

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

AEQUITAS MANAGEMENT, LLC;
AEQUITAS HOLDINGS, LLC;
AEQUITAS COMMERCIAL FINANCE,
LLC; AEQUITAS CAPITAL
MANAGEMENT, INC.; AEQUITAS
INVESTMENT MANAGEMENT, LLC;
ROBERT J. JESENİK, BRIAN A. OLIVER;
and N. SCOTT GILLIS,

Defendants.

No. 3:16-cv-00438-JR

FINDINGS AND
RECOMMENDATION



The Receiver seeks an Order (1) approving compromise of claims, (2) authorizing performance of settlement agreements, and (3) authorizing disbursement of funds held in a segregated account (ECF [980](#)). The Receiver, on behalf of the Receivership Entity, executed settlement agreements with the following counterparties:

- Gillis Management Solutions, Inc.
- Ocean Avenue Financial Services, LLC
- The Liquidating Trust of the Bankruptcy Estate of Tango Delta Financial, Inc.
- Michael Pirello
- Petrawest, Ltd. and Gerald T. Raydon
- Jae Son
- Larry Welch
- The Welch Family 2008 Revocable Trust dtd 10/15/2008
- Mary Greenheck

Only TRD Consulting, LLC filed any objection. TRD Consulting objects to the Tango Delta Trust settlement reached with the liquidating trustee of the bankruptcy estate of Tango Delta Financial, Inc.

BACKGROUND

A. The Receiver and Receivership Order

On March 10, 2016, the Securities and Exchange Commission (“SEC”) filed a complaint in this Court against the Receivership Defendants and three individuals, Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis. On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, Mr. Greenspan was appointed as Receiver for the Receivership Entity on an interim basis (“Interim Receivership Order”). (ECF [30](#)). On April 14, 2016, pursuant to the Final Receivership Order, Mr. Greenspan was appointed as Receiver of the Receivership Entity on a final basis. (ECF [156](#)).

Pursuant to Article IX of the Final Receivership Order, all Ancillary Proceedings, which include “[a]ll civil legal proceedings of any nature, including, but not limited to, bankruptcy

proceedings...or other actions of any nature” that involve the Receiver, any Receivership Property,¹ and any of the entities comprising the Receivership Entity are stayed. Final Receivership Order (ECF [156](#)) at ¶ 20. The Court also enjoined parties to such proceedings “from commencing or continuing any such legal proceeding, or from taking any action, in connection with any such proceeding, including, but not limited to, the issuance or employment of process.” Id. at ¶ 21. Moreover, “all Courts having any jurisdiction thereof are enjoined from taking or permitting any actions until further Order of this Court.” Id. at ¶ 22. The Final Receivership Order also provides the Receiver with the power and duty to “pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receivership Estates....” Id. at ¶ 6.J.

Since the Receiver filed the latest motion to approve settlements (ECF [961](#)), resulting in entry of this Court’s Order of April 12, 2022 (ECF [974](#)) approving sixteen settlement agreements, the Receiver has entered into nine additional settlement agreements. By their terms, all of the Settlement Agreements are expressly subject to approval of this Court. Greenspan Decl. (ECF [981](#)), at ¶ 3. The Settlement Agreements provide for the following benefits to the Receivership Estate and ultimately the Defrauded Investors: (1) Payments totaling \$128,510.00; (2) Release of counterparties’ claims against the Receivership Estate in excess of \$29,000,000; and (3) Release of \$1,683,403.38 plus accrued interest from a segregated account.

¹ The Final Receivership Order defines Receivership Property broadly to include “all property interests of the Receivership entity, including, but not limited to monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights and other assets...which the Receivership Entity own, possess, have a beneficial interest in, or control directly or indirectly....” Final Receivership Order (ECF [156](#)) at ¶ 6.A.

