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.
_____/

RECEIVER'S MOTION TO EXPAND SCOPE OF THE RECEIVERSHIP TO INCLUDE TMFL HOLDINGS, LLC, AND INCORPORATED MEMORANDUM OF LAW

Pursuant to Fla. Stats. § 517.191(2), Rule 1.100 of the Florida Rules of Civil Procedure, and the March 4, 2014, Order appointing receiver, Burton W. Wiand, as Receiver (the "**Receiver**") for Tri-Med Corporation ("**Tri-Med**") and Tri-Med Associates, Inc. ("**TMA**") (Tri-Med and TMA are collectively referred to as the "**Receivership Entities**"), moves the Court to expand the scope of this receivership to include TMFL Holdings, LLC ("**TMFL**"). As explained below and supported by the Affidavit of Burton W. Wiand, as Receiver in Support of Motion to Expand Scope of the Receivership to Include TMFL Holdings, LLC (the "**Receiver's Affidavit**"), which is being filed along with this motion, TMFL:

> (1) is an entity created by a principal of Tri-Med (a Defendant in this case) which was used to acquire real estate;
>
> (2) was funded entirely with money from Tri-Med investors; and

> (3) holds title to two residential real properties that were purchased and renovated with that money.

Consequently, TMFL should be added to this Receivership so that additional assets bought with Tri-Med investors' money can be brought under the Receiver's control and protection.

Defendants conceded that TMFL holds real estate belonging to Tri-Med: the purported "Accounting of Investor Funds" filed by Defendant Jeremy Anderson in this case on March 14, 2014 (the "**Accounting**"), states that "real estate [p]roperties currently being held … by TriMed Corp mostly by the entity 'TMFL Holdings, LLC'." Receiver's Aff. ¶ 15, Ex. 5.

As shown below and in the Receiver's Affidavit, Defendants engaged in widespread fraud in violation of Chapter 517, Florida Statutes ("**Chapter 517**"), in the offer and sale of unregistered securities in the form of investments issued through Tri-Med as part of a purported "investment program." Notably, Defendants were warned by their lawyers that based on their conduct,

> **"Florida securities regulators could impose sanctions, require a rescission offer or pursue other civil or criminal liabilities"**

and that,

> **"Tri-Med should discontinue all offers and sales of [investments]…immediately."**

Receiver's Aff. ¶ 53, Ex. 19. Unfortunately for their multiple hundreds of victims, Defendants ignored these warnings. Because Tri-Med investors' money was used to fund TMFL, the Receiver respectfully requests that the Court enter an Order expanding the scope of the Receivership to include TMFL.

BACKGROUND

1. On March 4, 2014, the State of Florida, Office of Financial Regulation ("**OFR**"), filed this enforcement action against Defendants Tri-Med; TMA; Jeremy Anderson ("**Defendant**

Anderson"); Anthony N. Nicholas, III ("**Defendant Nicholas III**"); Eric Ager ("**Defendant E. Ager**"); Irwin Ager ("**Defendant I. Ager**"); and Teresa Simmons Bordinat a/k/a Teresa Simmons; and on March 25, 2014, filed an amended complaint adding Anthony N. Nicholas, Jr. ("**Defendant Nicholas Jr.**"), as a defendant (collectively, "**Defendants**"). *See* Receiver's Aff. Exs. 1 & 2 (copy of Verified Complaint and Verified Amended Complaint, respectively).

2. Also on March 4th, the Court entered an Order appointing the Receiver (the "**Order Appointing Receiver**") as receiver over Tri-Med and TMA. *See* Receiver's Aff. Ex. 3 (copy of Order Appointing Receiver).

3. Pursuant to the Order Appointing Receiver, the Receiver has the duty and authority to, among other things, "marshal and safeguard all such properties and assets [of Receivership Entities]" and to take any actions necessary for the protection of investors or other creditors of the Receivership Entities. Receiver's Aff. ¶ 8.

4. Defendants violated Florida securities laws from at least 2011 forward by raising approximately $17 million in connection with the offer and sale of unregistered securities based on misrepresentations that, among other things, those funds would be (a) used to purchase medical practice accounts receivable ("**AR**") backed by Letters of Protection ("**LOPs**")[1] and (b) safeguarded by being kept in an attorney trust account. *See* Receiver's Aff. ¶¶ 10, 11, 16, 38 – 39, 41 43, Exs. 30 – 31, 33. In reality, these representations were false, as were many others, including the many examples detailed below in Paragraph 10 and in the Receiver's Affidavit.

