

No. 181 (Judgment as to Jezierski), Dkt. No. 196 (Judgment as to Ledford), and Dkt. No. 211 (Judgment as to Merrill).

2. On September 13, 2018, the Court appointed the Receiver to marshal and preserve the assets of the Defendants and their affiliate entities, which collectively are referred to as the Receivership Parties.¹ *See* Dkt. No. 11 at 1. On November 27, 2018, the Court entered a First Amended Order Appointing Temporary Receiver that further confirmed the Receiver's rights, duties, and obligations. *See* Dkt. No. 62. On September 14, 2021, the Court entered a Second Amended Order Appointing Temporary Receiver (the "Receivership Order") that further confirmed the Receiver's rights, duties, and obligations. *See* Dkt. No. 484.

3. Since the Receiver was appointed, he has undertaken significant efforts to identify the assets of the Receivership Parties, including monies, funds, securities, investments, cash, accounts, vehicles, equipment, real estate, art, collectibles, jewelry, casino accounts, bonds, and any other assets of value. In his initial preservation plan, the Receiver detailed the various assets of the Receivership Parties that he had identified within the first sixty days of his appointment, which included eleven real estate assets, thirty-four vehicles, an interest in an aircraft, fine art, watches, and other jewelry, along with their recommended disposition. *See* Dkt. No. 54.

¹ The Receivership Parties are: Merrill, Ledford; Jezierski; Global Credit Recovery, LLC; Delmarva Capital, LLC; Rhino Capital Holdings, LLC; Rhino Capital Group, LLC; DeVille Asset Management LTD; Riverwalk Financial Corporation; K.B. Merrill Associates; Financial Reclamation Group LLC; Halo Credit Solutions LLC; JBL Holdings LLC; Jay B. Ledford, P.C.; the Joseph Finance Company; Leddy Bear LTD; Ledford & Associates, PLLC; King Fischer LTD d/b/a LP Investments LTD; NLEX, Inc.; Receivables Portfolio Interchange, Inc.; Riverwalk Capital Investments, Inc.; Riverwalk Credit Solutions, Inc.; Riverwalk Debt Solutions, Inc.; Riverwalk Fixed Asset Group LLC; SCUSA Financial, Inc.; Vaquero Asset Management, Inc.; CRJ Holdings LLC; Centurion Capital Corporation; GCR CBL CP I, LLC; GCR CBL CP II, LLC; GCR CBL CP III, LLC; GCR CBL CP IV, LLC; GCR HCP Holdings 1, LLC; GCR Mercer Holdings, LLC; the J Trust; and the Kevin B. Merrill Revocable Trust. *See* Receivership Order, Dkt. No. 484 at 2-3.

4. Throughout the course of the SEC Action and pursuant to approval from this Court, the Receiver has diligently worked to market and sell the assets of the Receivership Parties with the goal of maximizing the cash available for distribution to those who have claims against the Receivership Parties.

5. The Receiver also operated DeVille Asset Management, Ltd (“DeVille”), Riverwalk Credit Solutions, Inc., and Riverwalk Debt Solutions, Inc. until the entities’ assets were sold. The Receiver’s operation of these entities generated cash for the Receivership Estate.

6. The Receiver has liquidated most of the physical assets of the Receivership Parties. However, the Receiver still intends to liquidate certain additional assets, including real property in Texas, art, collectibles, jewelry, watches, and other luxury items. The Receiver also intends to investigate and pursue claims and litigation against third parties, which could also increase the assets available for distribution. *See* Dkt. No. 484.

7. As of September 30, 2021, the Receivership Estate had \$59,339,909.87 in cash. *See* Dkt. No. 497.

B. The Fraud.

8. Merrill, Ledford, and Jezierski each pled guilty to conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349 in the related criminal action styled *United States of America v. Kevin B. Merrill, et al.*, Case No. 18-cr-00465-RDB, filed in the United States District Court for the District of Maryland (the “Criminal Action”). *See* Plea Agreements in Criminal Action, Case No. 1:18-cr-00465-RDB, Dkt. Nos. 76, 81, and 87. In addition, Ledford pled guilty to committing aggravated identity theft and a money-laundering transaction in excess of \$10,000.00. *See id.*, Dkt. No. 87 at 1. Merrill pled guilty to committing wire fraud. *See id.*, Dkt. No. 81 at 1.

