

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION**

STATE OF FLORIDA,  
OFFICE OF FINANCIAL REGULATION,

Plaintiff,

vs.

Case No.: 14-001695-CI

TRI-MED CORPORATION,  
TRI-MED ASSOCIATES INC.,  
JEREMY ANDERSON,  
ANTHONY N. NICHOLAS, III,  
ERIC AGER, IRWIN AGER,  
TERESA SIMMONS BORDINAT  
a/k/a TERESA SIMMONS,  
and ANTHONY N. NICHOLAS, JR.,

Defendants.

vs.

TMFL HOLDINGS, LLC

Relief Defendant.

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**THE RECEIVER'S MOTION TO APPROVE SETTLEMENTS  
WITH STEPHEN D. MARLOWE, BRIAN STAYTON, AND  
THEIR LAW FIRMS AND FOR ENTRY OF BAR ORDERS**

Burton W. Wiand (the “**Receiver**”), as Receiver for Tri-Med Corporation (“**Tri-Med**”), Tri-Med Associates Inc. (“**TMA**”), TMFL Holdings, LLC, Interventional Pain Center, PLLC, Rejuva Medical and Wellness Center, L.L.C., and Rejuva Medical Center, L.L.C. (collectively, the “**Receivership Entities**”), by and through his undersigned counsel, moves the Court for an order approving settlements of claims he intended to assert against

(1) Stephen D. Marlowe and Marlowe McNabb Machnik, P.A. (f/k/a Marlowe McNabb, P.A.) (collectively, “**Marlowe**”), and (2) Brian Stayton and Stayton Law Group, P.A. (collectively, “**Stayton**”) on the basis of the settlement agreements attached to this motion as **Exhibits A and B** (the “**Settlement Agreements**”), respectively. Among other things, the Settlement Agreements contemplate entry of bar orders as described below (the “**Bar Orders**”). Contemporaneously with this motion, the Receiver is also filing (1) the Declaration Of Burton W. Wiand, as Receiver, In Support Of The Receiver’s Motion To Approve Settlements With Stephen D. Marlowe, Brian Stayton, And Their Law Firms And For Entry Of Bar Orders (the “**Wiand Declaration**”), which sets forth the facts and conclusions on which this motion relies, and (2) a Motion To Approve Proposed Notice Of Settlements With Stephen D. Marlowe, Brian Stayton, And Their Law Firms (the “**Notice Motion**”). The Receiver respectfully requests that the Court first address the Notice Motion and, if that motion is granted, that it continue a decision on this motion until after the deadline set forth in the Notice Motion for objections or other responses to the relief requested in this motion.

### **BACKGROUND**

1. This Court originally appointed Mr. Wiand as Receiver for Tri-Med and TMA in a March 5, 2014, order (the “**Order Appointing Receiver**”), pursuant to Florida Statutes Section 517.191(2) and the Court’s inherent equity powers. Through subsequent orders, the Court appointed Mr. Wiand as Receiver for the rest of the Receivership Entities. In the Order Appointing Receiver, the Court directed the Receiver to, among other things, hold and manage the assets and property of the Receivership Entities and to marshal and safeguard all

such properties and assets. The Court also authorized the Receiver to assert and prosecute claims, actions, suits, and proceedings that may have been or that may be asserted or prosecuted by any of the Receivership Entities.

2. On some of these and other receivership matters, the Receiver has consulted or coordinated with a committee of nine defrauded investors: Miles E. Blount, Richard Burnham, Deborah Burnham, Karen A. Deich, Robert McClellan, Maria Pazienza, Nicholas Borghese Sands, James Waters, and Anthony Witlin (the “**Investors Committee**”). These investors invested a total of \$3,037,561.67 in Tri-Med.

3. The Investors Committee specifically was formed by the Receiver as a way to efficiently consult with defrauded Tri-Med investors on matters on which he felt it was important to solicit investors’ views, to consult about settlement negotiations with certain parties, and to participate as plaintiffs in any litigation, if necessary, on their own behalf and as representatives of similarly situated investors. The Investors Committee has been represented by separate counsel in connection with the matters underlying this motion, and it supports the relief requested in this motion, including entry of the Bar Orders.

#### **The Receiver’s Investigation Of Tri-Med**

4. To carry out his mandate, the Receiver investigated Tri-Med’s operations and the Ponzi scheme underlying this case (the “**scheme**”), which ultimately revealed that Insiders<sup>1</sup> retained professionals like lawyers and accountants – including Marlowe and Stayton – to give their scheme the appearance of legitimacy and make potential investors feel

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<sup>1</sup> Defendants Jeremy Anderson; Anthony N. Nicholas, III; Eric Ager; Irwin Ager; Teresa Simmons Bordinat a/k/a Teresa Simmons; and Anthony N. Nicholas, Jr. are the primary “**Insiders.**”

more comfortable. For example, investors were told that Marlowe was responsible for, among other things, holding investors' money in trust pending its use to purchase letters of protection ("LOPs"). Wiand Decl. ¶ 3.

5. At the inception of the scheme, Marlowe wrote a letter to Tri-Med stating that "[a]ll funds received by or through Tri Med from investors will be deposited into a Marlowe McNabb Trust Account established for this purpose" and that Marlowe McNabb would "pay medical providers for the LOPs." *Id.* Insiders provided that letter to investors, and investors relied on Marlowe's representations in making their investment decisions. *Id.* ¶ 4.

6. In similar letters, Insiders told investors that "your funds have been placed in an FDIC Insured Trust Account under the control and direction of one of Florida's most respected law firms, Marlowe McNabb P.A...." *Id.* During the entirety of the scheme, however, only approximately \$2.8 million of the more than \$17.6 million raised from investors was deposited in trust with Marlowe. *Id.* Insiders diverted the vast majority of the money invested in Tri-Med for their personal and others' benefit. *Id.* ¶ 5.

7. Similarly, Stayton was responsible, among other things, for executing the "Assignments of Interest" that Tri-Med provided to investors purportedly assigning them interests in LOPs allegedly purchased by Tri-Med. *Id.* ¶ 6. As Stayton explained in his April 30, 2012, engagement letter, "Tri-Med issues ... certificates to its investors when ... letters of protection are assigned," and "I sign each certificate." *Id.* By signing each certificate, however, the Receiver believes Stayton made numerous misrepresentations to investors. *Id.* For example, those certificates stated that each letter of protection "**ACTS AS AN INDISPUTABLE LIEN UPON THE INDIVIDUAL CASE IT REPRESENTS**" (original

emphasis). *Id.* The Receiver’s position, however, is that as a matter of law the certificates did not constitute valid assignments because, among other reasons, the investors never took ownership of the underlying LOP. *Id.*

8. To underscore the purported safety of the securities issued through Tri-Med, the Assignments of Interest executed by Stayton also stated that the LOPs were “secured,” “guaranteed,” or “backed” by major insurance companies. *Id.* ¶ 7. In reality, the LOPs were not secured, guaranteed, or backed by anything. *Id.* The LOPs were merely agreements between medical providers, patients, and their attorneys that gave the medical providers some right to receive payment for all or part of their services from any money patients might receive in connection with settlements or judgments. *Id.*

9. In some cases, including with respect to members of the Investors Committee, Stayton signed Assignments of Interest associated with LOPs that did not even exist. *Id.* ¶ 8. Insiders fabricated dozens of LOPs, and instead of purchasing medical receivables, they used investors’ money to enrich themselves, purchase real estate, and fund unrelated business ventures. *Id.* Even when Tri-Med actually purchased LOPs, many of them prohibited the relevant medical provider from transferring or assigning them to Tri-Med or Tri-Med’s investors. *Id.* Investors were not informed of this fact. *Id.*

#### **The Receiver’s Negotiations With Marlowe And Stayton**

10. Based on the Receiver’s findings and conclusions described above, among other things, the Receiver determined that both the Receivership Entities and investors in the Receivership Entities have claims against Marlowe and Stayton for, at minimum, professional negligence and the recovery of fraudulent transfers.

11. As a result, on December 22, 2015, counsel for the Receiver and counsel for the Investors Committee sent a demand letter to Stayton outlining the conduct the Receiver and Investors Committee view as problematic and the claims arising from that conduct. On December 23, 2015, counsel sent a similar demand letter to Marlowe. The letters requested that Marlowe and Stayton execute tolling agreements with the Receiver to allow time for pre-suit negotiations and possible settlement.

12. Marlowe and Stayton cooperated with the Receiver and Investors Committee, entered into tolling agreements, provided relevant documents, and negotiated with the Receiver and Investors Committee through counsel. As a result of those negotiations, the Receiver and the Investors Committee decided to settle their claims against Stayton for \$100,000 and against Marlowe for \$500,000 (the “**Settlement Amounts**”) plus other nonmonetary terms, as reflected in Exhibits A and B. The Settlement Agreements also include conditions that this Court enter Bar Orders that relieve Marlowe and Stayton of any additional liability or obligations arising from or relating to their representation or provision of professional services to any of the Receivership Entities.