5. The OFR alleged that less than 25% of money raised from investors was used to purchase LOPs. As stated in the complaint, this analysis was as of October 2013. The

[1] LOPs are contracts involving a patient, the patient's attorney, and the medical services provider under which the patient and attorney agree to pay all or part of the total billed by the

Receiver's investigation has revealed that from 2011 until this case was filed, approximately $17 million was raised from investors and only approximately $5 million of those funds were used to buy LOPs. Receiver's Aff. ¶ 13.

6. Notably, Defendants' admissions corroborate the Receiver's figures: although the Accounting misrepresents facts, it still states they used only 36% of funds raised from investors to buy LOPs and distributed an astounding 27% of funds raised from investors to themselves as purported "management expenses," "office expenses," and "overhead." *See* Receiver's Aff. ¶ 15, Ex.5.

7. On the OFR's motion, the Court found that a temporary injunction, asset freeze, and appointment of Receiver were warranted because OFR demonstrated an imminent danger to investor funds and other property currently in Defendants' possession. Order Appointing Receiver at 1 (*see* Receiver's Aff. ¶ 2, Ex. 3). Further, the Court found the evidence strongly indicated that Defendants made multiple misrepresentations in the offer and sale of in excess of $13 million of unregistered securities to at least 232 Florida investors. *Id.* ¶ 1.

8. As shown herein, OFR's verified allegations and evidence understated the amount of securities fraud perpetrated by Defendants; the Receiver's investigation has revealed Defendants' fraud was far more extensive. Defendants and their related entities (other than Tri-Med) directly received or benefitted from over $4.4 million raised from investors. Receiver's Aff. ¶ 60.

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medical services provider from the proceeds of any pre-suit settlement or lawsuit settlement or judgment the patient may obtain.

Defendants Operated A Fraudulent
Investment Scheme Through Tri-Med

9. To date, the Receiver has uncovered numerous examples of widespread fraud by Defendants in the offer and sale of securities in violation of Chapter 517. The evidence submitted with this motion shows that Tri-Med was operated as a fraudulent investment scheme.

10. Aside from the examples of fraud discussed above in paragraphs 4 through 6, the Receiver's investigation has uncovered evidence that establishes Defendants made the following additional material misrepresentations and omissions in connection with the offer and sale of securities to Tri-Med investors:

a. **Defendants Misrepresented The Investments Were Virtually Risk-Free.** Defendants falsely told investors that investments in Tri-Med were like bank certificates of deposit and their investment principal was safe. Receiver's Aff. ¶ 32, Ex. 22. For example, Defendants misrepresented that the investments were "considered safe enough, even for the most conservative of investors" and that "every possible precaution has been taken to ensure the complete protection of your money in this investment." *Id.* ¶ 33, Ex. 22. In truth, an investment in a small entity like Tri-Med with no track record and a purported focus on medical accounts receivable was far from safe.

b. In fact, earlier this year entities from which LOPs were bought with Tri-Med investors' money and to which $450,000 of Tri-Med investors' money was transferred as a purported "loan" filed for bankruptcy. *See, e.g., In re Visum Management, LLC*, Consolidated Case No. 8:14-bk-00469-MGW (Bankr. M.D. Fla.); Receiver's Aff. ¶ 35. As a result, investors' money is at risk.

c. **Defendants Misrepresented The Investments Were "Backed" Or "Paid" By "Major Insurance Companies".** Defendants also falsely told investors the LOPs and investors' principal investments were "backed" or "paid" by major insurance companies. *Id.* ¶¶ 29, 33, 42, 45, Ex. 26, 27, 32. In reality, the LOPs were not "backed" or "paid" by any insurance companies as there was no established right to collect from an insurance company; rather, the LOPs merely gave medical providers some right to collect for all or part of their services from any settlement money the patients might receive. Receiver's Aff. ¶ 29. Defendant I. Ager admitted the investments were not "backed" by insurance companies, but that "telling people that their [principal investment] . . . is going to be paid by 'A Major Insurance Company' is exactly what they want to hear!" Receiver's Aff. ¶ 30, Ex. 24.

d. **Defendants Misrepresented How Investors' Money Would Be Used.** Although investors were told their money would be used to buy LOPs, they were not told that only a small portion of it would be used for that purpose. Receiver's Aff. ¶¶ 13 – 17,

Ex. 5. Defendants usually took 40% of investors' money for themselves as purported "expenses" and "overhead," and, to a far smaller extent, to pay commissions to other sales agents. Receiver's Aff. ¶ 15, Ex. 5. They also transferred back to investors a small portion of that money as purported "interest;" but that was not true "interest", and instead was merely a transfer of a portion of investors' principal investments. *See id.*

e. Similarly, Defendants also did not tell investors that as a matter of course they would only earmark 60% of investors' money as "working capital" to operate Tri-Med's "investment program." *See* Receiver's Aff. ¶ 16, Ex. 5. As discussed above in paragraph 5, Defendants did not even meet this far-reduced number, and instead only approximately $5 million of the approximately $17 million raised from investors was used to buy LOPs. Receiver's Aff. ¶ 13. Defendants' Accounting corroborates this. Receiver's Aff. ¶ 15, Ex. 5.

