidar  
7 defendants created at the ANZ Bank in Samoa. The defendants fraudulently represented that the  
8 P.I.D.B. was a separate, distinct financial institution, and they encouraged prospective investors  
9 to deposit funds into this account.  
10

11                   The defendants' internal records confirm that McCormick invested \$5,984.00 in the  
12 P.I.D.B. account on or around April 26, 2000.  
13

14                   Wittmayer filed a claim for McCormick, and we denied Wittmayer's claim because he  
15 received commission payments in excess of the losses claimed.

16                   Wittmayer corresponded with the United States Attorney's Office and my office  
17 regarding this process as early as 2002. It is reasonable to conclude that McCormick was aware  
18 of this process as a result of Wittmayer's efforts on her behalf. One could conclude that he  
19 should have filed a timely petition.  
20

21                   However, it appears that McCormick believed Wittmayer was taking the appropriate  
22 steps to recoup her pro rata loss. If that is the case, McCormick has a good faith reason for filing  
23 a late claim.  
24

25                   If the Court incorporates McCormick's claim into the Distribution Report, we  
26 recommend approving him for a Verified Amount of \$5,984.00.  
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22. McGuire, Mary

McGuire filed a petition on behalf of her late mother, Frances Praksti, on September 15, 2004. McGuire, who did not file an application with the Receiver, seeks the Court's approval to participate in the restitution plan. We do not oppose McGuire's petition.

McGuire claims that the late Ms. Praksti invested \$89,286.00 in the Rosewood scheme on March 7, 2000. In support of her petition, McGuire produced a certificate, a contract, and proof of purchase for \$89,286.00. The defendants' internal records confirm the investment.

McGuire's letter to the Court notes that her mother, Ms. Praksti, passed away in January of 2003. Therefore, it is difficult to ascertain whether the late Ms. Praksti received our initial mailing. As McGuire is her mother's estate administrator, it appears that McGuire has a good faith reason for filing a late claim.

If the Court incorporates McGuire's claim into the Distribution Report, we recommend approving her for a Verified Amount of \$89,286.00.

23. McLeod, Hugh

McLeod filed a petition with the Court on behalf of Extra Adda, S.A. on September 16, 2004. McLeod, who did not file a restitution application with the Receiver, seeks the Court's approval to participate in the restitution plan. We do not oppose McLeod's petition.

McLeod claims that on September 22, 1999, he invested \$64,700.00 in the Rosewood scheme on behalf of Extra Adda, S.A. In support of his petition, McLeod produced a certificate for 50 units. McLeod failed to produce a proof of purchase. However, we were able to confirm his investment in the defendants' internal records.

In his letter to the Court, McLeod notes that he was not aware of the Receivership due to his travels and a recent move. Since McLeod had no prior knowledge of the Receivership, he

1 likely has a good faith reason for submitting a late claim.

2 If the Court incorporates McLeod's claim into the Distribution Report, we recommend  
3 approving him for a Verified Amount of \$64,700.00.

4 24. Moorer, Charles & Ruth

5 The Moorers filed a petition with the Court on September 16, 2004. The Moorers, who  
6 did not file an application with the Receiver, seeks the Court's approval to participate in the  
7 restitution plan.  
8

9 The Moorers claim that between April 30, 1998 and June 30, 1999, they invested  
10 \$11,768.00 (Ruth Moorer) and \$1,674.00 (Charles Moorer) in the Oakleaf and Vista plans. They  
11 also acknowledge the receipt of \$386.00 in payouts. Therefore, the Moorers' net investment is  
12 \$13,056.00. In support of their petition, the Moorers produced certificates, contracts, and proofs  
13 of purchase totaling \$12,414.00. Even though the Moorers failed to produce a proof of purchase  
14 for Charles Moorer's original \$1,028.00 Vista investment, we were able to confirm the  
15 investment in the defendants' internal records.  
16

17 On October 22, 2001, the Moorers completed a questionnaire provided by the United  
18 States Attorney. Thus, they were aware of this process. Indeed, their September 10, 2004 letter  
19 to the Court notes that they failed to update the Securities and Exchange Commission when they  
20 moved in February 2002. This indicates an awareness of the Receivership process. Ultimately,  
21 they did not establish communication again until a cousin informed them a potential distribution.  
22 It appears that the Moorers lack a good faith reason for submitting a late claim.  
23

24 If the Court incorporates the Moorers' claim into the Distribution Report, we recommend  
25 approving them for a Verified Amount of \$13,056.00.  
26  
27  
28

1                   25. Norwood, Bruce

2                   Norwood filed a petition on September 24, 2004. Norwood, who did not file an  
3 application with the Receiver, seeks the Court's approval to participate in the restitution plan.

