

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

CASE NO.: 16-CV-24678- COOKE/LOUIS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ONIX CAPITAL LLC, *et al.*,

Defendants.

RECEIVER’S MOTION TO APPROVE SECOND INTERIM DISTRIBUTION

Melanie E. Damian, Esq., as the court-appointed Receiver (the “Receiver”) in the above-captioned action, pursuant to this Court’s Order Granting Receiver’s Motion to Approve Claims Administration Process [D.E. 179] (the “Order Approving Plan”), files this Motion (the “Motion”) for an order approving the Receiver’s second interim distribution to claimants holding allowed claims (the “Second Distribution”). In support of this Motion, the Receiver states as follows:

I. INTRODUCTION

This is the Receiver’s second request to make a distribution to all allowed Claimants in this Receivership.

On April 4, 2019, this Court entered its Order Approving Receiver’s Unopposed Motion to Approve Allowed Claims and Initial Distribution [D.E. 262] approving the Receiver’s distribution plan for allowed claims, and authorizing an initial interim distribution to all claimants with allowed claims. Pursuant to that order, the Receiver effectuated an initial distribution of \$5,000,000.00, distributed on a pro rata basis to all allowed claimants.

On November 15, 2019, this Court entered its Order Adopting Magistrate Judge's Report and Recommendation regarding the Receiver's Motion to Approve and Enforce Settlement [D.E. 278] authorizing the Receiver to execute her Settlement Agreement with that third party so as to receive \$2,600,000.00 in settlement funds.

Now that the Receiver has executed that Settlement Agreement and Received those settlement funds, the Receivership Estate currently has cash on hand in the amount of \$4,774,212.63.

In light of the remaining work to be done to liquidate all remaining assets of the Receivership Estate, to prosecute claims against third parties, to reserve for any contingencies, and to administer the distribution process, the Receiver seeks to make a Second Distribution of \$3,000,000.00 to all claimants with allowed claims, on a *pro rata basis*. The proposed amount of each claimant's Second Distribution is reflected in the schedule, attached hereto as **Exhibit A**.¹

Many claimants have inquired as to the timing of additional distributions. Taking into consideration the amount of funds presently in the Estate, the financial condition of many of the defrauded investors, as well as the conclusion of the Claims Administration Process, it would be appropriate for the Receiver to make a Second Distribution to claimants with Allowed Claims at this time.

After the asset recovery and liquidation phases of the receivership have been concluded, as well as resolving pending contingencies, the Receiver will file a motion to make a final distribution of the remaining cash on hand in the Receivership Estate.

¹ For the purposes of protecting the privacy of all claimants, the attached Exhibit A refers to claimants only by their claim number.

II. BACKGROUND AND CLAIMS PROCESS

The Receiver conducted the Claims Administration Process in accordance with the Receiver's Motion to Approve Claims Administration Process [DE 113.] During the Claims Process, the Receiver received a total of 75 filed proofs of claims seeking a total of \$54,864,621.00 from the Receivership Estate from defrauded investors and creditors of the Receivership Entities. In accordance with the claims process approved by this Court, the Receiver analyzed each claim to determine whether the claimants were eligible to participate in the claims process and the extent to which, if at all, their claims should be allowed.

The Receiver maintained open lines of communication with all claimants who had questions as to the Receiver's initial determinations, and reviewed and analyzed all supplemental materials provided by all claimants who objected to the Receiver's initial determinations. The Receiver's goal through this process was to resolve all claims, if possible, without the Court's intervention.

The Receiver then provided written, final determinations to all claimants, to which only three (3) objections were filed, all three of which have now been settled and resolved.

III. THE PROPOSED SECOND DISTRIBUTION

This proposed Second Distribution will follow the same protocols as the Receiver's Initial Distribution, as previously approved by this Court. *See* Agreed Order Approving Receiver's Partial Allowance of E. Magendzo's Claim and Initial Distribution [D.E. 266.] The Receiver has not included within her calculation for distributions any interest or profit that was promised to such investors or creditors.

In the Receiver's Fourth Interim Report and Motion Authorizing (A) The Payment of Fees and Expenses of Receiver and Her Professionals and (B) Supplemental Distribution to Claimant No. 17 [D.E. 270] ("Motion"), the Receiver requested that Claimant No. 17's allowed claim be amended due to additional evidence received and approval from the Receiver's accountants. The Motion currently remains pending before this court. Consequently, the Receiver's schedule detailing the proposed amount of each claimant's Second Distribution, attached hereto as **Exhibit A**, puts forward the current approved claim amount for Claim No. 17, but includes a reserve for correcting the Initial Pro Rata distribution of Claim No. 17, as well as a reserve to correct the Second Pro Rata distribution of Claim No. 17 to the adjusted claim amount put forward in D.E. 170. If the Court grants the Motion, no reserve will be required as Claim No. 17 will be updated.