B. The Settlements

1. Settlements With No Objections

The settlement agreements to which there are no objections include: (1) Gillis Settlement Agreement (providing that Gillis Management Solutions, Inc. shall pay the Receivership Entity \$31,000 and release all claims against the Receivership entity in exchange for a release of claims against it); (2) Ocean Settlement Agreement (providing Ocean Avenue Financial Services, LLC pay the Receivership Entity \$7,000.00 and release all claims against the Receivership Entity in exchange for a release of the Receivership Entity's claims); (3) Michale Pirello Settlement Agreement (providing a mutual release of all claims); (4) Additional Five Net Winner Settlement Agreements (providing investors in Aequitas Securities who received distributions in excess of their investments repay 90% of net winnings). For the reasons stated in the Receiver's motion, the Court should find these settlements reasonable and in the best interest of the creditors and investors in the Receivership entity on light of: (1) the probability of success of litigation, (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors and a proper deference to their concerns.

2. Settlement With Objection

The Receiver entered into a settlement agreement with the Liquidating Trust of the Bankruptcy Estate of Tango Delta Financial, Inc. (formerly American Student Financial Group, Inc.), as established in the United States Bankruptcy Court for the Middle District of Florida, (In re Tango Delta Financial, Inc., Case No. 8:20-bk-3672-CPM) on April 18, 2022.

Prior to the filing of this case in March 2016 and the establishment of the Receivership, American Student Financial Group, Inc. (ASFG), 3 TRD Consulting, LLC (TRD), Aequitas

Capital Management, Inc. (ACM), and others, were parties to a lawsuit before the United States District Court for the Southern District of California (American Student Financial Group, Inc. et al. v. Aequitas Capital Management, Inc., et. al., Case No.: 12-cv-02446-CAB-JMA). With respect to the origin of the dispute at issue in the Tango Delta settlement agreement, the Receiver provides the following background:

On June 17, 2014, the California District Court entered an order granting ASFG's and TRD's application for Writ of Attachment. ([Greenspan Decl.](#), Ex. 3, Recital G). On July 23, 2014, the parties filed a Stipulation For Order To Deposit Funds in the Court's Investment Registry System, which was granted by the California District Court on July 25, 2014 ([Greenspan Decl.](#), Ex. 3, Recital H). On July 28, 2014, during the period this Court concluded ACM and the other entities comprising the Receivership Entity were collectively operated as a Ponzi scheme ("Ponzi Period"), ACM deposited \$2,483,403.38 into the California District Court registry ("Deposited Receivership Property"). ([Greenspan Decl.](#), Ex. 3, Recital I). On January 16, 2015, ACM and other defendants filed their Fourth Amended Answer, Affirmative Defenses, and Counterclaims to the ASFG/TRD Third Amended Complaint in the California District Court case, asserting four counterclaims, including fraud against ASFG, TRD, and others, as well as numerous affirmative defenses, including offset. ([Greenspan Decl.](#), ¶ 16). The matter initially was set for trial on March 14, 2016, but then stayed due to the injunction provisions set forth in the Interim and Final Receivership Orders entered in the Receivership Case. ([Greenspan Decl.](#), Ex. 3, Recital L).

On April 25, 2016, the Receiver filed a Motion for Disbursement of Funds ("Disbursement Motion"), seeking disbursement of the \$2,483,403.38 Deposited Receivership Property held in the California District Court's Investment Registry System. ([Greenspan Decl.](#), ¶ 17 and Ex. 3, Recital, O). On June 6, 2016, the California District Court entered an order granting the Receiver's Disbursement Motion, over the objections of ASFG and TRD. ([Greenspan Decl.](#), ¶ 17 and Ex. 3, Recital P). In ordering release of the funds, the California District Court determined that the funds were Receivership property, with the Receiver having a vested right to possession. *Id.*

The Receiver, ASFG, and TRD subsequently entered into a "Stipulation to Transfer Venue and for Release of Funds Held in the Court Registry," pursuant to which ASFG, TRD, and the Receiver agreed to transfer venue of the California District Court case to the Oregon District Court presiding over the Receivership and further agreed to release the \$2,483,403.38 to the control of the Receiver. ([Greenspan Decl.](#), Ex. 3, Recitals S, T, and U). Pursuant to that stipulation, the California District Court entered an order on August 22, 2016, transferring the entire case to the Oregon District Court and releasing the \$2,483,403.38 to the custody and control of the Receiver. The Deposited Receivership Property

(\$2,483,403.38) was placed in a segregated Receivership bank account, where it remains. ([Greenspan Decl.](#), ¶ 18 and Ex. 3, Recitals U and V).