13. As discussed below, Marlowe’s and Stayton’s insurers have tendered the policy limits available under their professional liability policies. In addition, Marlowe and Stayton are making personal contributions to effect this settlement. These payments are conditioned upon the Court entering the Bar Orders enjoining any third party, as described below, from commencing or instituting litigation against Marlowe, Stayton, or their insurers, arising out of their representation or provision of services to the Receivership Entities, or arising from professional, fiduciary, or any other services provided to the Receivership

Entities. This would include any claims, to the extent they exist, by the Receivership Entities' principals, shareholders, directors, officers, employees, investors, agents, or other third parties.

14. If the Bar Orders are not entered, the Settlement Agreements will be null and void and the parties will be restored to the *status quo*. Importantly, the Settlements Amounts will be contributed to the Receivership estate and used to pay the Receivership Entities' creditors, including investors with approved claims in this Court's claims process.

### **ARGUMENT**

15. By constitution and statute, the circuit courts of Florida are vested with exclusive equity jurisdiction. *See, e.g.*, Art. V, § 5(b), Fla. Const.; Fla. Stats. § 26.012(2)(c); *Terex Trailer Corp. v. McIlwain*, 579 So. 2d 237, 241 (Fla. 1st DCA 1991); *English v. McCray*, 348 So. 2d 293, 298 (Fla. 1977) (*citing State ex rel. B.F. Goodrich Co., et al v. Trammell, et al.*, 140 Fla. 500, 192 So. 175 (1939)). Similarly, receivership courts have "broad powers and wide discretion to determine relief in an equity receivership." *See S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) ("This discretion derives from the inherent powers of an equity court to fashion relief."). As a court of equity, this Court is vested with jurisdiction to approve the Settlement Agreements and enter the Bar Orders.

### **The Settlement Agreements And Amounts Are Fair And Equitable**

16. In deciding to accept these amounts from Stayton and Marlowe in resolution of all claims against them, the Receiver (and Investors Committee) considered a number of significant factors. First, the risks associated with litigating the claims were considered. Among those risks is the fact that, in addition to acting as attorneys, Marlowe and Stayton

also served as escrow agents for Tri-Med. Because of the narrow roles escrow agents typically play in business transactions, they are often insulated from liability by both the terms of their escrow agreements and pertinent Florida law. Also among those risks, is that Stayton and Marlowe likely would mount vigorous defenses. Consequently, litigation would likely require expenditure of substantial Receivership resources and would not be without significant risks. If litigation is unsuccessful, defrauded investors would recover nothing instead of the \$600,000 to be paid to the Receivership estate under the Settlement Agreements. These Settlement Amounts represent an equitable and good faith balance between the risks of litigation and the need to recover funds for the ultimate benefit of defrauded investors. *See* Wiand Decl. ¶ 9.

17. Second, the Settlement Amounts represent more than the maximum amounts presently available under Marlowe's and Stayton's respective professional liability policies. Marlowe's policy limit per claim is \$500,000, but it is a "wasting policy" so the fees his insurance company has been paying his attorney have reduced the available coverage amount. As such, the \$500,000 Settlement Amount represents the maximum currently available under Marlowe's insurance policy plus a payment in personal funds. *See id.* ¶ 10.

18. Stayton's insurance policy is similar, but it only has a \$100,000 limit per claim. Stayton's Settlement Amount represents the maximum currently available under his insurance policy and a payment in personal funds. Because the Settlement Amounts represent more than the maximum amounts currently available under Marlowe's and Stayton's respective professional liability policies, they are significant settlements. Indeed, because both have "wasting" policies, they add additional risk to litigating rather than settling



at this time because the longer the case proceeds, the more their attorneys have to be paid, which in turn reduces the amount of insurance coverage available for any eventual settlement or judgment. *See id.* ¶ 11.

19. Third, Stayton provided a financial affidavit, which demonstrated that, aside from his professional liability insurance and the personal payment described above, he does not have significant assets against which a significant judgment could be enforced. Indeed, his law firm is small, as is Marlowe's, and in deciding to resolve these matters, the Receiver has taken his ability (or potential inability) to collect on any judgment into account. *See id.* ¶ 12.

20. In deciding to recommend the resolution reflected in the Settlement Agreements, the Receiver also found the following considerations significant:

(a) based on the information reviewed by the Receiver, these settlements constitute a recovery by the Receivership Entities of an amount well in excess of all fees received by Stayton and Marlowe, collectively, as a result of their dealings with Tri-Med; and

(b) litigation of claims against Stayton and Marlowe could easily cost in excess of the Settlement Amounts and would in no way guarantee the significant benefit to the Receivership estate that will occur as a result of the settlement reached with them. *See id.* ¶ 13.

21. As a result of Stayton's and Marlowe's cooperative and good-faith approach to resolving matters with the Receiver and Investors Committee, the Receiver, Stayton, and Marlowe, with the consent of the Investors Committee, were able to reach agreements before

the filing of any action. This provided a considerable cost savings to the Receivership. *See id.* ¶ 14.

22. As noted above and in the Settlement Agreements, the Receiver and Stayton and Marlowe, subject to the approval of this Court, have agreed to settle for, among other things, payment by Stayton and Marlowe to the Receiver of \$600,000 and a broad release of liability. Also as part the Settlement Agreements, the Receiver and Stayton and Marlowe agreed to seek entry of a Bar Order precluding any claims against Stayton and Marlowe by investors in the Receivership Entities or by potential joint tortfeasors, including claims for contribution or indemnity, which relate in any way to Tri-Med.

#### **The Bar Order Is Appropriate**

23. The avoidance of a multiplicity of lawsuits is a basis to invoke equitable jurisdiction. *See, e.g., Realty Bond & Share Co. v. Englar*, 143 So. 152, 154, 104 Fla. 329 (Fla. 1932) (“The prevention of a multiplicity of actions at law is one of the special grounds of equity jurisdiction and for that purpose the remedy by injunction is freely used.”); *see also Dotolo v. Schouten*, 426 So.2d 1013, 1015 (Fla. 2d DCA 1983) (noting “prevention of a multiplicity of suits” “is a well recognized basis for injunctive relief”); *NEC Electronics, Inc. v. VG Sales Co.*, 655 So.2d 1146, 1148-49 (Fla. 4th DCA 1995) (noting “a court with prior jurisdiction may enjoin a party’s pursuit of competing actions in other forums where there is the possibility of exposing parties to inconsistent findings of law or fact”).

24. The Receiver seeks the entry of a Bar Order to prevent a multiplicity of suits against Marlowe and Stayton. The Settlement Agreements represent a fair and equitable resolution of the costs, delay, and uncertainty that would occur if the Receiver and multiple

other parties proceeded with competing litigation against Marlowe or Stayton. They also preserve the limited amount of funds (both insurance proceeds and personal assets) available to pay creditors, rather than have those same funds spent on litigation costs and attorney's fees to defend a multitude of potential claims. Accordingly, the entry of Bar Orders is a proper exercise of this Court's jurisdiction and in the best interest of the parties to the Settlement Agreements.

25. Federal courts overseeing bankruptcies and receiverships have also entered bar orders to facilitate settlement in similar situations. In fact, the Receiver has used this same procedure multiple times in *S.E.C. v. Nadel et al.*, Case No. 8:09-cv-87-T-26TBM (U.S. Dist. Ct., M.D. Fla.), which is another local receivership in which Mr. Wiand serves as receiver over numerous entities that were operated as a fraudulent Ponzi scheme. *See id.* Docs. 922 (approving settlement with law firm and entering bar order); 742 (same regarding clearing firm); 835 (same regarding broker-dealer). For the Court's convenience, these orders are attached to this motion as **Exhibit C**.

26. As an additional example, relying on Fed. R. Civ. P. 16 and the Bankruptcy Code, the Eleventh Circuit has explicitly authorized the use of bar orders in bankruptcy proceedings. *See In re Munford, Inc.*, 97 F.3d 449, 455 (11th Cir. 1996). According to the Eleventh Circuit, "[s]everal justifications for entering bar orders in bankruptcy cases exist":

First, public policy strongly favors pretrial settlement in all types of litigation because such cases, depending on their complexity, can occupy a court's docket for years on end, depleting the resources of parties and the taxpayers while rendering meaningful relief increasingly elusive. Second, litigation costs are particularly burdensome on a bankrupt estate given the financial instability of the estate. Third, bar orders play an integral role in facilitating settlement. This is because defendants buy little peace through settlement unless they are assured that they will be protected against codefendants'

efforts to shift their losses through cross-claims for indemnity, contribution, and other causes related to the underlying litigation.