9. In connection with their pleas, Merrill and Ledford agreed, among other things, that “there was a scheme and artifice to defraud and to obtain money and property from investors by materially false and fraudulent pretenses, representations, and promises using interstate wire communications as alleged in the Indictment.” *Id.*, Dkt. No. 87 at 1; *see also id.*, Dkt. No. 81 at 1.

10. Ledford and Merrill further agreed that from 2013-2018, their scheme to “defraud took in over \$394 million” from investors. *Id.*, Dkt. No. 81-1 at 15; Dkt. No. 87-1 at 12. Ledford and Merrill “used investor funds to pay out promised returns to other investors and to misrepresent those payouts as funds from the sales of portfolios.” *Id.*, Dkt. No. 87-1 at 9; Dkt. No. 81-1 at 7. They also “diverted investors’ funds and collections for their own personal benefit.” *Id.*, Dkt. No. 87-1 at 11; Dkt. No. 81-1 at 14. They returned \$248 million to the investors they defrauded during the course of the Ponzi scheme. *Id.*, Dkt. No. 81-1 at 15.

C. The Claims Process.

11. In February 2021, the Receiver filed a Motion for Order Setting Claims Bar Date, Establishing Claims Procedure, and Approving Notification Process to provide a process through which claims could be asserted against the Receivership Estate (the “Claims Procedure Motion”). *See* Dkt. 394. The Court granted the Claims Procedure Motion on February 10, 2021, and entered its Order Setting Claims Bar Date, Establishing Claims Procedure, and Approving Notification Process (the “Claims Procedure”). *See* Dkt. No. 396. Pursuant to the Claims Procedure, any Known Investors,² Relief Defendants, Other Creditors, Unknown Creditors, and Unknown Investor Creditors were directed to submit any claims they had against any of the Receivership Parties by May 20, 2021 (the “Claims Bar Date”). *See id.* The Claims Procedure provided procedures through

² Capitalized terms herein shall have the same meaning as those defined in the Claims Procedure unless otherwise noted.

which the Receiver could contest any claim and allowed the Claimant to subsequently supplement the claim. The Claims Procedure similarly provided a procedure through which the Court could resolve any disputed claims. *See id.*

12. The Claims Bar Date has now passed, and the Receiver has been working diligently to resolve disputed claims. A total of 274 claims were submitted, which included 219 claims submitted by Known Investors, 1 claim submitted by a Relief Defendant, and 54 claims submitted by Other Creditors, individuals within Investment Entities, and/or Unknown Investors (collectively, the “Claimants”). The Receiver objected to and/or requested that 83 Claimants supplement or withdraw their claims. Following resolution of this process, there are 238 undisputed and allowed claims totaling \$166,022,249.69, and there are 36 disputed claims that are the subject of this Objection. The disputed claims include 8 Known Investor claims for a total amount of \$8,672,556.83 and 28 Other Creditor claims for a total amount of \$2,811,799.26.³

13. Contemporaneously with the filing of this Objection, the Receiver is filing a separate Motion for Order Approving Distribution Plan and an Initial Interim Distribution (the “Distribution Plan”), which proposes an interim distribution of \$50 million to the Claimants with allowed claims. Of the \$50 million interim distribution, the Receiver will reserve \$1,698,688.29 for the 36 disputed claims that are the subject of this Objection, which is the total amount the disputed claims would receive under the Distribution Plan if ultimately allowed.⁴ If a disputed claim is allowed by the

³ To preserve anonymity, investors and creditors will be referred to by their assigned investor number. Pooled investors in Category 2 below have been assigned an additional individual number beginning with “P” for purposes of this objection for more specific identification. Other Creditors were also assigned a number beginning with “O.” A schedule outlining the claim amount originally filed by each investor or other identification number is attached as **Exhibit A** so Claimants can identify their unique number.