The gravamen of the ASFG/TRD claims presented in the California District Court case, as well as a related case filed in California state court, [footnote omitted] is a claim for money allegedly owed on account of a fraudulent scheme by which Aequitas purchased Corinthian College related student loans. At the risk of oversimplifying a complex situation, the student loans upon which ASFG/TRD are claiming a “profits participation” were the subject of a massive settlement between the Receiver and the federal Consumer Financial Protection Bureau and 14 States Attorneys General, which settlement cost the Receivership over \$183 million [footnote omitted] in principal and accrued and unpaid interest and fees. Moreover, as detailed in the Receiver’s Forensic Report, these loans and the ASFG/TRD scheme were a significant factor in the financial failure of Aequitas and the need for the appointment of the Receiver. The fraudulent ASFG/TRD conduct eventually caught up with them too, when after a name change, ASFG filed bankruptcy with few remaining material assets, other than avoidance claims against ASFG’s insiders and affiliates, including TRD. ([Greenspan Decl.](#), ¶ 21). The Receiver’s Forensic Report was filed in the Receivership Case on November 21, 2018, wherein the Receiver concluded that the Receivership Entity was insolvent from at least as early as July 3, 2014. (Dkt. No. [663](#)).

....

On July 30, 2019, ASFG and TRD (“Joint Claimants”) filed a proof of claim (“Proof of Claim”) in the Receivership Case noting that the basis of such claim was for “Services Performed” and “Contractual obligations, including any current, future, or contingent contractual or indemnity obligations arising from any contracts entered into by or on behalf of the Receivership Estate[.]” ([Greenspan Decl.](#), ¶ 22). The “Total Claim Amount” is listed as \$27,381,251, estimated as of June 2019. The Proof of Claim includes a check mark asserting the claim is secured but did not include a check mark asserting that it is an administrative claim. Although the Joint Claimants’ Proof of Claim is largely illegible, it appears to include the following language on the “Additional Information” sheet:

See Attachment to Claim Form. Note that ASFG, Inc.’s claim is for \$16,655,136 pre-receiver[ship] (prior to 3/16/2016) and as administrative claim post-receivership of \$4,496,850 (up to 6/19) for money that belonged to ASFG, Inc. but received by the Receiver as a constructive trustee for ASFG, Inc. plus attorney fees....

([Greenspan Decl.](#), ¶ 22).

An attachment to the Proof of Claim further referred to both the California District Court and San Diego Superior Court cases. In the Proof of Claim, the Joint Claimants wrongly asserted that “ASFG, Inc. is entitled to an immediate release of [the \$2,483,403.38] plus the accrued interest as part of its \$27,281,251.00 claim which, if paid, would be a credit against that amount.” William Rathbone is the attorney who filed the ASFG/TRD Proof of Claim. He is designated as the Claimant

contact on the Proof of Claim, providing both his firm's physical mailing address, together with his personal email address. Mr. Rathbone is the same attorney who is of record for ASFG/TRD in the California District Court and San Diego Superior Court cases. Additionally, pursuant to the Order approving his Application For Special Admission Pro Hac Vice, Mr. Rathbone was and still is attorney of record in the Receivership Case. ([Greenspan Decl.](#), ¶ 23).

....

Without notice to the Receiver, on May 11, 2020, Tango Delta Financial, Inc. fdba ASFG filed a Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the Middle District of Florida. In re Tango Delta Financial, Inc., Bankr. M.D. Fl. Case No. 8:20-bk-03672 (the "Florida Bankruptcy"). ([Greenspan Decl.](#), Ex. 3, Recital DD).