*Id.* (quotations and citations omitted). All of these factors are as applicable to equity receiverships in state court as they are to proceedings in federal courts.<sup>2</sup>

27. Similarly, in *Commodity Futures Trading Comm'n v. Equity Fin. Group*, 2007 WL 2139399 (D.N.J. 2007), the court approved a settlement between an equity receiver and a firm retained by receivership entities to perform accounting services, and entered a bar order after finding that “the Receiver established th[e] settlement is in the best interest of the Receivership estate, and that federal law and public policy favor the entry of the Bar Order to facilitate settlement of th[e] matter.” *Id.* at \*2. The court also found that the bar order would not prejudice investors because of the difficulties investors would have to bring claims directly against the settling defendant. *Id.*; see also *S.E.C. v. Capital Consultants, LLC*, 2002 WL 31470399 (D. Or. 2002) (approving settlement and entering bar order); *Gordon v. Dadante*, 336 Fed. Appx. 540 (6th Cir. 2009) (same); *Harmelin v. Man Fin., Inc.*, 2007 WL 4571021 (E.D. Pa. 2007) (same).

28. Here, the Receiver (and the Investors Committee) has determined that the settlements reflected by the Settlement Agreements are in the best interests of the Receivership and the investors in Tri-Med. Specifically, the settlements avoid protracted and expensive litigation, thereby avoiding litigation risk and conserving very substantial Receivership resources, as well as judicial resources. In addition, the Settlement Amounts

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<sup>2</sup> Although receiverships and bankruptcies have some important distinctions, the similarities of their goals make an analogy here appropriate. See, e.g., *S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 334 (7th Cir. 2010) (goal in securities-fraud receivership and liquidation bankruptcy is identical: the fair distribution of liquidated assets).

represent an equitable and good-faith resolution, especially when considered in light of the maximum available insurance proceeds. The settlements are also in the best interests of investors because they represent a substantial recovery to the Receivership estate without the expense and risk of litigation, which is compensating investors with approved claims through the claims process.

**Notice Will Be Provided To Investors**

29. Cases involving equity receivers' requests for bar orders in connection with settlement of claims have included notice to investors and other interested parties of the request for bar orders. *See, e.g., Equity Fin. Group*, 2007 WL 4571021<sup>3</sup>; *Harmelin*, 2007 WL 4571021 at \*4 (notice of bar order provided to all investors before court approved settlement); *Gordon*, 336 Fed. Appx. at 544 (court entered order providing interested parties with opportunity to "comment" on settlement reached by equity receiver with broker/dealer and request for bar order).

30. Here, the Receiver intends to provide: (1) actual notice of the settlements with Stayton and Marlowe and the requested Bar Orders to the investors in Tri-Med and to potential tortfeasors the Receiver believes have liability to Receivership Entities – *i.e.*, the individuals and entities who are to be enjoined and barred from asserting claims against Stayton and Marlowe relating to Tri-Med, and (2) publication notice to all other interested parties. A copy of the proposed notice to investors and potential joint tortfeasors is attached

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<sup>3</sup> Although there is no discussion of notice to investors in this *Equity Financial Group* opinion, the receiver's motion for approval of the settlement in that case explained that such notice had been provided. *See Equity Financial Group*, Case No. 1:04-cv-01512-RBK-AMD (D. N.J.), Memorandum In Support Of Motion Of Equity Receiver To Approve Settlement With Puttman & Teague, LLP, Elaine Teague, And John Puttman (Doc. 428-3, ¶¶ 25, 36).

to the Notice Motion (the “**Notice**”), and an abbreviated version for publication is contained in the text of the Notice Motion.

31. In brief, the Notice sets forth the terms of the Settlement Agreements and advises the recipients that they may object or otherwise respond to this motion in writing by 30 days from the date of the Notice, by (1) filing their objection or response with the Court by that deadline and (2) simultaneously serving a copy on the Receiver. As such, the Notice will provide investors and known potential joint tortfeasors with actual notice of the proposed Settlement Agreements and the Bar Order and an opportunity to object.

**Investors Will Not Be Prejudiced By The Settlement Agreements Or The Bar Order**

32. Entry of the Bar Order is also appropriate because investors will not be prejudiced by it.

33. First, investors will not be prejudiced because there are no pending litigations between investors and Stayton or Marlowe relating to the scheme despite the fact that the scheme was brought to light more than two years ago, in March 2014. This lapse of time indicates that no investor is likely to assert any claims against Stayton and Marlowe, aside from those that would be asserted by the Investors Committee. *See Harmelin*, 2007 WL 4571021 at \*4 (“[I]n the two and a half years since Mr. Hodgson was appointed as Receiver and despite all the communications that have gone forth, and the website, and the absence of any Order precluding an investor from filing their own lawsuit, no investor has done so.”).

34. Second, investors will not be prejudiced because the Settlement Amounts will become part of the Receivership estate, which is subject to distribution to investors with approved claims *pro rata* through the claims process established in this case. As such,

investors will benefit from the settlement agreements without needing to expend any personal resources to litigate with Marlowe or Stayton.

**Joint Tortfeasors Are Not Entitled To Contribution From Stayton Or Marlowe**

35. Under Florida law, if the Court approves the Settlement Agreements, no joint tortfeasor will be entitled to contribution from Stayton or Marlowe in connection with the scheme. Specifically, under the Uniform Contribution Among Tortfeasors' Act:

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death: (a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and, (b) It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

Fla. Stats. § 768.31(5). Here, the terms of the Settlement Agreements do not discharge any potential tortfeasor from liability other than Stayton and Marlowe. Further, for the reasons discussed before and in the Wiand Declaration, Stayton, Marlowe, and the Receiver entered into the Settlement Agreements in good faith. As such, if approved, the Settlement Agreements will discharge Stayton and Marlowe "from all liability for contribution to any other tortfeasor." Accordingly, the Bar Orders – in barring potential joint tortfeasors' claims against Stayton and Marlowe – are consistent with Florida law.

**CONCLUSION**

For these reasons, the Receiver respectfully requests that this Court enter an order granting this motion and finding and ordering that:

1. The settlements between the Receiver and Stayton and Marlowe presented to the Court in this motion are fair, equitable, and good faith settlements of all claims the

Receiver, the Receivership estate, the Receivership Entities, and Tri-Med's investors may have against Stayton or Marlowe;

2. The settlements reflected in the Settlement Agreements attached as Exhibits A and B are approved, and the Receiver is authorized to enter into and complete the proposed settlements in accordance with the requirements of the Settlement Agreements;

3. All individuals or entities who invested money in a Receivership Entity, as well as all persons or entities who may have liability to the Receiver, the Receivership Entities, or such investors arising or resulting from the fraudulent scheme underlying this enforcement action, together with their respective heirs, trustees, executors, administrators, legal representatives, agents, successors, and assigns, are permanently enjoined and barred from commencing or pursuing a claim, action, or proceeding of any kind and in any forum against Stayton or Marlowe that arises from or relates to Tri-Med or the allegations of this enforcement action; and

4. Said injunction bars all claims against Stayton and Marlowe for contribution, indemnity, or any other cause of action arising from the liability of any person or entity to the Receiver or to any of the Receivership Entities or their investors (including claims in which the injury is the liability to the Receiver or any of the Receivership Entities or their investors or where damages are calculated based on liability to the Receiver or any of the Receivership Entities or their investors), in whatever form and however denominated.

Proposed orders are attached as **Exhibits D & E**. However, as indicated at the beginning of this motion, the Receiver respectfully requests that the Court first address the Notice Motion and, if that motion is granted, that it continue a decision on this motion until



after the deadline set forth in the Notice Motion for objections or other responses to the relief requested in this motion.

**GOOD FAITH CERTIFICATION**

Counsel for the Receiver has conferred with counsel for the OFR and is authorized to represent to the Court that the OFR has no objection to the relief requested in this motion.

**s/Gianluca Morello**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 15, 2016, I electronically filed a true and correct copy of the foregoing with the Clerk of the Court by using the Florida Courts E-Filing Portal, which served the following parties and non-parties:

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# Exhibit A

## RELEASE AND SETTLEMENT AGREEMENT

WHEREAS, by orders dated March 5, 2014, May 13, 2014, September 30, 2015, and December 11, 2015, the Court in State of Florida, Office of Financial Regulation v. Tri-Med Corp., et al., Case No. 14-001695-CI (the "**OFR Proceeding**"), appointed Burton W. Wiand as Receiver (the "**Receiver**") for Tri-Med Corporation ("**Tri-Med**"), Tri-Med Associates Inc. ("**TMA**"), TMFL Holdings, LLC ("**TMFL**"), Interventional Pain Center, PLLC ("**IPC**"), Rejuva Medical and Wellness Center, L.L.C. ("**Rejuva M&W**"), and Rejuva Medical Center, L.L.C. ("**Rejuva Medical**") (collectively the "**Receivership Entities**"); and

WHEREAS, the Receiver and a committee of investors of the Receivership Entities (the "**Investors Committee**"), on behalf of themselves and all others similarly situated, intend to file a lawsuit (the "**Lawsuit**") against Stephen D. Marlowe ("**Marlowe**") and Marlowe McNabb Machnik, P.A. (the "**Marlowe Firm**") (Marlowe and the Marlowe Firm are collectively referred to as the "**Marlowe Parties**"), seeking to recover alleged fraudulent transfers and damages from the Marlowe Parties as a result of their representation of one or more Receivership Entities and/or actions as an escrow agent; and