IV. LEGAL ARGUMENT

As previously approved, the Receiver's proposed Second Distribution will be pro rata. *See SEC v. Infinity Group Co.*, 226 Fed. Appx. 217, 218 (3d Cir. 2007) ("District Courts have wide equitable discretion in fashioning distribution plans in receivership proceedings, and we review the District Court's order only for abuse of that discretion.") (citations omitted); *SEC v. Forex Asset Mgmt., LLC*, 242 F.3d 325, 331 (5th Cir. 2001) (finding that a district court has wide latitude when it exercises its inherent equitable power to approve a plan to distribute receivership assets and that such approval is reviewed for abuse of discretion).

V. THE FINAL DISTRIBUTION OF ANY REMAINING FUNDS

As provided in the Motion to Approve Claims Administration Process, the Receiver anticipates that after the Receiver makes the Second Distribution proposed herein, the Receiver will replenish the estate with additional funds as a result of her remaining asset recovery and

liquidation efforts. As of the filing of this Motion, this is primarily comprised of the Receiver's efforts to liquidate the remaining equity holdings as well as the Receiver's actions against entities that may have assisted the fraud. Accordingly, after the Receiver has completed her recovery efforts and paid all administrative expenses of the Estate, the Receiver will file with the Court a motion to approve a final *pro rata* distribution.

VI. CERTIFICATION

The Receiver has discussed the relief requested herein with the Securities and Exchange Commission and is authorized to represent to this Court that the SEC does not oppose the relief sought in this Motion.

VII. CONCLUSION

WHEREFORE, for the foregoing reasons, the Receiver respectfully requests that this Court enter the attached proposed order: approving the Second Distribution to all eligible claimants holding allowed claims in the amounts reflected in Exhibit A; scheduling a status conference; and granting such other relief as this Court deems just and proper.

Dated: December 12, 2019

Respectfully submitted,

KOZYAK TROPIN & THROCKMORTON, LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been served via transmission of Notices of Electronic Filing generated by CM/ECF on December 12, 2019 as filed with the Clerk of the Court using CM/ECF.

By: /s/ Daniel S. Maland
Daniel S. Maland, Esq.

EXHIBIT

“A”

Claim Number	Claim Amount	Allowed Claim Amount	Approved & Completed Initial Pro Rata Distribution	Proposed Second Pro Rata Distribution
1	\$ 646,667	\$ 646,667	\$ 158,692.08	\$94,348.72
2a	\$ 360,000	\$ -		
2b	\$ 200,000	\$ -		
3	\$ 100,000	\$ 77,642	\$19,053.35	\$11,327.97
4	\$ 300,000	\$ 277,500	\$ 68,098.50	\$40,487.25
5	\$ 136,645	\$ 1,600	\$ 392.64	\$233.44
6	\$ 735,000	\$ -		
7	\$ 200,000	\$ 200,000	\$ 49,080.00	\$29,180.00
8	\$ 1,100,000	\$ 1,100,000	\$ 269,940.00	\$160,490.00
9	\$ 424,124	\$ -		
10	\$ 100,000	\$ 100,000	\$ 24,540.00	\$14,590.00
11	\$ 1,300,000	\$ 1,300,000	\$ 319,020.00	\$189,670.00
12	\$ 100,000	-		
13	20% ownership interest in Next U Ventures, LLC	Settled Liquidator Claim		
14	20% ownership interest in Next Track Ventures, LLC	Settled Liquidator Claim		
15	\$ 60,000	\$ 60,000	\$ 14,724.00	\$8,754.00
16	\$ 100,000	\$ 100,000	\$ 24,540.00	\$14,590.00
17	\$ 195,000	\$72,750 (request that this be amended to \$187,400 is currently pending before the Court)	\$ 17,852.85	\$10,614.23
18	\$ 100,000	\$ 92,500	\$ 22,699.50	\$13,495.75
19	\$ 250,000	\$ 250,000	\$ 61,350.00	\$36,475.00
20	\$ 300,000	\$ 300,000	\$ 73,620.00	\$43,770.00
21	\$ 300,000	\$ -		
22	\$ 1,300,000	\$ -		
23	\$ 850,000	\$ 850,000	\$ 208,590.00	\$124,015.00
24	\$ 323,000	\$ -		
25	\$ 472,655	\$ 452,894	\$ 111,140.19	\$66,077.17
26	\$ 2,800,000	\$ 2,800,000	\$ 687,120.00	\$408,520.00
27	\$ 1,858,733	Settled Liquidator Claim		
28	\$ 82,500	Settled Liquidator Claim		
29	\$ 1,200,000	Settled Liquidator Claim		
30	\$ 379,500	Settled Liquidator Claim		
31	9.9% ownership interest in Onix Capital LLC	Settled Liquidator Claim		
32	42% ownership interest in Next Chat Ventures, LLC	Settled Liquidator Claim		
33	46% ownership interest in Deep Ocean, LLC	Settled Liquidator Claim		