ASFG's bankruptcy petition was filed shortly after Chief Bankruptcy Judge Ronald B. King for the U.S. Bankruptcy Court for the Western District of Texas ("Texas Bankruptcy Court"), orally issued findings of fact and conclusions of law, finding that ASFG was the recipient of fraudulent transfers and that its entire financing program (which appears to be similar to the one it utilized with respect to Aequitas) was designed to defraud the U.S. Department of Education by evading the 90/10 financing rule contained in the Code of Federal Regulations. ([Greenspan Decl.](#), Ex. 3, Recital EE). The findings of fact and conclusions of law were in relation to the twenty-nine causes of action brought against ASFG and certain related entities in October, 2018 by John Patrick Lowe as the Chapter 7 Trustee of Dickenson of San Antonio, Inc. d/b/a Career Point College (the "Texas Trustee"). ([Greenspan Decl.](#), Ex. 3, Recital FF).

ASFG's bankruptcy schedules were executed on June 3, 2020, by the entity's President, Timothy Duoos, under penalty of perjury. ([Greenspan Decl.](#), Ex. 3, Recital JJ). Those schedules do not list Aequitas as a creditor and do not include the Receiver on the Master Mailing list, precluding the Receiver from receipt of any notices related to the ASFG bankruptcy proceeding. ([Greenspan Decl.](#), ¶ 25 and Ex. 3, Recital GG).

The schedules and statement of financial affairs, however, are replete with references to the Receivership Case. ([Greenspan Decl.](#) ¶ 24). In the asset section of the schedules, ASFG lists two causes of action against "Aequitas Management, LLC." The first is in the amount of \$2,483,403.38, for "Writ of Attachment" (matching the Deposited Receivership Property now held in a segregated account by the Receiver), and includes a citation to the Receivership Case number, albeit with a typo. The ASFG bankruptcy schedules include, as another of its assets, a separate "Cause of Action" against Aequitas Management, LLC, for "Money Owed" in an "Unknown" amount. ([Greenspan Decl.](#), Ex. 3, Recital HH and II). In the "Legal Actions or Assignments" section of the statement of financial affairs, ASFG references the Receivership Case as "Pending" in the United States District Court for the District of Oregon and further discloses that ASFG is an "Intervenor" in the Receivership Case. ([Greenspan Decl.](#), ¶ 24).

On July 15, 2020, Jeffrey W. Warren, was appointed as the Chapter 11 Trustee to oversee [Tango Delta's (previously AFSG)] bankruptcy and business

operations (the “Florida Trustee”). ([Greenspan Decl.](#), Ex. 3, Recital KK). A review of the ASFG docket reveals that the Texas Trustee and the Florida Trustee had a contentious relationship, including, for example, fee application objections, a motion to transfer venue from Florida to Texas, multiple discovery disputes, and the filing of competing liquidation plans. ([Greenspan Decl.](#) ¶ 26).

On March 19, 2021, the Texas Trustee filed a Disclosure Statement and proposed Plan of Liquidation for ASFG. On April 21, 2021, the Florida Trustee filed a competing Disclosure Statement and Plan of Liquidation. ([Greenspan Decl.](#), Ex. 3, Recital LL). The competing Disclosure Statements both identify and describe, including the Texas Trustee’s reference to the Debtor’s Schedules, as property of the Tango Delta bankruptcy estate, a Cause of Action against Aquitas in the amount of \$2,483,403.38, the Deposited Receivership Property. ([Greenspan Decl.](#), Ex. 3, Recital OO).

Pursuant to its own motion, on July 1, 2021, the Bankruptcy Court entered an amended order directing the Florida Trustee, the Texas Trustee, TRD, and the Duoos Parties, including Timothy Duoos, to mediation. ([Greenspan Decl.](#), ¶ 27). The Liquidating Plan defines “Duoos Parties” as The Duoos 2004 Trust, a Revocable Inter-Vivos Trust, Christine Duoos, Deborah Duoos, Timothy Duoos, Tyler Duoos, Lynn Duoos, Garden Ad Agency, Inc., the Largo Garden Group, LLC, and the Duoos Affiliated Entities. ([Greenspan Decl.](#), Ex. 3, Recital RR).

The Mediated Joint Amended Plan of Liquidation was filed on September 22, 2021. ([Greenspan Decl.](#), ¶ 28). On September 23, 2021, the Notice of Filing Mediation Results Report was filed by the Florida Trustee advising the Court that a majority of the disputes among the parties had been resolved and incorporated into the “Mediated Joint Amended Plan of Liquidation.” ([Greenspan Decl.](#), ¶ 29).