WHEREAS, the Receiver, the Investors Committee, and the Marlowe Parties entered into a tolling agreement on or about January 6, 2016; and

WHEREAS, the Receiver and the Marlowe Parties acknowledge they have negotiated at arm's-length and have entered into this Release and Settlement Agreement (the "**Settlement Agreement**") in good faith; and

WHEREAS, the Marlowe Parties deny any and all liability or wrongdoing, but wish to resolve these matters amicably; and

WHEREAS, the Investors Committee is in favor of and agrees to support the Receiver's and the Marlowe Parties' motion for approval of this Settlement Agreement; and

WHEREAS, any resolution of this matter by agreement of the Receiver and the Marlowe Parties is subject to approval by the Court presiding over the OFR Proceeding (the "**OFR Receivership Court**");

NOW, THEREFORE, and subject to the approval of the OFR Receivership Court, the Marlowe Parties have agreed to pay and the Receiver has agreed to accept on behalf of all Receivership Entities and their investors a total of \$500,000.00 (the "**Settlement Amount**") in full settlement of the Released Claims (as defined below) with the full Settlement Amount going to the Receivership estate. Also as part of this settlement, the parties have agreed to seek entry of a bar order in connection with approval of this agreement by the OFR Receivership Court that is substantively in the form attached hereto as Exhibit A (the "**Bar Order**"). Payment shall be made payable to "Burton W. Wiand, as Receiver" and made within 10 days after the Bar Order becomes a final, non-appealable order.

Upon receipt and clearing of this full settlement payment, the Receiver, on behalf of the Receivership Entities and their directors, officers, attorneys, employees, agents, representatives, beneficiaries, creditors, successors, and assigns, shall be deemed to have released and forever discharged the Marlowe Parties, their parents, subsidiaries, and affiliates, and their respective directors, officers, attorneys, employees, agents, representatives, beneficiaries, insurers, successors, and assigns of and from any and all claims which could have been asserted in the Lawsuit, as well as any and all other claims, demands, rights, promises, and obligations arising from or related in any way to the

Marlowe Parties' involvement with, provision of services to, or representation of any Receivership Entity or the allegations of the OFR Receivership Action (“Released Claims”). Upon the Receiver's receipt and clearing of the full settlement payment, the Marlowe Parties shall be deemed to have waived any claim that they had, have, or hereafter may have against the Receiver, the Receivership Entities and their directors, officers, attorneys, employees, agents, representatives, beneficiaries, investors, creditors, successors, and assigns relating to the Marlowe Parties' involvement with any Receivership Entity or the allegations of the OFR Receivership Action.

The tolling agreement between the Receiver, the Receivership Entities, Investors Committee and the Marlowe Parties shall be deemed to expire upon receipt by the Receiver and clearing of the Settlement Amount.

The Receiver and the Marlowe Parties understand and agree that, subject to the approval of the OFR Receivership Court, the payment of the Settlement Amount, release, waiver of claims, and Bar Order as provided herein are in full accord and satisfaction of and in compromise of the Released Claims, and the payment, release, waiver, and Bar Order are not an admission of liability, which is expressly denied, but are made solely for the purpose of terminating a dispute and avoiding litigation.

After execution of this Settlement Agreement by all parties, the Receiver and Marlowe Parties will promptly move the OFR Receivership Court for approval of this settlement and entry of the Bar Order. This Bar Order is a material part of this settlement and this settlement is contingent upon entry of the Bar Order.

To the extent necessary, the Marlowe Parties agree to assist the Receiver reasonably in seeking the OFR Receivership Court's approval of this settlement and entry of the Bar Order. The Marlowe Parties also agree to continue to reasonably cooperate

with the Receiver's efforts to gather information and otherwise fulfill his Court-ordered obligations imposed in the OFR Receivership Action, including by providing additional information relating to the Receivership Entities which the Receiver may request through subpoenas or other discovery tools available to the Receiver under applicable laws and rules.

The Marlowe Parties understand and agree that each party shall bear its own individual costs and attorney's fees incurred in the resolution of this matter.

The Receiver and the Marlowe Parties agree this Settlement Agreement shall be governed by and be enforceable under Florida law in the Circuit Court for the Sixth Judicial Circuit in Pinellas County, Florida. Any dispute that arises with respect to this agreement between the parties hereto shall be submitted exclusively to the OFR Receivership Court for summary resolution.

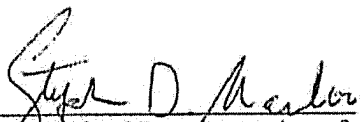
By each signature to this Settlement Agreement, each undersigned warrants that he or she is duly and fully authorized to execute and deliver this instrument for and on behalf of the Entity or organization for which that person signs. Each party has reviewed and participated in the drafting of this Settlement Agreement. Accordingly, any rule of construction to the effect that ambiguities are to be resolved against the drafter party shall not apply to the interpretation of this Settlement Agreement.

Each person signing below represents and warrants that such person has been duly authorized to execute this Settlement Agreement, and that upon execution hereof, the Settlement Agreement shall be a valid, legal and fully binding agreement upon all parties to this agreement.

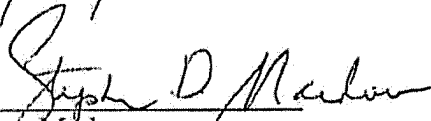
The Receiver and the Marlowe Parties also agree that electronically transmitted copies of signature pages will have the full force and effect of original signed pages.




In witness whereof the parties have set their hands as of the dates indicated.

By:   
As Authorized Representative of  
Marlowe McNabb Machnik, P.A.


Date: 7/27/16

By:   
Stephen Marlowe

Date: 7/27/16

By:   
Burton W. Wiand, as Receiver  
of the Receivership Entities

Date: 7/28/2016

By:  7/28/16  
Robert Pearce, as counsel for the Investors Committee

# Exhibit B

**SETTLEMENT AGREEMENT**

**WHEREAS, by orders dated March 5, 2014, May 13, 2014, September 30, 2015, and December 11, 2015, the Court in State of Florida, Office of Financial Regulation v. Tri-Med Corp., et al., Case No. 14-001695-CI (the "OFR Proceeding"), appointed Burton W. Wiand as Receiver (the "Receiver") for Tri-Med Corporation ("Tri-Med"), Tri-Med Associates Inc. ("TMA"), TMFL Holdings, LLC ("TMFL"), Interventional Pain Center, PLLC ("IPC"), Rejuva Medical and Wellness Center, L.L.C. ("Rejuva M&W"), and Rejuva Medical Center, L.L.C. ("Rejuva Medical") (collectively the "Receivership Entities"); and**

**WHEREAS, the Receiver and a committee of investors of the Receivership Entities (the "Investors Committee"), on behalf of themselves and all others similarly situated, intend to file a lawsuit (the "Lawsuit") against Brian F. Stayton ("Stayton") and Stayton Law Group P.A. (the "Stayton Firm") (Stayton and the Stayton Firm are collectively referred to as the "Stayton Parties"), seeking to recover alleged fraudulent transfers and damages from the Stayton Parties as a result of their representation of one or more Receivership Entities and/or actions as an escrow agent; and**

**WHEREAS, the Receiver, the Investors Committee, and the Stayton Parties entered into a tolling agreement on or about January 20, 2016; and**

**WHEREAS, the Receiver and the Stayton Parties acknowledge they have negotiated at arm's-length and have entered into this agreement in good faith; and**

**WHEREAS, the Stayton Parties deny any and all liability or wrongdoing, but wish to resolve these matters amicably; and**

**WHEREAS, the Investors Committee is in favor of and agrees to support a motion for approval of this Settlement Agreement; and**

**WHEREAS, any resolution of this matter by agreement of the Receiver and the Stayton Parties is subject to approval by the Court presiding over the OFR Proceeding (the "OFR Receivership Court");**

**NOW, THEREFORE, and subject to the approval of the OFR Receivership Court, the Stayton Parties have agreed to pay and the Receiver has agreed to accept on behalf of all Receivership Entities and defrauded investors a total of \$100,000.00 (the "Settlement Amount") in full settlement of the Released Claims (as defined below) with the full Settlement Amount going to the Receivership estate. Also as part of this settlement, the parties have agreed to seek entry of a bar order in connection with approval of this agreement by the Receivership Court that is substantively in the form attached hereto as Exhibit A (the "Bar Order"). Payment shall be made payable to "Burton W. Wiand, as Receiver" and made within 10 days after the Bar Order becomes a final, non-appealable order.**

**Upon receipt and clearing of this full settlement payment, the Receiver, on behalf of the Receivership Entities and their directors, officers, employees, agents, representatives, beneficiaries, creditors, and assigns, shall be deemed to have released and forever discharged the Stayton Parties, their parents, subsidiaries, and affiliates, and their respective officers, directors, employees, agents, insurers, successors, and assigns of and from any and all claims which could have been asserted in the Lawsuit, as well as any and all other claims, demands, rights, promises, and obligations arising from or related in any way to the Stayton Parties' involvement with or provision of services to any Receivership Entity or the allegations of the OFR Receivership Action ("Released Claims"). Upon the Receiver's receipt and clearing of the full settlement payment, the Stayton Parties shall be deemed to have waived any claim that they had, have, or**

hereafter may have against the Receiver, the Receivership Entities and their employees, agents, representatives, beneficiaries, investors, creditors, and assigns relating to the Stayton Parties' involvement with any Receivership Entity or the allegations of the OFR Receivership Action.