4                   Norwood claims two investments in Oakleaf: a June 11, 1999 \$1,294.00 investment and a  
5 September 17, 1999 \$2,588.00 investment. Norwood provided two separate checks that confirm  
6 the investments.  
7

8                   It is noteworthy that Norwood's submission to the Court also includes the original  
9 questionnaire distributed to potential victims by the United States Attorney's Office. Norwood  
10 completed and signed the questionnaire on May 24, 2001. His September 24, 2004 letter to the  
11 Court provides no explanation why Norwood failed to timely file an application with our office  
12 despite the fact that he was aware of this process back in 2001. There is little evidence that this  
13 applicant has a good faith reason for filing a late application.  
14

15                  If the Court incorporates Norwood's claim into the Distribution Report, we recommend  
16 approving him for a Verified Amount of \$3,882.00.  
17

18                   26. O'Keefe, Steven Michael

19                  O'Keefe filed a petition with the Court on September 10, 2004. O'Keefe, who did not  
20 file an application with the Receiver, seeks the Court's approval to participate in the restitution  
21 plan. We do not oppose O'Keefe's petition.  
22

23                  O'Keefe claims a December 28, 1999 \$28,468.00 investment in the Rosewood scheme.  
24 In support of his petition, O'Keefe produced a certificate for 22 units, a bank statement  
25 evidencing various withdrawals in December of 1999, and a sworn affidavit. Even though  
26 O'Keefe failed to produce a direct proof of purchase, we were able to confirm his investment in  
27 the defendants' internal records.  
28

1 In his letter to the Court, O'Keefe notes that he received our December 2002 letter to  
2 potential investors and mailed his questionnaire to our office. We did not receive O'Keefe's  
3 claim. If O'Keefe attempted to file a claim, and we did not receive the claim due to some  
4 unknown factor, it is reasonable to conclude that O'Keefe has a good faith reason for submitting  
5 a late claim.

6  
7 If the Court incorporates O'Keefe's claim into the Distribution Report, we recommend  
8 approving him for a Verified Amount of \$28,468.00.

9 27. Oszurko, Lidia

10 Oszurko filed a petition with the Court on September 24, 2004. Oszurko, who did not  
11 file an application with the Receiver, seeks the Court's approval to participate in the restitution  
12 plan.  
13

14 Oszurko claims a \$7,7764.00 investment in Rosewood in December 1999. Oszurko's  
15 documents support this claim. She has provided two separate proofs of purchase: a \$1,294.00  
16 wire transfer request on December 20, 1999; and a \$6,470.00 wire transfer on December 29,  
17 1999.  
18

19 It is noteworthy that Oszurko's submission to the Court also includes the Receiver's  
20 original December 6, 2002 letter and questionnaire. Her September 24, 2004 letter to the Court  
21 provides no explanation why Oszurko failed to timely file an application with our office despite  
22 the fact that she had the appropriate paperwork nearly two years ago. It is difficult to conclude  
23 that this applicant has a good faith reason for filing a late application.  
24

25 If the Court incorporates Oszurko's claim into the Distribution Report, we recommend  
26 approving Oszurko for a Verified Amount of \$7,764.00.  
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28. Porter, Robert J.

Porter filed a petition with the Court on September 3, 2004. Porter, who did not file an application with the Receiver, seeks the Court's approval to participate in the restitution plan.

Porter claims a December 30, 1998 \$24,586 investment in the Rosewood scheme. In support of his petition, Porter produced a certificate and proofs of purchase totaling \$24,586.00.

However, it is noteworthy that Porter's submission to the Court also includes the original questionnaire distributed to potential claimants by the United States Attorney's Office. Porter completed and signed the questionnaire on June 4, 2001. His letter to the Court notes that the Porters winter away from home and frequently travel. This is not a reasonable explanation why the Porters failed to submit a timely application. As a result, it is difficult to conclude that the Porters have a good faith reason for filing a late application.

