UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
SOUTHERN DIVISION

In re SANCTUARY BELIZE LITIGATION	No: 18-cv-3309-PJM

TEMPORARY RECEIVER'S MEMORANDUM IN SUPPORT OF MOTION FOR ORDER DETERMINING THAT FUNDS TURNED OVER TO THE TEMPORARY RECEIVER FROM NEWPORT LAND GROUP LLC'S BANK ACCOUNTS MAY BE USED FOR ALL RECEIVERSHIP PURPOSES

Temporary Receiver Robb Evans & Associates LLC submits the following memorandum in support of its motion for an order determining that funds turned over to the Temporary Receiver from Newport Land Group LLC's bank accounts may be used for all receivership purposes.

I. INTRODUCTION AND STATEMENT OF FACTS

The Temporary Receiver, Robb Evans & Associates LLC ("Receiver") was appointed as Temporary Receiver in this action pursuant to the Ex Parte Temporary Restraining Order with Asset Freeze, Writs *Ne Exeat*, Appointment of a Temporary Receiver, and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue ("TRO") issued by the Court on November 5, 2018 (Doc. 13). Under the TRO, the Receiver became temporary receiver over all named Corporate Defendants (except for Atlantic International Bank, Ltd.) and over the assets of Andris Pukke ("Pukke") and Peter Baker ("Baker") valued at $1,000 or more. The TRO was extended by the Extension of Temporary Restraining Order and Interim Preliminary Injunction (Doc. 34) filed November 29, 2018 ("Interim Preliminary Injunction").

(The named Corporate Defendants that became receivership entities under the TRO are referred to herein as the "Original Receivership Entities.")

The FTC filed a motion to amend the Complaint and a proposed Amended Complaint for Permanent Injunction and Other Equitable Relief ("Amended Complaint") on December 28, 2018 adding Michael Santos ("Santos") and Newport Land Group, LLC ("NLG") as defendants. (Doc. 87) The Court granted the motion to amend on January 11, 2019. (Doc.107) On February 13, 2019 the Court entered a Stipulated Preliminary Injunction as to Santos and Defendants Rod Kazazi, Foundation Partners, Brandi Greenfield, BG Marketing LLC, Frank Costanzo, Deborah Connelly, Ecological Fox LLC, Angela Chittenden, and Beach Bunny Holdings LLC (Doc. 164) ("Stipulated Preliminary Injunction"). Under the Stipulated Preliminary Injunction, the Receiver remained as receiver over the stipulating Receivership Entities BG Marketing, LLC, Ecological Fox, LLC, and Foundation Partners, and NLG was expressly added as a named Receivership Entity. The Receiver remains temporary receiver over the Original Receivership Entities named in the TRO and over the assets of Pukke and Baker.

A. Newport Land Group LLC

Like the Original Receivership Entities, NLG offered Caribbean and Central American residential real estate opportunities to American consumers. Before he became a key player with NLG, Santos met Pukke in prison. Santos Motion to Dismiss, page 2, Doc. 322. Santos worked on and off for various Pukke-controlled entities, eventually acting as a fundraiser for NLG. *Id*. at pp. 3-4. According to Santos, NLG was formed by Pukke and Rod Kazazi ("Kazazi"). *Id.* at p. 4. In a California state court action since held in abeyance due to this proceeding and discussed in more detail below, Santos discussed the origins of NLG, stating: "In the first quarter of 2018, I met with Rod Kazazi and his business associate Andris Pukke about a new real estate

development project located in Costa Rica." Declaration of Michael Santos, Paragraph 2 (Attached to the Request for Judicial Notice ("RJN") filed concurrently herewith as Exhibit 1) (the "Santos Declaration"). Santos indicated that "Kazazi and Pukke informed me that they wished to raise $10 million in capital from investors." Santos Declaration, ¶3.