Claim Number	Claim Amount	Allowed Claim Amount	Approved & Completed Initial Pro Rata Distribution	Proposed Second Pro Rata Distribution
34	63% ownership in Next Pay Ventures, LLC	Settled Liquidator Claim		
35	\$ 100,000	\$ 100,000	\$24,540.00	\$14,590.00
36	CLP 165,000,000	\$ -		
37	\$ 24,000	\$ 24,000	\$5,889.60	\$3,501.60
38	\$ 75,000	\$ 72,750	\$17,852.85	\$10,614.23
39	\$ 30,000	\$ 28,200	\$6,920.28	\$4,114.38
40	41% ownership in Next Cab Ventures, LLC	Settled Liquidator Claim		
41	20% ownership in Next Call Ventures, LLC	Settled Liquidator Claim		
42	29% ownership in Next Chat Ventures, LLC	Settled Liquidator Claim		
43	\$ 100,000	-		
44	\$ 96,590	-		
45	\$ 20,000	\$ 20,000	\$ 4,908.00	\$2,918.00
46	€ 12,000.00	-		
47	Equity Investments in Deep Ocean, Next Chat, Next Pay and Progressive Power	-		
48	\$ 400,000	\$ 400,000	\$ 98,160.00	\$58,360.00
49	\$ 305,406	\$ 305,406	\$ 74,946.63	\$44,558.75
50	59% ownership interest in Progressive Power, LLC	Settled Liquidator Claim		
51	\$ 1,276,373	Settled Liquidator Claim		
52	\$ 515,247	Settled Liquidator Claim		
53	\$ 300,200	Settled Liquidator Claim		
54	\$ 1,165,000	Settled Liquidator Claim		
55	\$ 33,000	Settled Liquidator Claim		
56	\$ 315,000	Settled Liquidator Claim		
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58	\$ 1,000,000	Settled Liquidator Claim		
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Claim Number	Claim Amount	Allowed Claim Amount	Approved & Completed Initial Pro Rata Distribution	Proposed Second Pro Rata Distribution
60	\$ 22,500	Settled Liquidator Claim		
61	\$ 680,398	Settled Liquidator Claim		
62	\$ 18,561,000	Settled Liquidator Claim		
63	\$ 6,913,000	Settled Liquidator Claim		
64	\$ 275,250	Settled Liquidator Claim		
65	90.1% ownership in Onix Capital LLC	Settled Liquidator Claim		
66	\$ 642,000	\$ -		
67	\$ 1,000,000	\$ 1,000,000	\$ 245,400.00	\$145,900.00
68	\$ 1,000,000	\$ -		
69	\$ 100,000	\$ 100,000	\$ 24,540.00	\$14,590.00
70	\$ 88,400	\$ -		
71	\$ 100,000	\$ -		
72	\$ 2,515,000	\$ 2,515,000	\$ 617,181.00	\$366,938.50
73	\$ 194,100	-		
74	\$ 200,000	\$ 200,000	\$ 49,080.00	\$29,180.00
75	\$ 100,000	\$ 100,000	\$ 24,540.00	\$14,590.00
76 (supp. BVI claim)	\$ 15,000.00	\$ 15,000.00	\$ 3,681.00	\$2,188.50
		Total Maximum Allowed Claims w/o Liquidators' Claims= \$13,698,916.62	Total Pro Rata Distribution Allotment = \$3,328,092.47	Total Pro Rata Distribution Allotment = \$1,978,682
RESERVE			Reserve to correct Initial Distribution of Claim 17= \$28,135.11	Reserve to correct Second Distribution of Claim 17= \$16,727.43
Calculation for \$3,000,000.00 Distribution	Chilean Liquidator Receives 1/3 of \$3,000,000.00 or \$1,000,000.00	Remaining Allowed Claimants Receive 2/3 of \$3,000,000.00 or \$2,000,000.00	The pro rata percentage is: \$2,000,000.00/\$13,698,916.62= .1459 or 14.59%	Total Pro Rata Distribution Allotment including Reserves for Claim 17= \$2,023,544.54

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ONIX CAPITAL LLC, *et al.*,

Defendants.

**ORDER APPROVING RECEIVER'S UNOPPOSED
MOTION TO APPROVE SECOND DISTRIBUTION**

THIS MATTER comes before the Court on December 12, 2019, upon the Unopposed Motion to Approve Second Distribution [ECF # ____] (the "Motion") filed by Melanie E. Damian, as the court-appointed Receiver (the "Receiver") in the above-captioned enforcement action. The Court has considered the Motion, and is otherwise fully advised in the premises. Accordingly, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Motion [ECF # ____] is GRANTED.
2. The Receiver is authorized to make a second distribution totaling \$3,000,000.00 to claimants holding allowed claims on a *pro rata* basis and to the Chilean liquidation in the approved amount as proposed in the Motion, in the amounts provided in Exhibit A to the Motion, and further reserve the amounts identified in Exhibit A for Claim 17.

DONE AND ORDERED in chambers at Miami, Florida, this ____ day of December, 2019.

MARCIA G. COOKE
United States District Judge

Copies to furnished to:
Lauren F. Louis, U.S. Magistrate Judge
Counsel of record