The tolling agreement between the Receiver, the Receivership Entities, Investors Committee and the Stayton Parties shall be deemed to expire upon receipt by the Receiver and clearing of the Settlement Amount.

The Receiver and the Stayton Parties understand and agree that, subject to the approval of the OFR Receivership Court, the payment of the Settlement Amount, release, waiver of claims, and Bar Order as provided herein are in full accord and satisfaction of and in compromise of the Released Claims, and the payment, release, waiver, and Bar Order are not an admission of liability, which is expressly denied, but are made solely for the purpose of terminating a dispute and avoiding litigation.

After execution of this Settlement Agreement by all parties, the Receiver and Stayton Parties will promptly move the OFR Receivership Court for approval of this settlement and entry of the Bar Order. This Bar Order is a material part of this settlement and this settlement is contingent upon entry of the Bar Order.

To the extent necessary, the Stayton Parties agree to assist the Receiver reasonably in seeking the OFR Receivership Court's approval of this settlement and entry of the Bar Order. The Stayton Parties also agree to continue to reasonably cooperate with the Receiver's efforts to gather information and otherwise fulfill his Court-ordered obligations imposed in the OFR Receivership Action, including by providing additional information relating to the Receivership Entities which the Receiver may request through

subpoenas or other discovery tools available to the Receiver under applicable laws and rules.

The Stayton Parties understand and agree that each party shall bear its own individual costs and attorney's fees incurred in the resolution of this matter.

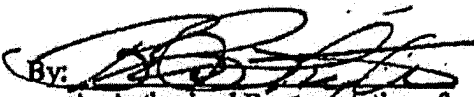
The Receiver and the Stayton Parties agree this Settlement Agreement shall be governed by and be enforceable under Florida law in the Circuit Court for the Sixth Judicial Circuit in Pinellas County, Florida. Any dispute that arises with respect to this agreement between the parties hereto shall be submitted exclusively to the OFR Receivership Court for summary resolution.

By each signature to this Settlement Agreement, each undersigned warrants that he is duly and fully authorized to execute and deliver this instrument for and on behalf of the Entity or organization for which that person signs. Each party has reviewed and participated in the drafting of this Settlement Agreement. Accordingly, any rule of construction to the effect that ambiguities are to be resolved against the drafter party shall not apply to the interpretation of this Settlement Agreement.

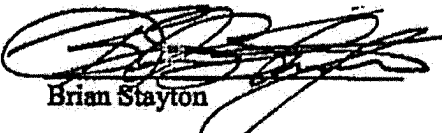
Each person signing below represents and warrants that such person has been duly authorized to execute this Release, and that upon execution hereof, the Release shall be a valid, legal and fully binding agreement upon all parties to this agreement.

The Receiver and the Stayton Parties also agree that electronically transmitted copies of signature pages will have the full force and effect of original signed pages.


In witness whereof the parties have set their hands as of the dates indicated.

By:   
As Authorized Representative of  
Stayton Law Group, P.A.

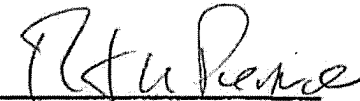
Date: July 20, 2016

By:   
Brian Stayton

Date: JULY 20, 2016

By:   
Burton W. Wland, as Receiver  
of the Receivership Entities

Date: 8/15/2016

By:   
Robert Pearce, as counsel for the Investors Committee

Date: 8/15/2016

# Exhibit C



UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

Case No. 8:09-cv-87-T-26TBM

ARTHUR NADEL,  
SCOOP CAPITAL, LLC,  
SCOOP MANAGEMENT, INC.

Defendants,

SCOOP REAL ESTATE, L.P.,  
VALHALLA INVESTMENT PARTNERS, L.P.,  
VALHALLA MANAGEMENT, INC.,  
VICTORY IRA FUND, LTD,  
VICTORY FUND, LTD,  
VIKING IRA FUND, LLC,  
VIKING FUND, LLC, AND  
VIKING MANAGEMENT,

Relief Defendants.

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**ORDER APPROVING SETTLEMENT AGREEMENT**

This matter having come before the Court on motion by Burton W. Wiand, as Receiver ("Receiver") for Scoop Capital, LLC; Scoop Management, Inc.; Scoop Real Estate, L.P.; Valhalla Investment Partners, L.P.; Victory IRA Fund, Ltd.; Victory Fund, Ltd.; Viking IRA Fund, LLC; Viking Fund LLC; Valhalla Management, Inc.; Viking Management, LLC; Venice Jet Center, LLC; Tradewind, LLC; Laurel Mountain Preserve, LLC; Laurel Preserve, LLC; Laurel Mountain Preserve Homeowners

Association, Inc.; Marguerite J. Nadel Revocable Trust UAD 8/2/07; Guy-Nadel Foundation, Inc.; Lime Avenue Enterprises, LLC; A Victorian Garden Florist, LLC; Viking Oil & Gas, LLC; Traders Investment Club; and Home Front Homes, LLC, and all other entities subject to receivership pursuant to the Court's orders appointing and reappointing Receiver and expanding receivership in the proceeding styled Securities & Exch. Comm'n v. Arthur Nadel, et al., Case No. 8:09-cv-87-T-26TBM (M.D. Fla.) (the "SEC Receivership Action") (collectively, the "Receivership Entities"), to approve the Settlement Agreement with Holland & Knight LLP and Scott R. MacLeod (collectively, "H&K") (Dkt. ~~79~~);

And due and proper notice of the motion having been given to all interested persons;

And the court having considered the moving papers and any other filings relating to the Receiver's motion;

**UPON DUE CONSIDERATION, it is ORDERED AND ADJUDGED that the Receiver's Motion to Approve Settlement (Dkt. ~~79~~) is GRANTED.**

IT IS FURTHER ORDERED that the Court specifically approves the written Settlement Agreement entered into between the Receiver and H&K that is attached to the Receiver's motion as Exhibit A (the "Settlement Agreement") and incorporated herein by reference;

IT IS FURTHER ORDERED that the Court finds that the settlement between the Receiver and H&K presented to the Court is a fair, equitable, reasonable, adequate, and

good faith settlement of all claims the Receivership estate and the Receivership Entities may have against H&K;

IT IS FURTHER ORDERED that the Receiver is authorized to enter into and complete the settlement with H&K in accordance with the requirements of the Settlement Agreement;

IT IS FURTHER ORDERED that the Receiver is authorized to pay Johnson Pope Bokor Ruppel & Burns the sum of \$6,333,333, plus the costs the Johnson Pope firm incurred in its representation of the Receiver from the funds the Receiver receives under his Settlement Agreement with H&K;

IT IS FURTHER ORDERED that the Court finds that the provisions of the Bar Order provided below are reasonable and necessary and that, in their absence, the settlement agreement, which is in the best interests of the Receivership and the investors, will not be consummated. A failure to consummate the settlement would interfere with and be prejudicial to the administration of the Receivership;

IT IS FURTHER ORDERED that all individuals or entities who invested money in a Receivership Entity, as well as all persons or entities who may have liability to the Receiver, the Receivership Entities, or such investors arising or resulting from the operations of any of the Receivership Entities or from the fraudulent scheme underlying the SEC Receivership Action, together with their respective heirs, trustees, executors, administrators, legal representatives, agents, successors and assigns, are permanently enjoined and barred from commencing or pursuing a claim, action or proceeding of any

kind and in any forum against H&K that directly or indirectly arises from or relates to the operation of the Receivership Entities or is in connection with any of the legal services that H&K performed in connection with the Receivership Entities, including the Relief Defendants, or the allegations of the SIC Receivership Action;<sup>1</sup>

IT IS FURTHER ORDERED that said injunction bars all claims against H&K for contribution, indemnity, or any other cause of action arising from the liability of any person or entity to the Receiver or to any of the Receivership Entities or their investors (including claims in which the injury is the liability to the Receiver or any of the Receivership Entities or their investors or where damages are calculated based on liability to the Receiver or any of the Receivership Entities or their investors), in whatever form and however denominated, and that such person or entity shall be entitled to such set-offs or judgment reductions as permitted by law, if any, as a result of said injunction;

IT IS FURTHER ORDERED that the releases included in the Settlement Agreement have been given in good faith, and that the Settlement Agreement therefore discharges H&K from all liability for contribution to any other tortfeasor pursuant to, at a minimum, Fla.Stat. § 768.31(5) and 15 U.S.C. § 78u-4(f)(7); and


IT IS FURTHER ORDERED that under the circumstances of this matter, including the need to bring finality to the resolution of potential claims between the

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<sup>1</sup> Without limitation of the foregoing language, this bar order applies to the action styled John V. Cloud, et al. v. Holland & Knight, et al., Case No. 09-12397 (Div. H), pending in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (the "Cloud Action"). The plaintiffs in the Cloud Action are hereby enjoined from further pursuing that action.