⁴ This reserve does not include any claims in Category 2 that are duplicative of a pooled investor group’s claim. To the extent an individual’s claim in Category 2 is allowed, the Receiver will seek a dollar-for-dollar reduction in the proposed interim distribution to the applicable pooled investor

Court, the Receiver will pay the disputing Claimant in accordance with the Distribution Plan. If a disputed claim is not allowed by the Court, the reserved funds will be released to the Receivership Estate for distribution in accordance with the Distribution Plan or as otherwise ordered by the Court.

II. REQUESTED RELIEF

14. Pursuant to the Claims Procedure, the Receiver has standing to review and file objections to any claims submitted. *See* Dkt. No. 396. The Receiver has reviewed all 274 claims and now objects to 36 disputed claims. The Receiver objects to any claims that fall into one of five categories, which include:

Category 1: Claims that provide insufficient documentation substantiating the validity of the transactions or liability underlying the claim.

Category 2: Claims separately submitted by individuals who were also included in claims submitted by a pooled investor group.

Category 3: Claims that failed to reflect settlements or compensation in partial or full satisfaction of their losses.

Category 4: Claims submitted by Investors for transactions that pre-date the inception of the Ponzi scheme.

Category 5: Claims made by Other Creditors for transactions with entities other than the Receivership Parties.

The Receiver requests that the court disallow these claims in part or in whole for the reasons discussed below.

group. The Receiver will withhold distributions to any pooled investor group under the Distribution Plan until all objections to duplicative claims of individuals within the pooled investor group are resolved.

A. Legal Standard.

15. A “district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership.” *S.E.C. v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986) (internal quotations omitted). “The primary job of the district court is to ensure that the proposed plan of distribution is fair and reasonable.” *S.E.C. v. Quan*, 870 F.3d 754, 761 (8th Cir. 2017) (internal quotations omitted); *see also S.E.C. v. Torchia*, 922 F.3d 1307, 1311 (11th Cir. 2019) (“The goal of such receiverships is to grant fair relief to as many investors as possible.”). Additionally, in contemplating fair relief, the principals of equity require that the Court treat victims in factually similar cases equally. *S.E.C. v. Cap. Consultants*, 397 F.3d 733, 738-39 (9th Cir. 2005). In furtherance of fairness, reasonableness, and equity, all filed claims should be evaluated by the same standards, subject to reasonable administration, and similarly situated Claimants should get proportionate recovery and be subject to the same proof criteria.

B. Objections to Category 1 Claims: Claims Providing Insufficient Documentation Substantiating Underlying Transactions.

16. The sixteen claims objected to under this category include claims filed by the following Claimants: I-0094, I-141, I-0147, I-0195, I-0217, O-0001, O-0002, O-0006, O-0008, O-0010, O-0011, O-0012, O-0014, O-0015, O-0016, and O-0017.

17. The court should disallow claims that provide insufficient documentation of the underlying transaction(s). All allowed claims in this case have been substantiated by bank records, proof of wire transfers, other financial documents showing the exact amounts that were paid to a Receivership Party and received by the Claimants, the contractual agreement supporting the claim amount, or other documentation to substantiate damages allegedly suffered or incurred by the Claimant. Despite outreach by the Receiver seeking additional documentation, these sixteen claimants have provided insufficient documentation of the transfer of funds to a Receivership Party

or any other basis for a definite claim against a Receivership Party. Equity and fairness in the administration of the Receivership Estate necessitates that the Receiver use the same standards to evaluate the allowability of all filed claims. *See Cap. Consultants*, 397 F.3d at 738-39 (“equity demands equal treatment of victims in a factually similar case”). Insofar as these sixteen claimants have failed to provide sufficient documentation to support their claims, the Receiver requests that the Court disallow these claims.