Santos was able to find 15 investors who collectively invested over $3.3 million in Class A equity ownership in NLG. Santos Declaration, ¶8. The other investors' perception of who owned and controlled NLG mirrored Santos's. On November 16, 2018 the investors, including Santos, sued NLG in Orange County Superior Court (California state court) seeking a return of their investment funds. See Declaration of Brick Kane ("Kane Declaration"), ¶8. In the lawsuit, all the investors submitted declarations saying the same thing: that they met with Kazazi and Pukke[1] who were (i) acting as the face of the project; (ii) developing a master plan for the property; and (iii) seeking $10,000,000 in equity funding. *See, e.g.*, Declaration of Alfonso Kolb, Jr., Paragraphs 2, 3 & 5 (the "Kolb Declaration"), RJN, Exhibit 2. Santos contributed $1.4 million for Class A ownership, the largest single investor. Santos Declaration, ¶6; *see also* Kane Declaration, ¶8.

These investment funds were supposed to go to NLG's development in Costa Rica called Rancho Del Mar. Kane Declaration, ¶13. Prospective lot purchasers were also solicited, and several placed deposits for lots in Rancho Del Mar. *Id*. All of the checks and wire transfers for these investments and lot deposits were made payable to or wire transferred to NLG and totaled $3,879,571.50. *Id*. The real estate for the development was never purchased. Report of Receiver's Activities for the Period from November 6, 2018 to February 21, 2019 (Doc. 219) ("Receiver's Report"), p. 63; Kane Declaration, ¶13.

[1] In addition, defendant Frank Costanzo ("Costanzo") advised the Receiver that he was the Chief Executive Officer of NLG. Kane Declaration, ¶4.

NLG utilized two bank accounts at Bank of America, ending in account nos. 0794 and 8924 (referred to as the "0794 Account" and "8924 Account" and collectively as the "NLG Bank Accounts"). Kane Declaration, ¶13. When the Receiver took control of the NLG Bank Accounts, $3,752,571.50 was in the 8924 Account and $4,773.59 was in the 0794 Account for a total of $3,757,345.09. *Id*. This sum was turned over to the Receiver in April 2019 after the Court issued the Stipulated Preliminary Injunction expressly naming NLG as a Receivership Entity. *Id*. Kazazi was one of two authorized signatories for the NLG Bank Accounts, in addition to Defendant Brandi Greenfield ("Greenfield"). Kane Declaration, ¶3. As of the inception of the receivership, the total amount in the NLG Bank Accounts was $122,226.41 less than the amount raised from the investors and prospective lot purchasers for Rancho Del Mar ($3,879,571.50 minus $3,757,345.09 = $122,226.41). Kane Declaration, ¶13.

The Receiver has undertaken a detailed analysis of the NLG Bank Accounts as well as the financial statements generated by QuickBooks by the Receivership Entities for NLG, as well as the financial statements maintained on QuickBooks for the named Receivership Entities. The NLG Bank Accounts were not segregated from the accounts held by the Original Receivership Entities. Specifically, nearly $1.3 million was transferred from Original Receivership Entities into the 0794 Account. Kane Declaration, ¶11. The main source of the funds from the Original Receivership Entities into this account was $360,900 from Buy International, Inc. ("Buy International"), $831,000 from Eco-Futures Development ("EFD"), and $95,000 from Global Property Alliance, Inc. ("GPA") . *Id.* **Therefore, the NLG Bank Accounts were commingled with nearly $1.3 million in funds from the Original Receivership Entities.** All of this money originated from consumers who made payments to acquire lots in the Belize real estate development at Sanctuary Bay known as the "Reserve." Kane Declaration, ¶11, Receiver's

Report, p. 63. Notwithstanding various descriptions of the transfers from the Original Receivership Entities to NLG in the QuickBooks financial records for the Original Receivership Entities and for NLG, the Receiver has uncovered no legitimate business justification for these transfers. Kane Declaration, ¶11.

Based on this review of NLG's banking records and the financial records for NLG and the Original Receivership Entities, the Receiver determined that a substantial amount of money was paid from the NLG Bank Accounts for purposes unrelated to the Rancho Del Mar real estate project in Costa Rica. The Receiver determined that $1,065,000 was paid from the NLG Bank Accounts to acquire land in the Bahamas for another real estate development project **unrelated to the Reserve project in Belize and unrelated to the Rancho Del Mar project in Costa Rica.** Kane Declaration, ¶12.