Receiver and H&K so that payment of the amount contemplated by their settlement can be made to the Receivership estate for the benefit of the defrauded investors with allowed claims, there is no just reason for delay of entry of a final judgment approving the Settlement Agreement. Accordingly, the Clerk of the court is directed to enter this Order as a final judgment.

**DONE AND ORDERED** at Tampa, Florida on this 2 day of OCTOBER 2012.



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**RICHARD A. LAZZARA**  
**UNITED STATES DISTRICT JUDGE**

COPIES FURNISHED TO:  
Counsel of Record

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

CASE NO: 8:09-cv-87-T-26TBM

ARTHUR NADEL; SCOOP CAPITAL, LLC;  
and SCOOP MANAGEMENT, INC.,

Defendants,

SCOOP REAL ESTATE, L.P.; VALHALLA  
INVESTMENT PARTNERS, L.P.; VALHALLA  
MANAGEMENT, INC.; VICTORY IRA FUND,  
LTD.; VICTORY FUND, LTD.; VIKING IRA  
FUND, LLC; VIKING FUND, LLC; and  
VIKING MANAGEMENT, LLC,

Relief Defendants.

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**ORDER**

Before the Court are Receiver's Motion to Approve Settlement With Goldman Sachs Execution & Clearing, L.P., with supporting exhibits and affidavit (Dkt. 679), Investors' Objections to Settlement and Opposition to Receiver's Motion to Approve Settlement (Dkts. 707-711, 715 & 716), and Receiver's Reply to Objections (Dkt. 731).

Burton W. Wiand, as Receiver, moves the Court for an order approving settlement of claims he intended to assert against Goldman Sachs Execution & Clearing, L.P.

(“GSEC”) on the basis of a Settlement Agreement (Dkt. 679, Ex. A) that contemplates GSEC’s payment in the amount of \$9,850,000 to the Receivership estate in resolution of all claims against that entity as well as the entry of a bar order. The bar order would preclude any claims against GSEC by investors in the Receivership entities or by potential joint tortfeasors, including claims for contribution or indemnity that relate in any way to the Ponzi scheme perpetrated by Defendant Arthur Nadel (Nadel). The Receiver mailed more than 700 settlement notices to investors in the scheme underlying this case, to potential joint tortfeasors, and to other interested parties whose rights may be affected by the Settlement. (Dkt. 686; Dkt. 731, Affidavit of B. Wiand, ¶ 4.) He also published notice in the Wall Street Journal national edition and in the Sarasota Herald Tribune, and posted notice on the receivership website. (Dkt. 699.) The notices advised recipients of their right to object to the Settlement, of the procedure for objecting, and of the January 17, 2012, deadline for filing objections.

The Court finds that the Settlement amount represents an equitable and good faith balance between the advantages afforded to clearing firms by relevant authorities and various calculations of GSEC’s potential liability in connection with Nadel’s Ponzi scheme. The Settlement amounts to a recovery by the Receivership that is well in excess of all revenues earned by GSEC as a result of its indirect dealings with Nadel. Litigation of the claims against GSCE could easily cost the Receivership in excess of \$1 million without the guarantee of a significant benefit to the estate. The Court also finds that

entry of a bar order is appropriate inasmuch as the Receiver has established that the settlement, and its resulting avoidance of protracted and expensive litigation, is in the best interest of the Receivership estate and the investors and will not result in any prejudice. The Receiver additionally demonstrates that entry of the bar order facilitates a higher settlement value and, therefore, a larger recovery for claimants that would otherwise be available without the bar order.

A district court has broad powers and wide discretion to determine relief in an equity receivership. See S.E.C. v. Elliott, 953 F.2d 1560, 1566 (11<sup>th</sup> Cir. 1992); see also Liberte Capital Group, LLC v. Capwill, 462 F.3d 543, 551 (6<sup>th</sup> Cir. 2006) (reiterating holding that a district court has broad powers in fashioning relief in an equity proceeding) (citing and quoting Liberte Capital Group, LLC v. Capwill, 421 F.3d 377, 382 (6<sup>th</sup> Cir. 2005)). In fact, federal courts have issued bar orders in connection with settlements proposed by equity receivers. See generally, Gordon v. Dadante, 336 Fed.Appx. 540 (6<sup>th</sup> Cir. 2009); Commodity Futures Trading Comm'n v. Equity Fin. Group, 2007 WL 2139399 (D. N.J. 2007); Harmelin v. Man Fin., Inc., 2007 WL 4571021 (E.D. Pa. 2007); SEC v. Capital Consultants, LLC, 2002 WL 31470399 (D. Or. 2002). Notably, only the Investors' Objection even addressed the bar order and only to



the extent of arguing that the record is insufficient for the Court to properly evaluate the request. (Dkt. 715.)<sup>1</sup>

The Court has carefully reviewed the Objections to Receiver's Motion to Approve Settlement, but finds that none of the Objectors has standing to contest the Settlement. Seven of the eight Objectors did not file a claim in the claims process established in this case. Consequently, they lack standing to object. See Callahan v. Moneta Capital Corp., 415 F.3d 114, 117-18 (1<sup>st</sup> Cir. 2005) (holding that potential claimants who did not submit claims by bar date "d[id] not have "standing to object to the adjudication of a pending claim in the Claims Disposition Order."); see also Fryer v. Enter. Bank, 2006 WL 3052165, at \*9 n.10 (W.D. Pa. 2006) (following Callahan). The sole Objectors who actually filed a claim, Vernon M. Lee, individually, and as trustee of the Vernon M. Lee Trust (Dkt. 715), lack standing because they allegedly received false profits and consequently are not creditors of the Receivership estate and are not otherwise entitled to distributions from it.<sup>2</sup> See e.g., In re Patriot Co., 303 B.R. 811, 815 (8<sup>th</sup> Cir. BAP 2004) (holding that objector lacked standing to challenge a settlement in which the objector was not aggrieved or had no financial stake) (citations omitted); In re Southern Med.

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<sup>1</sup> These Objectors are currently Defendants in lawsuits filed by the Receiver in the Tampa Division of this district seeking return of what the Receiver classifies as "false profits." See case numbers 8:10-cv-166-T-17MAP; 8:10-cv-205-T-17MAP; and 8:10-cv-210-T-17MAP.

<sup>2</sup> As noted earlier, these Objectors are currently Defendants in a lawsuit filed by the Receiver in the Tampa Division of this district seeking return of what the Receiver classifies as "false profits." See 8:10-cv-210-T-17MAP.

Arts Cos., Inc., 343 B.R. 258, 263 (10<sup>th</sup> Cir. BAP 2006) (holding that “[b]eing neither a party to the [settlement] Agreement, a creditor, nor adversely effected by the Agreement, [objector] lacked standing to object to its approval.”); In re Huggins, 460 B.R. 714, 718 (E.D. Tenn. Bankr. 2011) (rejecting Objector’s argument that the terms of the settlement were not in the best interests of the estate because he was not a creditor and would not receive a distribution from the estate). Furthermore, each of the Objections focuses on matters that are either unfounded or irrelevant to resolving Receiver’s Motion.

What is indeed relevant is that, in full compliance with his responsibilities, the Receiver carefully considered the potential claims against the GSEC by properly balancing the costs and risks of proceeding to litigation with the considerable savings and the certain and substantial benefit to the Receivership estate that would result from the Settlement. Contrary to Objectors’ assertions, each of the legal and factual considerations relevant to that balancing process is discussed in sufficient detail in Receiver’s Motion (Dkt. 679) and supporting affidavit (Dkt. 680). Receiver explained that GSEC’s role as a clearing firm presents an additional barrier to potential claims; that litigation would likely cost the Receivership more than \$1 million in legal expenses; that the settlement amount approximates the full value of money transferred from Nadel-controlled accounts at GSEC serviced through Shoreline Trading Group LLC to shadow accounts at Wachovia Bank and exceeds the total fees that GSEC earned in connection

with those accounts; and that the Settlement amount will compensate Nadel's victims with allowed claims.

Here, the Receiver acts on behalf of private Receivership Entities and must protect the best interests of the Receivership estate and defrauded investors. In a similar case involving a Ponzi scheme, the Tenth Circuit determined that the interests of the receiver were very broad and included not only protection of the receivership *res*, but also protection of the defrauded investors and considerations of judicial economy. See Securities and Exchange Comm'n v. Vescor Capital Corp., 599 F.3d 1189, 1194 (10<sup>th</sup> Cir. 2010). The Court finds that the Settlement is fair, reasonable, and in the best interest of the Receivership estate and the defrauded investors as a whole. See Sterling v. Stewart, 158 F.3d 1199, 1202 (11<sup>th</sup> Cir. 1998) (holding that the determination of fairness of the settlement [in an equity receivership] is left to the sound discretion of the trial court and that the court's decision will not be overturned absent a clear showing of abuse of discretion).