18. Specifically, Claimants I-0094, I-0141, I-0147, and I-0217 contended that their claim amount should be higher because they made additional investments with the Receivership Party. The Receiver requested these Claimants supplement their claim with documentation to evidence the investment such as a wire transfer, bank statement, or other documentation to show the Claimant actually gave the money to the Receivership Party. To date, the Claimants have not provided any additional information in response to the Receiver’s request.

19. Claimant I-0195 disputed portions of the claim amount on the grounds that the Claimant had not received certain disbursements from the Receivership Party. The Receiver provided the Claimant with copies of the cashed checks, payable to the Claimant, as evidence of the disputed disbursements and requested that the Claimant provide further explanation and documentation to support the disputed portion of the claim amount. To date, the Claimant has not provided any additional information or documentation to refute the cashed checks. Accordingly, the Receiver objects to the changes to Claimant I-0195’s claim amount.

20. Similarly, Claimant O-0006 submitted a claim based on a loan he contends he made to a Receivership Party in 2009. The Receiver requested documentation that Claimant O-0006 actually made the loan. The Claimant advised that he no longer has documentation to support that he made the loan to the Receivership Party. The Receiver does not have any evidence of a loan

being made by this Claimant and does not have access to bank records dating back to 2009 when the loan was allegedly made. Accordingly, the Receiver objects to this claim.

21. Claimants O-0001 and O-0002 submitted claims that appear to be based on contracts with a Receivership Party under which the Receivership Party owes money to the Claimant. To date, Claimant O-0001 has not provided a copy of the underlying contract, despite the Receiver's request for the same. Claimant O-0002 similarly did not include a copy of the contract to support the amount of its claim. Upon the Receiver's request, Claimant O-0002 supplemented its claim to identify the basis for its claim amount but still has not provided documentation that it has actually incurred the amount of its claim, which is required for the Receivership Party to be liable to this Claimant. Accordingly, the Receiver objects to the claims of Claimants O-001 and O-002.

22. Claimants O-0010, O-0011, O-0012, O-0014, O-0015, O-0016, and O-0017 submitted claims to the Receiver based on lawsuits they filed that have yet to be reduced to a judgment. Some of these Claimants provided a copy of the lawsuit and the documents they contend support liability against the Receivership Party; the remainder did not provide any documentation for the claimed liability. The Receiver provided these Claimants with the opportunity to supplement their claim with all documents relating to, evidencing, or supporting the claim. After reviewing the documents submitted by these Claimants, the Receiver has insufficient documentation to conclude that the Receivership Party is liable for the causes of action at issue and/or that the Claimant has incurred the damages identified in their claim amount. Accordingly, the Receiver objects to the claims submitted by these Claimants on the grounds they submitted insufficient documentation to support the basis for liability or their claim amount.

C. Objection to Category 2 Claims: Claims Submitted by Individual Claimants Also Included in Pooled Claims.

23. The sixteen claims objected to under this category include claims filed by investors who invested, either in whole or in part, through one or more pooled investor groups: I-0040, P-0001, P-0002, P-0003, P-0004, P-0005, P-0006, P-0007, P-0008, P-0009, P-0010, P-0011, P-0012, P-0013, P-0014, and P-0015.

24. The Receiver requests that the court disallow claims submitted by individual investors who are subsumed in claims submitted by pooled investor groups and allowed by the Receiver. The claims filed in this Category 2 are duplicative of the pooled investor group's claim and would result in double payment to the individual investor. The individual investor will receive the same distribution in the Distribution Plan whether their claim is paid as part of the pooled investor group's claim or individually from the Receiver. As discussed at length in the Claims Procedure, it would be inefficient to allow individuals in pooled investor groups to submit separate claims, and it would be difficult for the Receiver to verify amounts paid by or to the individual within the pooled investor group.

25. A goal of receivership is to distribute the limited resources of a receivership estate in an equitable manner to all innocent investors. *Cap. Consultants*, 397 F.3d at 738. Allowing individuals to benefit from double recovery by filing claims both as individuals and through a pooled investor claim violates equitable distribution and would harm the subordinate investors and creditors who would now receive lesser or no recovery. *See id.* (addressing the inequity of double recovery in the case of an offset provision). The Receiver has verified with each pooled investor group that the duplicative claims identified in this Category 2 are included within the pooled investor group's claim. As such, the Receiver objects to all claims submitted by individuals who are also included in a pooled investor group's claim.