On September 23, 2021, the Florida Trustee also filed a “Motion for Entry of Order Conditionally Approving the Settlement Among Warren-Trustee, on Behalf of the Debtor, TRD, the Duoos Parties, and Lowe-Trustee” (the “Mediated Settlement Motion”). ([Greenspan Decl.](#) ¶ 30).

On October 28, 2021, the Bankruptcy Court entered its Hearing Proceeding Memo granting the Mediated Settlement Motion. Three (3) court days later, on November 2, 2021, the Bankruptcy Court entered its “Order Approving Disclosure Statement for Plan of Liquidation for . . . , Debtor . . . [and] Confirming Mediated Joint Amended Plan of Liquidation for . . . Debtor . . .” ([Greenspan Decl.](#), ¶ 31).

Pursuant to the Mediated Joint Amended Plan of Liquidation (the “Liquidating Plan”), ASFG’s estate is to be liquidated through the creation of a “Liquidating Trust,” as defined in the Liquidating Plan. The Liquidating Plan designated John Patrick Lowe as the liquidating trustee, but he subsequently was replaced by Larry S. Hyman (the “Liquidating Trustee”). ([Greenspan Decl.](#), ¶ 32, Ex. 4).

....

Pursuant to the Liquidating Plan, on the Effective Date, Liquidating Trust Assets transfer to the Liquidating Trust. [footnote omitted] “Liquidating Trust Assets means collectively (i) all Assets of the Debtor not distributed under the Plan and (ii) Liquidating Trust Claims.” [Liquidating Plan at p. 8, ¶ 1.50 (ECF [981](#) at

Ex. 4)]. Liquidating Trust Claims include “[a]ny and all claims or Causes of Action involving the receivership of Aequitas.” [Liquidating Plan at p. 9, ¶ 1.51(d) (ECF [981](#) at Ex. 4)] The Liquidating Plan defines Causes of Action as:

[A]ny and all actions, causes of action, suits, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment and claims, whether know[n], unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertible directly or derivatively, in law, equity or otherwise, including Avoidance Actions, and any and all other claims or rights of the Debtor or the Estate of any value whatsoever, at law or in equity, against any Creditor or third party.

* * *

(Liquidating Plan at p. 5, ¶ 1.19.) [ECF [981](#) at Ex. 4].

As set forth above, ASFG’s bankruptcy schedules list two causes of action against “Aequitas Management, LLC,” one in the amount of \$2,483,403.38 for “Writ of Attachment”, which also includes a citation to the Receivership Case number and a second cause of action based on “Money Owed” (unknown value). ([Greenspan Decl.](#), Ex. 3, Recitals HH and II). These causes of action were transferred to the Liquidating Trust on the Effective Date of the Liquidating Plan. Pursuant to notice filed in the Florida Bankruptcy, the Effective Date of the Liquidating Plan is November 22, 2021, when all conditions to the Effective Date were satisfied or waived. ([Greenspan Decl.](#), ¶ 33.) The purported claim/cause of action for “Writ of Attachment” in the amount of \$2,483,403.38 relates specifically to the Deposited Receivership Property transferred from the California District Court to the control of the Receiver.

Pursuant to the terms of the Liquidating Plan, the Liquidating Trustee has the power, among others to (i) settle, compromise, or adjust by arbitration, or otherwise, any disputes or controversies in favor or against the Liquidating Trust, (ii) release, convey, subordinate, or assign any right, title, or interest in or to the Liquidating Trust Assets, (iii) waive or release rights of any kind, and (iv) in general, without in any manner limiting any of the foregoing, deal with the Liquidating Trust Assets or any part or parts thereof in all other ways as would be lawful for any person owing the same to deal therewith, whether similar to or different from the ways above specified, at any time or times hereafter. [Liquidating Plan at pp. 27-28, ¶¶ 12.4(f), (o), (p), and (s) (ECF [981](#) at Ex. 4)].

....