**ACCORDINGLY, it is ORDERED AND ADJUDGED:**

1. Receiver's Motion to Approve Settlement With Goldman Sachs Execution & Clearing, L.P. (Dkt. 679) is granted.
2. The Settlement between Receiver and GSEC presented to the Court is a fair, equitable, and good faith settlement of all claims that the Receiver, the Receivership estate, and the Receivership entities may have against GSEC;

3. The Settlement reflected in the Settlement Agreement attached as Exhibit A to docket 679 is specifically approved, and the Receiver is authorized to enter into and complete the proposed Settlement with GSEC in accordance with the requirements of the Settlement Agreement;

4. All individuals or entities who invested money in a Receivership Entity, as well as persons or entities who may have liability to Receiver, the Receivership Entities, or such investors arising or resulting from the fraudulent scheme underlying the SEC Receivership Action, together with their respective heirs, trustees, executors, administrators, legal representatives, agents, successors, and assigns, are permanently enjoined and barred from commencing or pursuing a claim, action, or proceeding of any kind and in any forum against GSEC that arises from or relates to the clearing, execution, and/or prime brokerage services that GSEC performed for Receivership Entities, including the Relief Defendants, or the allegations of the SEC Receivership Action;

5. The injunction bars all claims against GSEC for contribution, indemnity, or any other cause of action arising from the liability of any person or entity to the Receiver or to any of the Receivership Entities or their investors (including claims in which the injury is the liability to Receiver or any of the Receivership Entities or their investors or where damages are calculated based on liability to the Receiver or any of the Receivership Entities or their investors), in whatever form and however denominated, and that such

person or entity shall be entitled to such set-offs or judgment reductions as permitted by law, if any, as a result of said injunction;

6. The releases included in the Settlement Agreement have been given in good faith, and the Settlement Agreement, therefore, discharges GSEC from all liability for contribution to any other tortfeasor pursuant to, at a minimum, Fla. Stat. § 768.31(5) and 15 U.S.C. § 78u-4(f)(7).

7. The Clerk is directed to enter this order as a final judgment.

**DONE AND ORDERED** at Tampa, Florida, on February 10, 2012.

*s/Richard A. Lazzara*  
\_\_\_\_\_  
**RICHARD A. LAZZARA**  
**UNITED STATES DISTRICT JUDGE**

**COPIES FURNISHED TO:**  
Counsel of Record

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

Case No. 8:09-cv-87-T-26TBM

ARTHUR NADEL,  
SCOOP CAPITAL, LLC,  
SCOOP MANAGEMENT, INC.

Defendants,

SCOOP REAL ESTATE, L.P.  
VALHALLA INVESTMENT PARTNERS, L.P.,  
VALHALLA MANAGEMENT, INC.  
VICTORY IRA FUND, LTD,  
VICTORY FUND, LTD,  
VIKING IRA FUND, LLC,  
VIKING FUND, LLC, AND  
VIKING MANAGEMENT,

Relief Defendants.

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**ORDER**

This matter having come before the Court on motion by Burton W. Wiand, as Receiver ("Receiver") for Scoop Capital, LLC, Scoop Management, Inc., Scoop Real Estate, L.P., Valhalla Investment Partners, L.P., Victory IRA Fund, Ltd., Victory Fund, Ltd., Viking IRA Fund, LLC, Viking Fund LLC, Valhalla Management, Inc., Viking Management, LLC, Venice Jet Center, LLC, Tradewind, LLC, Laurel Mountain Preserve, LLC, Laurel Preserve, LLC, Laurel Mountain Preserve Homeowners Association, Inc., Marguerite J. Nadel Revocable Trust UAD 8/2/07, Guy-Nadel Foundation, Inc., Lime Avenue Enterprises, LLC, A Victorian Garden Florist, LLC, Viking Oil & Gas, LLC, Traders Investment Club, and Home Front

Homes, LLC, and all other entities subject to receivership pursuant to the Court's orders appointing and reappointing Receiver and expanding receivership in the proceeding styled Securities & Exch. Comm'n v. Arthur Nadel, et al., Case No. 8:09-cv-87-T-26TBM (M.D. Fla.) (the "SEC Receivership Action") (collectively, the "Receivership Entities"), to approve the Settlement Agreement with Shoreline Trading Group, LLC ("Shoreline") (Dkt. 803);

And due and proper notice of the motion having been given to all interested persons;

And the Court having considered the moving papers and any other filings relating to the Receiver's motion;

**UPON DUE CONSIDERATION, it is ORDERED AND ADJUDGED that the Receiver's Motion to Approve Settlement (Dkt. 803) is GRANTED.**

IT IS FURTHER ORDERED THAT the Court specifically approves the written Settlement Agreement entered into between the Receiver and Shoreline that is attached to the Receiver's motion as Exhibit A (the "Settlement Agreement") and incorporated herein by reference;

IT IS FURTHER ORDERED THAT the Court finds that the settlement between the Receiver and Shoreline presented to the Court is a fair, equitable, reasonable, adequate, and good faith settlement of all claims the Receivership estate and the Receivership Entities may have against Shoreline;

IT IS FURTHER ORDERED THAT the Receiver is authorized to enter into and complete the settlement with Shoreline in accordance with the requirements of the Settlement Agreement;

IT IS FURTHER ORDERED THAT all individuals or entities who invested money in a Receivership Entity, as well as all persons or entities who may have liability to the Receiver, the Receivership Entities, or such investors arising or resulting from the fraudulent scheme underlying the SEC Receivership Action, together with their respective heirs, trustees, executors, administrators, legal representatives, agents, successors and assigns, are permanently enjoined and barred from commencing or pursuing a claim, action or proceeding of any kind and in any forum against Shoreline, its parents, subsidiaries, and affiliates, and their respective present and former officers, directors, employees, shareholders, principals, partners, members, managing members, member managers, agents, and successors that arises from or relates to the brokerage services that Shoreline performed for Receivership Entities, including the Relief Defendants, or the allegations of the SEC Receivership Action;

IT IS FURTHER ORDERED that said injunction bars all claims against Shoreline, its parents, subsidiaries, and affiliates, and their respective present and former officers, directors, employees, shareholders, principals, partners, members, managing members, member managers, agents, and successors for contribution, indemnity, or any other cause of action arising from the liability of any person or entity to the Receiver or to any of the Receivership Entities or their investors (including claims in which the injury is the liability to the Receiver or any of the Receivership Entities or their investors or where damages are calculated based on liability to the Receiver or any of the Receivership Entities or their investors), in whatever form and however denominated, and that such person or entity shall be entitled to such set-offs or judgment reductions as permitted by law, if any, as a result of said injunction;

IT IS FURTHER ORDERED that the releases included in the Settlement Agreement have been given in good faith, and that the Settlement Agreement therefore discharges Shoreline,



its parents, subsidiaries, and affiliates, and their respective present and former officers, directors, employees, shareholders, principals, partners, members, managing members, member managers, agents, and successors from all liability for contribution to any other tortfeasor pursuant to, at a minimum, Fla. Stat. § 768.31(5) and 15 U.S.C. § 78u-4(f)(7); and

IT IS FURTHER ORDERED that under the circumstances of this matter, including the need to bring finality to the resolution of potential claims between the Receiver and Shoreline for the benefit of defrauded investors with allowed claims, there is no just reason for delay of entry of a final judgment approving the Settlement Agreement. Accordingly, the Clerk of the Court is directed to enter this Order as a final judgment.

**DONE AND ORDERED** at Tampa, Florida, on May 4, 2012.

  
\_\_\_\_\_  
**RICHARD A. LAZZARA**  
**UNITED STATES DISTRICT JUDGE**

**COPIES FURNISHED TO:**  
Counsel of Record

# Exhibit D

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION

STATE OF FLORIDA,  
OFFICE OF FINANCIAL REGULATION,

Plaintiff,

vs.

Case No. 14-001695-CI

TRI-MED CORPORATION, TRI-MED  
ASSOCIATES, INC., JEREMY ANDERSON,  
ANTHONY N. NICHOLAS, III, ERIC AGER,  
IRWIN AGER, TERESA SIMMONS  
BORDINAT a/k/a TERESA SIMMONS,  
and ANTHONY N. NICHOLAS, JR.,

Defendants.

TMFL HOLDINGS, LLC,

Relief Defendant.

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**ORDER APPROVING SETTLEMENT WITH DEFENDANTS,  
STEPHEN D. MARLOWE AND MARLOWE MCNABB MACHNIK, P.A.**

**THIS CAUSE** came before this Honorable Court on The Receiver's Motion To Approve Settlements With Stephen D. Marlowe, Brian Stayton, And Their Law Firms And For Entry Of Bar Orders (the "Motion") and, specifically, the Receiver's Settlement Agreement with Stephen D. Marlowe and Marlowe McNabb Machnik, P.A., which is attached to the Motion as Exhibit A (the "Marlowe Settlement Agreement").