B. The Same Individuals Control the Original Receivership Entities and Newport Land Group

Pukke is the ultimate control person over NLG and the Original Receivership Entities, as evidenced by the facts set forth in the Receiver's Report, including pp. 3-7. The FTC alleges that though Pukke does not officially own any of the corporate defendants, he "is at the heart of the deceptive, unlawful real estate investment scheme alleged in this Complaint." Amended Complaint, ¶8. As Kane testified at the evidentiary hearing on the FTC's motion for preliminary injunction and as set forth in the Receiver's Report, the Receiver has determined that Pukke is the person with ultimate control over the Original Receivership Entities. He directed operational and financial matters and controlled sales, management and, most importantly, the cash generated by the Reserve. Kane Declaration, ¶9. Critically, Pukke diverted at least $16 million from consumer payments intended for the Reserve. Receiver's Report pp. 5-7. As one of his associates noted, "Based on my observations, everyone, whether in the United States or Belize,

ultimately reported to Andris Pukke." Declaration of Frank Costanzo, ¶18, Docket 238-2 (hereafter the "Costanzo Declaration"). Costanzo further noted "although operations in the United States were ostensibly owned by Peter Baker, they were ultimately controlled by Andris Pukke." *Id*. at ¶19.

Pukke is aided by a central cast of characters. For instance, Kazazi is another control person over NLG and the Original Receivership Entities. As noted by Santos, he was presented to investors as one of the faces of NLG. He was an authorized signatory for the NLG Bank Accounts. Kane Declaration ¶3. At the same time, Kazazi was Chief Executive Officer of EFD and the Chief Financial Officer of GPA. *See* Federal Trade Commission's ("FTC") Memorandum in Support of Temporary Restraining Order (Doc. 5) ("Motion for TRO") p. 63 and evidence filed in support thereof. Kazazi was also a bank signatory for GPA, Sittee River Wildlife Reserve ("SRWR"), Eco-Futures Belize Limited ("Eco-Futures Belize"), EFD, and Foundation Development Management, Inc. ("FDM") as well as NLG. *Id*. He conveyed to third parties that he had a "senior executive role" at the Reserve. *Id*. Among other things, Kazazi has incorporated entities associated with the Reserve, directed financial transfers, negotiated lot buyback agreements, and coordinated SBE's[2] response to negative press. *Id*. Kazazi "oversaw the finances of the SBE" and "knew how much money the SBE had at any given time." Costanzo Declaration, ¶20.

Greenfield was the other authorized signatory on the NLG Bank Accounts besides Kazazi and held the title of "Manager" of NLG. Kane Declaration, ¶¶3,4. NLG's website lists her as a Founding Partner of NLG. Motion for TRO, PXC154, p. 8. At the same time, Greenfield was the "Director of Sales" for the Reserve and authorized to sign contracts for EFD. Motion for

[2] "SBE" is used by the FTC to refer to the Reserve.

TRO at p. 59 and evidence cited therein. Greenfield had a role in the telemarketing scripts being used to sell lots in the SBE. Costanzo Declaration, ¶21.

Costanzo is another control person over the Original Receivership Entities. Costanzo held himself out as CEO of NLG. Kane Declaration, ¶4; Costanzo Declaration, ¶26. Costanzo also used the name Frank Connelly and Frank Costanzo-Connelly. Costanzo Declaration, ¶7. Under the name Frank Connelly, Costanzo is presented as a Founding Partner and the CEO of NLG on its website. Motion for TRO, PXC154, p. 8. Costanzo is also an officer of FDM, Buy International and EFD. Motion for TRO, p. 61, and evidence filed in support thereof. He has described himself as having "significant personal knowledge of the sales and marketing and planned development related to the Sanctuary Belize." Costanzo Declaration, ¶8. Costanzo stated that NLG "shared control people with the other United States based companies." *Id*. at ¶14. Costanzo further indicated that NLG was a "core company" in the marketing and development of projects including the Reserve. *Id*. at ¶12. For instance, NLG listed on its website two portions of the Reserve, Laguna Palms and Bamboo Springs, as current developments. Motion for TRO, PXC154, pages 5, 12, 17, 21 and 22.