D. Objection to Category 3 Claims: Claims that Failed to Identify Settlements or Other Compensation Received on Their Claim.

26. The two claims objected to under this category are the claims filed by the following Claimants: I-0163 and I-0308.

27. These claims did not identify settlements or other compensation for losses sustained by the Defendant's fraudulent scheme ("Compensation Payments") and should be disallowed, in part, in the amount of the Compensation Payment that the Claimants received but failed to disclose. The Receiver has obtained documents and information from other Claimants and court records to substantiate that the two Claimants identified above received Compensation Payments but failed to disclose them as part of the Claims Procedure.

28. The Claims Procedure vests all claimants with a duty to disclose any Compensation Payments that they received. Dkt. No. 396 at 3. Under the Claims Procedure, a Claimant's failure to disclose a Compensation Payment can result in the waiver of the Claimant's rights to participate in distributions from this SEC Action. Dkt. No. 396 at 3. Additionally, requiring the offset of recoveries to claims in this way serves the goal of equitably by distributing limited assets in a Receivership Estate, while also incentivizing claimants to seek recoveries. *Cap. Consultants*, 397 F.3d at 738 ("the offset provision imposes a reasonable compromise that balances the goal of encouraging CCL clients to seek third-party recoveries and rewarding them for their efforts, and the goal of distributing the limited assets of the receivership in a roughly equal fashion"); *see also S.E.C. v. Parish*, No. 2:07-cv-00919, 2010 WL 5394736 (D.S.C. 2010).

29. Based on the waiver embedded in the Claims Procedure, as well as the interest in equity that offsets provide, the Receiver objects to the claims filed by these Claimants that failed to reflect their receipt of Compensation Payments. Although under the Claims Procedure the Receiver could object to the claims in their entirety, the Receiver is not requesting that from the Court. Rather,

the Receiver requests that these claims be disallowed, in part, in the amount of the undisclosed Compensation Payments that the Claimants received.

E. Objection to Category 4 Claims: Claims for Transactions that Pre-Date the Ponzi Scheme.

30. The one claim objected to under this category is the claim filed by Claimant I-0141.

31. The Receiver requests that the court disallow claims made that are based on transactions that occurred before the 2013 start of the Ponzi scheme. A court's power to grant distributions of fraudulently obtained profits arises from its broad discretion to impose remedies for securities fraud and violations of the Exchange Act. *Off. Comm. of Unsecured Creditors of WorldCom, v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006).

32. Fairness and equity require that the pool of Investor Creditors be limited to those that invested under the Ponzi scheme or did business with the defendants during the course of the Ponzi scheme. Recovery by Investor Creditors that pre-dated the Ponzi scheme would diminish the recovery of the victims of the fraud being addressed. Assets that would otherwise be used to compensate the defrauded Claimants would be given to Investor Creditors who were not disadvantaged by the misinformation or deception of the Ponzi scheme. As such, recovery by Investor Creditors who transacted with the Defendants prior to the initiation of the Ponzi scheme would be inequitable.

33. Here, the Defendants have admitted that their plan to defraud investors began in 2013. Stipulation of Facts at 15, Criminal Action, Dkt. No. 81-1; *id.*, Stipulation of Facts at 12, ECF No. 87-1. No finding of fraud has been made prior to 2013. As such, the Receiver objects to this Investor Creditor's claim that is based on transactions prior to 2013.

F. Objection to Category 5 Claims: Claims for Non-Investor Transactions with Entities Outside of the Receivership

34. The two claims objected to under this category include claims filed by the following Claimants: O-0006 and O-0007.

35. Any claims made for Other Creditor transactions with entities outside of the Receivership Estate cannot be administered through the Receiver. The Court has granted the Receiver control of, and the power to administer, the assets of the Receivership Parties; not all entities associated with the Defendants. *See* Dkt. No. 484. The claims at issue seek compensation for commercial transactions with DeViant Holdings, LLC (“DeViant”) and Platinum Capital Investments, Ltd. (“Platinum Capital”), which are not Receivership Parties. As such, the Receiver objects to the claims on the ground that it does not have the power to administer the assets of DeViant or Platinum Capital and cannot equitably satisfy the claims out of assets within the Receivership Estate.