If the Court incorporates Porter's claim into the Distribution Report, we recommend approving him for a Verified Amount of \$24,586.00.

The defendants' internal records indicate that Thelma A. Porter, who we believe to be Porter's spouse, also invested \$24,586.00 in the Rosewood scheme on the same day as Porter. However, she received a payout exceeding her original investment at maturity a year later. Therefore, Thelma A. Porter should not be eligible for a pro rata distribution if she decides to file her own claim with the Court.

29. Ricci, Tina Marie

Counsel David B. Smith filed a Petition for Leave to File Claim on Behalf of Tina Marie Ricci on September 17, 2004. Ricci, who did not file an application with the Receiver, seeks the Court's approval to participate in the restitution plan. We do not oppose Ricci's petition.

Ricci claims a December 16, 1999 \$7,764.00 investment and a January 12, 2000

1 \$14,234.00 investment in the Rosewood scheme. In support of her petition, Ricci produced  
2 contracts, certificates, and proofs of purchase. The defendants' internal records confirm these  
3 investments.

4 In her letter to attorney David Smith, which was filed with the Court, Ricci notes that she  
5 learned of the Receivership on or around August 25, 2004, and that she has moved twice in the  
6 past 13 months. However, we sent our letters to investors in December 2002, well before she  
7 moved. If indeed she was unaware of the Receivership, it is reasonable to conclude that she has  
8 a good faith reason for filing a late application.

9  
10 If the Court incorporates Ricci's claim into the Distribution Report, we recommend  
11 approving her for a Verified Amount of \$21,998.00.

12  
13 30. Riley, Carol

14 Riley filed a petition with the Court on September 15, 2004 on behalf of Prosperity  
15 International. Riley, who did not file an application with the Receiver, seek the Court's approval  
16 to participate in the restitution plan. We do not oppose Riley's petition.

17  
18 Riley claims to have invested \$38,820.00 in October 1999 and \$97,050.00 in February  
19 2000, in Rosewood International for a total investment of \$135,870.00. Riley acknowledges that  
20 the February 2000 \$97,050.00 Rosewood investment was a product of a rollover from Dexia to  
21 Rosewood. Riley provides a proof of purchase for the \$38,820.00 claim, but does not provide a  
22 proof of purchase for the \$97,050.00 claim. The defendants' financial records, however, indicate  
23 that Riley invested at least \$97,050.00 in Dexia.

24  
25 The documents provided by Riley support her claims. But Exhibit IIb in her letter to the  
26 Court, an Affidavit Verifying Private Patron Letter of Wishes, further evidences the fact that  
27 Riley received a \$27,951.32 payout on or about February 22, 2000. Attached as Exhibit 44 is a  
28

1 true and correct copy of Exhibit Iib attached to Riley's petition. In addition, the defendants'  
2 financial records indicate Riley received a \$44,000.00 payout on or about December 10, 1999.  
3 Attached as Exhibit 45 is a true and correct copy of a payout to Riley. As a result, the Riley  
4 Verified Amount would be \$63,918.68 (\$135,870.00 less \$27,951.32 and \$44,000.00).

5 In her letter to the Court, Riley does not provide a reason for filing a late claim. She  
6 asserts that she did not learn of the Receivership until August 2004. There is no evidence to  
7 show that she has a good faith reason for filing a late application.  
8

9 If the Court incorporates Riley's claim into the Distribution Report, we recommend  
10 approving Riley for a Verified Amount of \$63,918.68.

11 31. Schwark, Jacqueline

12 Schwark filed a petition on August 18, 2004. Schwark, who did not file a restitution  
13 application with the Receiver, seeks the Court's approval to participate in the restitution plan.  
14

15 Schwark claims a September 13, 1999 \$6,470.00 investment in the Rosewood scheme.  
16 In support of her petition, Schwark produced proper documentation, including a certificate, a  
17 contract, and proofs of purchase totaling \$6,470.00.  
18

19 In her letter to the Court, Schwark notes that she was not aware of the restitution  
20 application deadline because she was on vacation. We requested that claims be submitted to this  
21 office in our letter to investors dated December 2002. If Schwark received our mailing and  
22 failed to submit her claim, we do not believe that being away on vacation is a good faith reason  
23 for filing late.  
24

25 If the Court incorporates Schwark's claim into the Distribution Report, we recommend  
26 approving her for a Verified Amount of \$6,470.00.  
27  
28

1                   32. Showalter, Richard & Susan

2                   Richard and Susan Showalter filed a petition on August 25, 2004. The Showalters, who  
3 did not file an application with the Receiver, seek the Court’s approval to participate in the  
4 restitution plan.