On February 23, 2022, the Receiver filed a Motion to Enforce Receivership Injunction and Receivership’s Classification of the American Student Financial Group, Inc. Claim (“Motion to Enforce”). (Dkt. No. [923](#)). Shortly thereafter, through counsel, the Liquidating Trustee engaged in good faith settlement negotiations with the Receiver. After weeks of negotiations, the parties agreed to resolve all claims, as follows:

- Payment of \$800,000 by the Receivership Entity to the Liquidating Trust;
- Release of the balance of the Deposited Receivership Property (\$1,683,403.38 plus accrued interest) from the segregated account, to be utilized in accordance with the terms of the Receivership Order and Court-approved Distribution Plan, for the benefit of Defrauded Investors; and
- Mutual release of all claims and causes of action by and between the Receivership Entity and the Liquidating Trust, with the exception of the Liquidating Trustee's agreement not to object to any proof of claim filed by the Receivership Entity in the Florida Bankruptcy, provided the claim does not exceed \$5,000,000 and is treated as a late-filed claim that is subordinated to the claims of other allowed, nonsubordinated, unsecured creditors.

([Greenspan Decl.](#), Ex. 3).

DISCUSSION

TRD Consulting objects to the settlement. TRD Consulting does not contest the right of the Liquidating Trustee to settle Tango Delta's (formerly ASFG) claims against ACM. It does however contend he had no such authority with respect to TRD Consulting.

As noted above, the Liquidating Trustee has the power to settle, compromise, or adjust by arbitration, or otherwise, any disputes or controversies in favor or against the Liquidating Trust. Liquidating Plan at pp. 27-28, ¶¶ 12.4(f), (o), (p), and (s) (ECF [981](#) at Ex. 4). TRD argues section 1.19 of the Plan does not define cause of action to include claims and causes if action owned by TRD Consulting. However, that section includes “[A]ny and all actions, causes of action ..., whether know[n], unknown, reduced to judgment, not reduced to judgment, ... disputed, undisputed, secured or unsecured and **whether asserted or assertible directly or derivatively**, in law, equity or otherwise, including Avoidance Actions, and any and all other claims or rights of the Debtor or the Estate of any value whatsoever, at law or in equity, **against any Creditor or third party.**” Liquidating Plan at p. 5, ¶ 1.19. ECF [981](#) at Ex. 4) (emphasis added). Timothy

Duoos was the President of AFSG (now Tango Delta). AFSG was wholly-owned by Express Aviation Acquisition Corporation which itself was wholly-owned by Duoos. Memorandum of Action of Sole Shareholder (ECF [989](#) at Ex. 1). Currently, Duoos and his family controls TRD Consulting. Greenfield Decl. (ECF [989](#)) at p. 2, Ex. 2. But on the date the consulting agreement upon which TRD's proof of claim is based, Timothy Duoos was the sole member of TRD Consulting. Greenspan Decl. (ECF [924](#)) at p. 296.

As noted above, the Texas Bankruptcy Court determined ASFG was designed to defraud the U.S. Department of Education. As set forth in this action, Aequitas' insolvency is largely based on the Corinthian student loan debt which was brought to Aequitas by Duoos. Further, this Court has already determined that Aequitas operated as a Ponzi scheme.

In 2011, Duoos, through ASFG and TRD Consulting, presented Aequitas with an opportunity to purchase Corinthian loans. Third Amended Complaint at ¶ 30, American Student Financial Group, Inc. et. al. v. Aequitas Capital Management, Inc., et. al., Case No.: 12-cv-02446-CAB-JMA. As noted, this program was designed to defraud. TRD Consulting received approximately \$10,764,454.27 in funds from Aequitas and ASFG received a little over \$4,000,000. Greenfield Decl. (ECF [989](#)) at ¶ 5, p. 2.