The Court, after reviewing the notices the Receiver provided to investors and third parties, concludes that all interested parties or prospective interested parties have been provided with notice of the Motion and the Marlowe Settlement Agreement and have been provided adequate opportunity to object to same. Having received no objection and/or after hearing

argument with regard to any objections, the Court concludes the Receiver's Motion should be granted. Accordingly, it is:

**ORDERED AND ADJUDGED**, as follows:

1. The Marlowe Settlement Agreement is hereby specifically **APPROVED**. The Court finds that the Marlowe Settlement Agreement represents a fair, equitable, and good faith resolution of all claims against Stephen D. Marlowe and Marlowe McNabb Machnik, P.A. relating to Tri-Med.

2. The parties to the Marlowe Settlement Agreement are obligated and hereby authorized and directed to consummate the settlement pursuant to its terms.

3. A Bar Order in favor of Stephen D. Marlowe and Marlowe McNabb Machnik, P.A. is hereby **GRANTED**. This Order shall act to permanently bar, enjoin, and restrain any person, third party, or entity, including without limitation:

a. Tri-Med Corporation; Tri-Med Associates, Inc.; TMFL Holdings LLC; Interventional Pain Center PLLC; Rejuva Medical and Wellness Center LLC; Rejuva Medical Center LLC (the "Receivership Entities");

b. Jeremy Anderson, Anthony N. Nicholas III, Eric Ager, Irwin Ager, Teresa Simmons Bordinat a/k/a Teresa Simmons, Anthony N. Nicholas, Jr., A.J. Brent, Jodie Miller, Jeffrey Miller, Elliott Simon, John Parker, William Gross, George Roe, John Burns, Barbara Ager, Total Retirement Security Planning and Mentoring Group LLC, Lauren Lindsay, Donald Brothers, Scott S. Schultz, Lisa Schager-Smith, Edward Wendol, James Britain, Thomas Tyrkala, John Persico, Rosanna Okenquist, David Okenquist, and Joe Manassa;

c. claimants holding claims against the Receivership Entities arising in any way out of the activities of the Receivership Entities (sections 2 a., b., and c. are collectively referred to as the “third parties”); and

d. the Investors Committee and all investors including, but not limited to, those individuals having invested in Tri-Med or its related entities (the “**Tri-Med Investors**”)

from filing suit, seeking any type of recovery, or asserting any type of claim against Stephen D. Marlowe and Marlowe McNabb Machnik, P.A. that arises out of, is connected to, or which in any way relates to the same nucleus of operative facts as those pending, or which could have been asserted, by the Receiver, the Investors Committee, the Tri-Med Investors, or the third parties, including, but not limited to any claims arising out of Stephen D. Marlowe and/or Marlowe McNabb Machnik, P.A.’s representation of the Receivership Entities, or arising out of Stephen D. Marlowe and/or Marlowe McNabb & Machnik, P.A.’s involvement (directly or indirectly) as Tri-Med’s Escrow Agent, or in any of those matters set forth by the Receiver as against Stephen D. Marlowe or Marlowe McNabb Machnik, P.A. in this Receivership, any related proceedings, or any related litigation.

4. The releases included in the Marlowe Settlement Agreement have been given in good faith, and the Marlowe Settlement Agreement, therefore, discharges Stephen D. Marlowe and Marlowe McNabb Machnik, P.A. from all liability for contribution to any other tortfeasor pursuant to, at a minimum, Fla. Stats. § 768.31(5).

4. This order is not meant to, and does not, impact in any way any claims the Receiver or Tri-Med investors have against anyone except Stephen D. Marlowe and Marlowe McNabb Machnik, P.A. and except as specifically set forth in Fla. Stats. § 768.31.

5. This Order is a final order as it relates to the Marlowe Settlement Agreement.

6. This Court retains jurisdiction to modify, interpret, and enforce the terms of this order as necessary to implement the terms and purpose of the relief granted by this Order and any memorandum opinion.

**DONE AND ORDERED** in Chambers in Pinellas County, Florida on this \_\_\_\_ day of \_\_\_\_\_, 2016.

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Circuit Judge

Copies furnished to:

Counsel of Record for the Parties

# Exhibit E

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION

STATE OF FLORIDA,  
OFFICE OF FINANCIAL REGULATION,

Plaintiff,

vs.

Case No. 14-001695-CI

TRI-MED CORPORATION, TRI-MED  
ASSOCIATES, INC., JEREMY ANDERSON,  
ANTHONY N. NICHOLAS, III, ERIC AGER,  
IRWIN AGER, TERESA SIMMONS  
BORDINAT a/k/a TERESA SIMMONS,  
and ANTHONY N. NICHOLAS, JR.,

Defendants.

TMFL HOLDINGS, LLC,

Relief Defendant.

---

**ORDER APPROVING SETTLEMENT WITH DEFENDANTS  
BRIAN STAYTON AND THE STAYTON LAW GROUP, P.A.**

**THIS CAUSE** came before this Honorable Court on The Receiver's Motion To Approve Settlements With Stephen D. Marlowe, Brian Stayton, And Their Law Firms And For Entry Of Bar Orders (the "Motion") and, specifically, the Receiver's Settlement Agreement with Brian Stayton and the Stayton Law Group, P.A., which is attached to the Motion as Exhibit B (the "Stayton Settlement Agreement").

The Court, after reviewing the notices the Receiver provided to investors and third parties, concludes that all interested parties or prospective interested parties have been provided with notice of the Motion and the Stayton Settlement Agreement and have been provided adequate opportunity to object to same. Having received no objection and/or after hearing



argument with regard to any objections, the Court concludes the Receiver's Motion should be granted. Accordingly, it is:

**ORDERED AND ADJUDGED**, as follows:

1. The Stayton Settlement Agreement is hereby specifically **APPROVED**. The Court finds that the Stayton Settlement Agreement represents a fair, equitable, and good faith resolution of all claims against Brian Stayton and the Stayton Law Group, P.A. relating to Tri-Med.

2. The parties to the Stayton Settlement Agreement are obligated and hereby authorized and directed to consummate the settlement pursuant to its terms.

3. A Bar Order in favor of Brian Stayton and the Stayton Law Group, P.A. is hereby **GRANTED**. This Order shall act to permanently bar, enjoin, and restrain any person, third party, or entity, including without limitation:

a. Tri-Med Corporation; Tri-Med Associates, Inc.; TMFL Holdings LLC; Interventional Pain Center PLLC; Rejuva Medical and Wellness Center LLC; Rejuva Medical Center LLC (the "Receivership Entities");

b. Jeremy Anderson, Anthony N. Nicholas III, Eric Ager, Irwin Ager, Teresa Simmons Bordinat a/k/a Teresa Simmons, Anthony N. Nicholas, Jr., A.J. Brent, Jodie Miller, Jeffrey Miller, Elliott Simon, John Parker, William Gross, George Roe, John Burns, Barbara Ager, Total Retirement Security Planning and Mentoring Group LLC, Lauren Lindsay, Donald Brothers, Scott S. Schultz, Lisa Schager-Smith, Edward Wendol, James Britain, Thomas Tyrkala, John Persico, Rosanna Okenquist, David Okenquist, and Joe Manassa;

c. claimants holding claims against the Receivership Entities arising in any way out of the activities of the Receivership Entities (sections 2 a., b., and c. are collectively referred to as the “third parties”); and

d. the Investors Committee and all investors including, but not limited to, those individuals having invested in Tri-Med or its related entities (the “Tri-Med Investors”)

from filing suit, seeking any type of recovery, or asserting any type of claim against Brian Stayton and the Stayton Law Group, P.A. that arises out of, is connected to, or which in any way relates to the same nucleus of operative facts as those pending, or which could have been asserted, by the Receiver, the Investors Committee, the Tri-Med Investors, or the third parties, including, but not limited to any claims arising out of Brian Stayton and the Stayton Law Group, P.A.’s representation of the Receivership Entities, or arising out of Brian Stayton and the Stayton Law Group, P.A.’s involvement (directly or indirectly) as Tri-Med’s Escrow Agent, or in any of those matters set forth by the Receiver as against Brian Stayton and the Stayton Law Group, P.A. in this Receivership, any related proceedings, or any related litigation.

4. The releases included in the Stayton Settlement Agreement have been given in good faith, and the Stayton Settlement Agreement, therefore, discharges Brian Stayton and the Stayton Law Group, P.A. from all liability for contribution to any other tortfeasor pursuant to, at a minimum, Fla. Stats. § 768.31(5).

4. This order is not meant to, and does not, impact in any way any claims the Receiver or Tri-Med investors have against anyone except Brian Stayton and the Stayton Law Group, P.A. and except as specifically set forth in Fla. Stats. § 768.31.

5. This Order is a final order as it relates to the Stayton Settlement Agreement.

6. This Court retains jurisdiction to modify, interpret, and enforce the terms of this order as necessary to implement the terms and purpose of the relief granted by this Order and any memorandum opinion.

**DONE AND ORDERED** in Chambers in Pinellas County, Florida on this \_\_\_\_ day of \_\_\_\_\_, 2016.

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Circuit Judge

Copies furnished to:

Counsel of Record for the Parties