III. CONCLUSION

The above claims violate the principles of fairness, reasonableness, and equity that guide the administration of the Receivership Estate. As such, the Receiver, Gregory S. Milligan, respectfully requests that the Court enter an Order sustaining the Receiver’s Omnibus Objection to Claims and granting such other and further relief the Court deems just and proper.

Respectfully Submitted,

/s/ Lynn H. Butler

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CERTIFICATE OF SERVICE

On November 17, 2021, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court for the District of Maryland, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically through the Court's CM/ECF filing system for all parties who have registered to receive electronic service. Additionally, the foregoing document was served on the following parties not registered for Court's CM/ECF filing system as indicated below:

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All Claimants with Claims Subject to this Objection (via U.S. Mail)

/s/ Lynn H. Butler

Lynn H. Butler

EXHIBIT A

Investor Code	Claim Amount	Disputed Portion of Claim
I-0040	\$ 720,563.41	\$ 720,563.41
I-0094	\$ 34,467.41	\$ 34,467.41
I-0141	\$ 5,989,900.96	\$ 5,429,900.96
I-0147	\$ 448,381.20	\$ 2,298,792.21
I-0163	\$ 19,932.94	\$ 8,750.00
I-0195	\$ 210,637.45	\$ 8,854.85
I-0217	\$ 150,000.00	\$ 125,000.00
I-0308	\$ 898,611.66	\$ 46,227.99
P-0001 (Pooled: I-0015)	\$ 126,519.75	\$ 126,519.75
P-0002 (Pooled: I-0011)	\$ 65,185.00	\$ 65,185.00
P-0003 (Pooled: I-0001)	\$ 200,000.00	\$ 200,000.00
P-0004 (Pooled: I-0001)	\$ 250,000.00	\$ 250,000.00
P-0005 (Pooled: I-0001)	\$ 165,000.00	\$ 165,000.00
P-0006 (Pooled: I-0001)	\$ 107,517.00	\$ 107,517.00
P-0007 (Pooled: I-0001)	\$ 139,205.00	\$ 139,205.00
P-0008 (Pooled: I-0001)	\$ 472,858.00	\$ 472,858.00
P-0009 (Pooled: I-0011)	\$ 100,000.00	\$ 100,000.00
P-0010 (Pooled: I-0014)	\$ 55,793.93	\$ 55,793.93
P-0011 (Pooled: I-0014)	\$ 91,874.00	\$ 91,874.00
P-0012 (Pooled: I-0014)	\$ 100,000.00	\$ 100,000.00
P-0013 (Pooled: I-0015)	\$ 300,000.00	\$ 300,000.00
P-0014 (Pooled: I-0017)	\$ 100,000.00	\$ 100,000.00
P-0015 (Pooled: I-0325)	\$ 50,000.00	\$ 50,000.00
O-0001	\$ 25,619.73	\$ 25,619.73
O-0002	\$ 37,082.51	\$ 37,082.51
O-0006	\$ 202,017.00	\$ 202,017.00
O-0007	\$ 39,600.00	\$ 39,600.00
O-0008	\$ 3,500.00	\$ 3,500.00
O-0009	\$ 5,000.00	\$ 5,000.00
O-0010	\$ 69,138.34	\$ 69,138.34
O-0011	\$ 24,853.00	\$ 24,853.00
O-0012	\$ 5,036.00	\$ 5,036.00
O-0014	\$ 19,500.00	\$ 19,500.00
O-0015	\$ 18,000.00	\$ 18,000.00
O-0016	\$ 18,000.00	\$ 18,000.00
O-0017	\$ 20,500.00	\$ 20,500.00