Santos also moved between NLG and the Original Receivership Entities. As noted above, he raised millions of dollars in investments for NLG. At the same time, he was also a Director for Communications for GPA and Director of Business Development for GPA, Buy Belize and Buy International. Amended Complaint ¶29. He had at least one work station, stored documents at the Original Receivership Entities' office location and received mail at that address. Federal Trade Commission's Motion and Memorandum in Support Seeking Leave to Immediately Amend Complaint to Add Michael Santos and Newport Land Group LLC as Defendants and For Preliminary Injunction Against Michael Santos, Section II, page 3, Docket

87 (hereafter "Motion to Amend"). Santos filmed marketing videos in the defendant's conference rooms. *Id*. Santos also ran a YouTube channel where he made videos marketing the Laguna Palms portion of the Reserve. Costanzo Declaration, ¶26. Costanzo appeared as CEO of NLG in some of these videos with Santos to sell lots in the Reserve. *Id*. Though NLG was ostensibly created to develop residential real estate in countries other than Belize, NLG ultimately ended up doing marketing for the Reserve.

II. ARGUMENT

As set forth both below, there are four reasons why the Receiver is entitled to use the funds which were in the NLG Bank Accounts for all receivership purposes. First, NLG is properly treated as a Receivership Entity under the TRO due to its status as an affiliate of the Original Receivership Entities. Second, NLG is properly treated as a Receivership Entity under the TRO because it conducted business at 3333 Michelson Drive and was involved in the Reserve project in Belize. Third, NLG is an asset beneficially owned and controlled by Pukke, and Pukke's assets are property of the receivership estate under the TRO. Fourth, nearly $1.3 million belonging to the Original Receivership Entities was transferred into the NLG Bank Accounts and commingled with funds originating from Rancho Del Mar investors and prospective lot purchasers, thereby mandating that the Receiver treat the funds originating in the NLG Bank Accounts as part of a unitary receivership estate and not segregated in any manner. Each of these arguments is discussed below.

A. NLG is Properly Treated as a Receivership Entity Under the TRO Due to its Status as an Affiliate of the Original Receivership Entities

First, NLG is properly treated as a Receivership Entity under the TRO due to its status as an affiliate of the Original Receivership Entities based on common ownership and control of NLG and the Original Receivership Entities. Under the TRO, all "Receivership Entities" are

under the control of the Receiver. TRO, XVI(A) and (B), p. 27. The Term "Receivership Entities" includes, *inter alia*, all "Corporate Defendants." TRO, Definitions (H), p. 11. The term "Corporate Defendant(s)" includes the Original Receivership Entities and each of their "subsidiaries, **affiliates**, successors and assigns." TRO, Definitions (B), p. 11 (emphasis added).

The term "affiliate" is not defined by the TRO. As noted by the Fourth Circuit Court of Appeals, "[a]ffiliate is a well-established term in the business context, and always denotes some significant degree of control between two entities. *See, e.g., Black's Law Dictionary* 58 (West 6th ed.1990) (defining "affiliate" as "signify[ing] a condition of being united; being in close connection, allied, associated, or attached as a member or branch…" *Jermar, Inc. v. L.M. Communications II of South Carolina, Inc.,* 181 F.3d 88 (table), 1999 WL 381817, *4 (4th Cir. 1999). "In standard legal parlance, 'affiliate' denotes a close connection or association between two persons." *Cox v. Shah*, 187 F.3d 629 (table), 1999 WL 492664, *8 (4th Cir. 1999). *See also Black's Law Dictionary* 59 (7th ed. 1990) (defining "affiliate" as "a corporation related to another corporation by shareholders or other means of control."); Merriam-Webster's Collegiate Dictionary 10th Edition 20 (defining "affiliated" as "closely associated with another").