5                   The Showalters claim that they invested \$6,470.00 with the Zidar defendants, primarily  
6 in the Rosewood investment scheme. The Showalters provided the proper paperwork including a  
7 certificate, contract and proofs of purchase totaling \$6,470.00.  
8

9                   In their letter to the Court, the Showalters note that they “did not receive most of the  
10 letters that were previously sent.” This indicates that the Showalters received at least some of  
11 our correspondence. If the Showalters received any of our mailings and never submitted a claim  
12 until August, 2004, it is unlikely that have a good faith reason for filing a late claim.  
13

14                  If the Court incorporates the Showalters’ claim into the Distribution Report, we  
15 recommend approving them for a Verified Amount of \$6,470.00.

16                   33. Shultz, Betty

17                  Shultz filed a petition with the Court on August 30, 2004. Shultz, who did not file an  
18 application with the Receiver, seeks the Court’s approval to participate in the restitution plan.  
19 We oppose part of Shultz’s claim because it lacks documentary evidence, and we recommend  
20 that the Court approve only a portion of her claim, if the application is determined to be timely.  
21

22                  Shultz claims that she invested \$166,926.00 with the Zidar defendants, primarily in the  
23 Oakleaf investment scheme. However, she did not complete an application questionnaire that  
24 was originally required of all investors. So, it is difficult to evaluate her claim. Moreover, she  
25 did not provide a single proof of purchase, contract or certificate to substantiate her claim until  
26 October 26, 2004.  
27  
28

1 Nonetheless, the defendants' financial records confirm that Shultz and her husband  
2 invested \$90,580.00 as follows: (1) a \$21,177.78 wire transfer on June 12, 1998; (2) a \$4,702.22  
3 wire transfer on June 23, 1998; (3) a \$38,820.00 wire transfer on April 14, 1999; and (4) a  
4 \$25,880.00 check deposit on February 4, 2000.

5 In her letter to the Court, Shultz notes that her husband, who made the investment, had a  
6 stroke in November 2001 and is incompetent. Shultz further notes that she did not recall this  
7 investment until her brother-in-law informed her of the pending distribution. It appears that  
8 Shultz has a good faith reason for filing a late claim.

9  
10 If the Court incorporates Shultz's claim into the Distribution Report, we recommend  
11 approving her for a Verified Amount of \$90,580.00.

12  
13 34. Simons, Claudette

14 Simons filed a petition with the Court on September 13, 2004. Simons, who did not file  
15 an application with the Receiver, seeks the Court's approval to participate in the restitution plan.  
16 We do not oppose Simons' petition.

17 Simons claims that, on or around March 2, 2000, she invested \$15,528.00 in the  
18 Rosewood. In support of her petition, Simons produces a contract, certificate and proof of  
19 purchase for that amount. The defendants' internal records also confirm the investment.

20  
21 In her letter to the Court, Simons does not provide a reason for filing a late claim, and  
22 therefore, it is difficult to ascertain whether she has a good faith reason for doing so.

23  
24 If the Court incorporates Simons' claim into the Distribution Report, we recommend  
25 approving her for a Verified Amount of \$15,528.00.

26 35. Thompson III, George B.

27 Thompson petitioned the Court on September 24, 2004. Thompson, who did not file an  
28

1 application with the Receiver, seeks the Court's approval to participate in the restitution plan.

2 Thompson claims to have invested \$14,234.00 in Rosewood in February 2000. The  
3 documents provided by Thompson support this claim. He provides a copy of a check payable to  
4 Meliorations Management, which confirms a \$14,234.00 investment.