As noted above, ASFG and TRD Consulting submitted a proof of claim in an amount exceeding \$27,000,000 and based upon this claim, seek release of the \$2,483,403.38 held in the segregated Receivership bank account. However, only AFSG is asserted as entitled to the money in the proof of claim. Greenspan Decl., ¶ 22 (ECF [981](#)). The claim does not seek release of funds to TRD Consulting. In addition, in a bankruptcy schedule executed by Duoos, Tango Delta Financial (formerly ASFG) asserts as one of its assets the \$2,483,403.38 (as a cause of action) held in the segregated Receivership bank account. Greenfield Decl. (ECF [989](#)) at Ex. 3. Thus, the

purported entitlement to the money at issue in the settlement fits directly within the definition of a “cause of action” over which the Liquidating Trustee has authority to settle. At a minimum, it certainly is derivatively assertable.² TRD Consulting may, of course, seek any permitted distribution as an Allowed Convenience Class of Claims creditor. See Order Granting Receiver’s (Second) Motion To Approve Classification of Certain Claims (ECF [861](#)).

Nonetheless, as noted above, the California Court already determined the Receiver has a vested right to possession of the segregated account and may seek an order to disburse the funds. Moreover, the job of this Court is to assess the settlement and not make determinations as to the merits of related proceedings.³ The instant motion is analogous to Rule 9019 settlement in bankruptcy.

When assessing a compromise, courts need not rule upon disputed facts and questions of law, but rather only canvass the issues. A mini trial on the merits is not required. [Burton v. Ulrich \(In re Schmitt\)](#), 215 B.R. 417, 423 (9th Cir. BAP 1997). In determining whether to approve the settlement, the Court must consider: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views. [In re Open Med. Inst., Inc.](#), 2022 WL 1711774, at *7 (B.A.P. 9th Cir. May 26, 2022). In the bankruptcy context, a trustee

² TRD Consulting also relies on section 5.1(d) of the Liquidating Plan where Tango Delta “and the Duoos Parties release their liens, if any, against any amounts owed by Aequitas.” TRD argues the provision does not say TRD Consulting transferred its claims to the Liquidating Trust. Liquidating Plan at ¶ 5.1(d) (ECF [981](#) at Ex. 4) However, the Duoos Parties includes the Duoos affiliated entities which arguably encompasses TRD Consulting. Liquidating Plan ¶ 1.38 (ECF [981](#) at Ex. 4).

³ The more appropriate forum would be the Florida Bankruptcy Court where TRD Consulting could petition for a portion of the settlement proceeds if it believes it has a legitimate claim.

is “is entrusted to marshal an estate's assets and liabilities, and proceed in settling its accounts on whatever grounds he, in his informed discretion, believes will net the maximum return for the creditors (on whose behalf he toils).” [In re Mailman Steam Carpet Cleaning Corp.](#), 212 F.3d 632, 635 (1st Cir. 2000).

The protracted disputes involving the funds at issue demonstrate the propriety of the proposed settlement and likely results in the best returns for the creditors. Accordingly, the Court should grant the motion for an order approving compromise of claims.

CONCLUSION

The Receiver’s motion for an Order (1) Approving Compromises of Claims, (2) Authorizing Performance of Settlement, and (3) Authorizing Disbursement of Funds Held in A Segregated Account (ECF [980](#)) should be granted and the following Order should enter:

The settlement agreements with (1) Gillis Management Solutions, Inc.; (2) Ocean Avenue Financial Services, LLC; (3) The Liquidating Trust of the Bankruptcy Estate of Tango Delta Financial, Inc.; (4) Michael Pirello; (5) Petrawest, Ltd. and Gerald T. Raydon; (6) Jae Son; (7) Larry Welch; (8) The Welch Family 2008 Revocable Trust dtd 10/15/2008; and (9) Mary Greenheck are approved.

The Receiver is authorized to perform on each of the Settlement Agreements and to disburse \$2,483,403.38 plus accrued interest held in a segregated account, to be utilized in accordance with the terms of the Receivership Order, the Court-approved Distribution Plan, and the Settlement Agreement with the Liquidating Trust of the Bankruptcy Estate of Tango Delta Financial, Inc.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of appeals. Any notice of appeal pursuant to [Rule 4\(a\)\(1\), Federal Rules of Appellate Procedure](#), should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties shall have fourteen (14) days within which to file a response to the objections. Failure to timely file

objections to any factual determination of the Magistrate Judge will be considered as a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to this recommendation.

DATED this 22nd day of August, 2022.

/s/ Jolie A. Russo
JOLIE A. RUSSO
United States Magistrate Judge