NLG is an affiliate of the Original Receivership Entities and subject to the TRO since the same people controlled NLG and the Original Receivership Entities. As noted in detail above, Pukke, Kazazi, Costanzo, Greenfield and Santos each had key control authority for both NLG and the Original Receivership Entities, with Pukke being the ultimate control person. Thus, NLG is properly considered an affiliate of the Original Receivership Entities since it was under the common control of Pukke, Costanzo, Kazazi, Costanzo, Greenfield and Santos who were all also running the Original Receivership Entities.

Early on, the Receiver determined that it should treat NLG as a Receivership Entity and exercised all of its rights and duties specified in the TRO. Kane Declaration, ¶10. Section XVI.W of the TRO authorized the Receiver to determine if any nonparty was, in fact, a Receivership Entity. On December 5, 2018, counsel for the Receiver advised the parties to the lawsuit and various other parties in interest of this determination as required by Section XVI.X of the TRO. Kane Declaration, ¶10 In that letter, the Receiver advised the parties this determination could be challenged by filing a motion with the Court. No such motion was ever filed. Kane Declaration, ¶10. Further, in the Motion to Amend, the FTC noted that it was not moving to add NLG to the Preliminary Injunction since "the Receiver has already deemed Newport Land Group LLC a Receivership Entity and taken control over it and its assets." Motion to Amend, fn. 4.

B. NLG is Properly Treated as a Receivership Entity Under the TRO Since it Conducted Business at 3333 Michelson Drive and was Involved in the Reserve

NLG falls under the TRO's definition of "Receivership Entities" for a second reason. The TRO's definition of Receivership Entity includes (i) any entity that is operated from 3333 Michelson Drive, Suite 500, Irvine, California ("Michelson Premises") and "assists, facilitates or otherwise conducts business related" to the Reserve. TRO Definition H, p. 11. Thus, this is a two-pronged test. Did NLG work out of the Michelson Premises? If so, did it conduct business related to the Reserve? Both prongs are satisfied.

For the first prong, when the Receiver took control of the Receivership Entities, it was learned that NLG had a mailing address but that this address was merely a "virtual office" and no work was conducted there. Kane Declaration ¶7. Rather, mail was delivered to the Michelson Premises where the other Receivership Entities were located. *Id*. NLG had a mail slot at the

Michelson Premises. *Id.* Additionally, the QuickBooks log-in information for NLG was kept at the Michelson Premises alongside the other Receivership Entities. *Id*. at ¶5. NLG's QuickBooks were maintained by the Original Receivership Entities operating at the Michelson Premises. *Id*. at ¶6. The FTC asserts that the Michelson Premises was NLG's "*de facto* principal place of business…" Amended Complaint, ¶18. Santos had a work station, stored documents and received mail at the Michelson Premises. Motion to Amend, Section II, page 3, and evidence cited therein.

In addition to sharing the Michelson Premises with the Original Receivership Defendants, the second prong of Definition H is satisfied because NLG was involved in advertising, marketing, distributing and selling real estate investments in Belize. Santos ran a YouTube channel where he made videos marketing the Laguna Palms portion of the Reserve. Costanzo Declaration, ¶26. Costanzo was the CEO of NLG and appeared in some of these videos with Santos to sell lots in the Reserve. *Id*. NLG listed on its website two portions of the Reserve, Laguna Palms and Bamboo Springs, as current developments. Motion for TRO, PXC154, pages 5, 12, 17, 21 and 22.

C. NLG is an Asset Beneficially Owned and Controlled by Pukke, and Pukke's Assets are Property of the Receivership Estate Under the TRO

Even if NLG weren't an affiliate of the Corporate Defendants or didn't meet the TRO's definition of Receivership Entity, NLG would still be properly subject to the TRO since it is ultimately controlled by and thus an asset of Pukke. The TRO granted the Receiver control of "[a]ll Assets held by or for the benefit of Individual Defendant[] Andris Pukke." TRO, XVI(B). Pukke was ultimately in charge of all of the Corporate Defendants and was the primary financial beneficiary. Pukke diverted over $16 million, much of which was used for his own personal benefit. Receiver's Report pp. 5-7 and Exhibit 4 thereto. The Receiver further determined:

> From 2015 and continuing into 2018, Pukke developed, promoted, and ultimately directed and caused additional offshore development projects to be started in Mexico, Costa Rica, the Bahamas, and the Dominican Republic. The financial records and documents show that each of these four additional projects is similar in concept and design to the Reserve.