5 As a result, we would have approved the claim had it been timely filed with our office.

6 It is noteworthy that Thompson's September 24, 2004 letter to the Court outlines several  
7 reasons why he failed to timely file an application with the Receiver. The reasons are both  
8 personal and business related, and it appears that Thompson has been overwhelmed by a variety  
9 of circumstances in recent years. We do not believe that these reasons made it impossible for  
10 Mr. Thompson to comply with our deadlines, and it appears that he lacks a good faith basis for  
11 filing a late application. Moreover, on December 16, 2003, our staff instructed Thompson's  
12 mother by phone that she and Thompson needed to file formal claims with our office.  
13  
14

15 If the Court incorporates Thompson's claim into the Distribution Report, we recommend  
16 approving Thompson for a Verified Amount of \$14,234.00.

17  
18 36. Wohlfred, Viola

19 Wohlfred filed a petition with the Court on August 23, 2004. Wohlfred, who did not file  
20 an application with the Receiver, seeks the Court's approval to participate in the restitution plan  
21 now. We do not oppose the petition.

22 Wohlfred claims an April 21, 2000 \$1,294.00 Rosewood investment. Wohlfred provided  
23 the proper documentation including a certificate, contract and proof of purchase for \$1,294.00.  
24

25 In her letter to the Court, Wohlfred notes that she recently located her certificates and  
26 other supporting documentation. Beyond that information, it is difficult to ascertain whether she  
27 has a good faith reason for filing her claim late.  
28

1 If the Court incorporates Wohlfred's claim into the Distribution Report, we recommend  
2 approving her for a Verified Amount of \$1,294.00.

3 37. Zaruba, Al & Martha

4 The Zarubas filed a petition with the Court on August 23, 2004. The Zarubas, who did  
5 not file an application with the Receiver, seek the Court's approval to participate in the  
6 restitution plan now. We do not oppose the petition.  
7

8 The Zarubas claim an August 30, 1999 \$19,410.00 investment in the Rosewood scheme.  
9 However, the Zarubas did not file an application questionnaire that was required of all other  
10 investor claimants. And they did not provide a Rosewood certificate or proof of purchase.  
11 Nonetheless, the defendants' internal records verify the Rosewood investment in the amount of  
12 \$19,410.00.  
13

14 In their letter to the Court, the Zarubas note that they moved from their old address four  
15 years ago. It is likely that they did not receive our initial mailing to investors, which appears to  
16 be a good faith reason for not submitting their claim in a timely fashion.  
17

18 If the Court incorporates the Zarubas' claim into the Distribution Report, we recommend  
19 approving them for a Verified Amount of \$19,410.00.

20 **VIII. Responses to Higher Education Student Assistance Foundation Investors**

21 Michael Gribbins is one of 64 H.E.S.A.F. investors. Gribbins, through his attorney,  
22 objects to the distribution being made to the H.E.S.A.F. administrator Roland Baldwin. We want  
23 to clarify his misunderstanding.  
24

25 First, none of the 64 investors invested in Rosewood or Oakleaf directly. Baldwin  
26 invested funds that he collected from students' parents, often without their knowledge or  
27 consent. Baldwin invested \$65,994.00 in Rosewood.  
28

1 On July 25, 2002, Baldwin notified the United States Attorneys' Office in Seattle that he  
2 was no longer acting as the H.E.S.A.F. Administrator. As noted in the Receiver's Petition for  
3 Approval of Proposed Distribution Plan, we recommend reimbursing the H.E.S.A.F. investors  
4 directly based on the percentage share of each investor's original investment with H.E.S.A.F.  
5 No funds should be disbursed to Baldwin directly. On July 23, 2004, the Court approved our  
6 recommendation and directed us to distribute the funds directly to the H.E.S.A.F. investors.  
7

8 On September 17, 2004, we sent a response to Gribbins' attorney, Lawrence P. Cartelli,  
9 noting that the pro rata share of Baldwin's Rosewood investment will be disbursed to the  
10 investors, not Baldwin. Attached as Exhibit 46 is a true and correct copy of the September 17,  
11 2004 letter.  
12

### 13 IX. Order

14 The Receiver files a proposed order with this response. Once the Court makes final  
15 rulings on individual Verified Amounts, we will produce an updated report, or Excel  
16 spreadsheet, that incorporates the Court's changes. This report will update the Verified Amounts  
17 and determine the final pro rata ratio each claimant is due to receive based on the changes  
18 approved by the Court.  
19

20 Respectfully submitted this 27<sup>th</sup> day of October, 2004.

21 McKAY CHADWELL, PLLC

22 s/ Michael D. McKay

23 Michael D. McKay, WSBA #7040

24 Receiver

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