Receiver's Report, p. 9. Frank Costanzo noted "although operations in the United States were ostensibly owned by Peter Baker, they were ultimately controlled by Andris Pukke." Costanzo Declaration, ¶19. The Receiver further determined:

> From the forensic accounting and other analysis of the accounting and business records of the Receivership Entities completed to date, the Temporary Receiver has confirmed these financial records often contain misleading and inaccurate posting entries and descriptions that hide or mislead cash diversions by Pukke. As detailed in the Financial Information section of this report, Pukke ignored any rules regarding corporate governance.

Id., p. 4.

Therefore, even if for some reason NLG is not deemed to be a Receivership Entity despite its affiliate status and its qualification as a Receivership Entity under Definition H of the TRO, it should be deemed to be an asset of Pukke's and therefore part of the receivership estate for all purposes.

D. Since There was Commingling Between NLG and the Original Receivership Entities, the Receiver Properly Treats Funds from the NLG Bank Accounts as Part of the Unitary Receivership Estate

As shown above, there was extensive commingling between the various Receivership Entities and NLG, such that nearly $1.3 million dollars was transferred to NLG from the Original Receivership Entities. Since there is commingling between NLG and the Original Receivership Entities, the Receiver properly treats the NLG Bank Accounts as part of the overall receivership estate.

Case law clearly supports this. For instance, the Court in *SEC v. Byers*, 637 F.Supp.2d 166 (S.D. N.Y. 2009) considered the request of the receiver to consider certain real estate and commodities funds as commingled and thus properly distributed pro rata to all claimants. The

real estate funds had been extensively commingled. *Id*. at 178. The commodities funds, conversely, showed limited commingling. *Id*. Those with claims related to the commodities funds argued that their claims should be paid with money in the commodities account (and receive a more favorable treatment) since it was "their" money. *Id*. at 179. The Court disagreed, noting that since commingling did occur, what the investors considered "their" money "in all likelihood…includes money transferred from an investor who never had any intention of investing in a commodity fund." *Id*. Undertaking a comprehensive review of case law on this point, the Court noted that money was fungible and that any evidence of commingling was enough to "taint" all of the funds. *Id*. at 177-78. The commodities account claimants argued that the low level of commingling protected them, but the Court held there was no need to show that the commingling was systematic or pervasive and "there is some evidence that commingling occurred, and the law does not appear to require more than that." *Id*. at 178.

This commingling concept espoused by *Byers* was recently reiterated in *SEC v. Bivona*, 2017 WL 4022485 (N.D. Ca. 2017). Like *Byers*, some of the claimants argued against pooling of the assets and that their claims should trace to certain funds. The Court disagreed, noting "[t]here are few hard-and-fast rules for how courts should exercise their discretion in such circumstances, but one deeply engrained principle holds that where multiple people have been victimized, all victims of the fraud be treated equally." *Id*. at *6 (internal quotations and citations omitted). "If a particular investor who is able to "trace" his or her investment is permitted to do so, other victims will end up receiving a smaller portion of whatever remains. In effect, the investor who obtains relief based on tracing will obtain preferential treatment vis-à-vis other investors." *Id*. at *7.

The Class A Investors and those who placed lot deposits with NLG should not be permitted to argue against the Receiver's use of the NLG Accounts because of a claimed ability to trace their deposits. From a threshold perspective, $1.3 million was moved from Original Receivership Entities to NLG. To favor those with claims against NLG would negatively impact claimants against the Original Receivership Entities. The overwhelming authority is that tracing is not allowed for equitable remedies. *See United States v. Real Property Located at 13328 and 13324 State Highway 75 N.,* 89 F.3d 551, 553–54 (9th Cir.1996) (affirming allocation of proceeds of disgorged property pro rata to victims of a fraudulent investment scheme, regardless of whether claimants can trace their funds, because "the equities demand[ ] that all victims of the fraud be treated equally").

It would be inequitable to permit the NLG investors and prospective lot purchasers exclusive access to all of the funds from the NLG Bank Accounts when nearly $1.3 million came into those accounts from the Original Receivership Entities. If the $3,757,345.09 attributed to the NLG Bank Accounts were devoted exclusively to repaying the $3,879,571.50 raised from NLG investors and prospective lot purchases, those claimants would receive 96.8% of their claims to the detriment of other consumers in this case.

Conversely, because all potentially defrauded consumers and investors should be treated equally, the funds attributable to the NLG Bank Accounts should be used to fund common receivership expenses. This Court has broad supervisory powers and the discretion to determine the scope of the entities and assets subject to the TRO. *In re San Vicente Medical Partners, Ltd*., 962 F.2d 1402, 1408 (9th Cir. 1992); *SEC v. Elmas Trading Corp*., 620 F.Supp. 231 (D. Nev. 1985), aff'd 805 F.2d 1039 (9th Cir. 1986); *Delaware Watch Co. v. FTC*, 332 F.2d 745, 746-47 (2d Cir. 1964) (affirming an FTC order holding a company liable because it was part of a "maze

of interrelated companies" through which "the same individuals were transacting an integrated business"); *Commodity Futures Trading Comm'n. v. Wall Street Underground, Inc.*, 281 F. Supp. 2d 1260, 1271 (D. Kan. 2003) (noting that when corporations act as a common enterprise, each may be liable for the deceptive acts and practices of the other)(citing *Sunshine Art Studios, Inc. v. FTC*, 481 F.2d 1171, 1175 (1st Cir. 1973)).

Since the receivership estate is viewed as a whole, not by its individual pieces, it is appropriate that all assets from all the entities be used to fund the expenses of the entire receivership estate. The "primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors." *SEC v. Hardy,* 803 F.2d 1034, 1038 (9th Cir.1986); *FTC v. 3R Bancorp,* No. 04 C 7177, 2005 WL 497784, at *3 (N.D.Ill. Feb. 23, 2005). Allocating receivership expenses among all the harmed investors is proper. *SEC v. Alpine Mut. Fund Trust*, 824 F.Supp. 987 (D. Colo. 1993). In *Alpine*, the receiver wanted the receivership expenses spread *pro rata* against all claimants. *Id.* at 995. Some claimants objected, arguing that certain of the expenses did not benefit them. The receiver argued that "under a theory of unjust enrichment … allowing certain creditors to avoid paying expenses would grant them the benefit of the Receiver's efforts in 'marshalling, preserving and enhancing the value of the … assets' without having to pay" for those services. *Id*. The Court agreed that expenses should be shared *pro rata*, stating "in our view, whether the work of the Receiver has *always* benefited the creditors is irrelevant where the creditors have received some benefit." *Id*. (Emphasis in original.) Therefore, it is appropriate that funds transferred from the NLG Bank Accounts to the Receiver may be used for all receivership purposes.

III. CONCLUSION

As shown above, (i) NLG is properly treated as a Receivership Entity under the TRO due

to its status as an affiliate of the Original Receivership Entities; (ii) NLG is properly treated as a Receivership Entity under the TRO since it conducted business at the Michelson Premises and was involved in the Reserve project in Belize; (iii) NLG is properly considered a Receivership Entity because it is an asset beneficially owned and controlled by Pukke, and Pukke's assets are property of the receivership estate under the TRO; and (iv) the extensive commingling of funds between the Original Receivership Entities and NLG precludes the segregation of funds turned over to the Receiver from the NLG Bank Accounts.

For the reasons set forth herein, the Receiver respectfully requests that the Court issue an order that all funds turned over to the Receiver from the NLG Bank Accounts may be used for all receivership purposes.

Dated: May 14, 2019

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