f. Investors also were not told that some of their money would be used to (i) buy real estate; (ii) buy medical equipment; and (iii) make "loans" to various individuals and entities with ties to Defendants, including a Tri-Med employee (*i.e.*, an attorney that had been suspended by the Florida Bar), an owner of a car service company, a contractor, and apparent relatives of Defendants Nicholas Jr. and Nicholas III. Receiver's Aff. ¶¶ 17 – 18, Exs. 5 - 10.

g. Nor were investors told of the large "loan" from Tri-Med mentioned above in paragraph 10.b., which was made to Visum Management, LLC, an entity owned by Drs. Eric Groteke and/or Glen Pettersen, who also owned one of the three main sources of LOPs bought with Tri-Med investors' money. Receiver's Aff. ¶ 35.

h. **Defendants Failed To Disclose LOPs Were Not Assignable.** For the small portion of LOPs that were purchased, investors were not told that at least some of those LOPs had language that prohibited them from being assigned to anyone, including to Tri-Med or Tri-Med investors. Receiver's Aff. ¶¶ 27, 40, Ex. 4.

i. **Defendants Misrepresented That LOPs Were Being Assigned.** In at least some instances, the "Assignment of Interest" certificates received by Tri-Med investors purporting to assign them an LOP were completely fabricated and there was no LOP to assign and the insurance company identified on that "certificate" as being responsible for payment was made up by Defendants. *See* Receiver's Aff. ¶ 42, Ex. 32.

j. **Defendants Misrepresented The Medical Services Providers From Which LOPs Were Bought.** Defendants also misrepresented to investors the medical services providers from which LOPs were purchased. Among the medical providers from which Defendants falsely told investors Tri-Med purchased LOPs were hospitals operated by Hospital Corporation of America ("**HCA**"). Receiver's Aff. ¶ 37, Ex. 29. HCA's lawyers wrote Defendants to demand they cease and desist from falsely informing investors they had a relationship with HCA. *Id.*

k. The truth is the vast majority of LOPs were purchased from only 3 sources. Receiver's Aff. ¶ 34. One of those three sources was a medical services

provider in Minnesota with which Defendant Anderson is intimately involved, called Interventional Pain Center, PLLC ("**IPC**"), and another source was several clinics owned by Drs. Groteke and Pettersen as mentioned above in paragraph 10.g. Receiver's Aff. ¶ 35. Drs. Groteke and Pettersen had a very close relationship with Defendants which included other "business ventures" and they and/or their entities received Tri-Med investors' money for unauthorized purposes which were unrelated to the purchase of LOPs. *Id.*

l. **Defendants Misrepresented That Tri-Med Investments Were Registered With OFR Or Exempt From Registration.** Defendants falsely told investors that Tri-Med securities were registered with the OFR. Receiver's Aff. ¶ 28, Ex. 22.

m. In other instances, Defendants falsely told investors that Tri-Med securities were exempt from registration. Receiver's Aff. ¶ 32, Ex. 22.

n. **Defendants Misrepresented That All Investor Funds Were Held In An Attorney Trust Account.** Defendants falsely told investors their investment money would be held in an attorney trust account when it was not being used to buy LOPs. Receiver's Aff. ¶¶ 38 – 39, 43, Exs. 30, 33. For example, investors received correspondence from Tri-Med stating, "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…." Receiver's Aff. ¶ 39, Exs. 21, 30.

o. Similarly, Defendants' sales pitches to investors included a letter from attorney Stephen Marlowe ("**Attorney Marlowe**") of Marlowe McNabb P.A. ("**Marlowe McNabb**") which explained 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." Receiver's Aff. ¶ 43, Ex. 33.

p. In reality, only approximately $2.8 million of the approximately $17 million raised from investors was deposited in trust with Marlowe McNabb. Receiver's Aff. ¶ 44, Ex. 34.

q. **Defendants Misrepresented The Names Of Securities Lawyers They Purportedly Retained.** Defendants also misrepresented to investors the names of lawyers purportedly retained by Tri-Med. For example, Defendants' sales pitch to investors included a "legal opinion" on well-known law firm Broad & Cassel's letterhead that the Tri-Med investments were exempt from registration under the securities laws. *See* Receiver's Aff. ¶ 37, Ex. 37. But Broad & Cassel never represented Tri-Med or any other Defendant, and the legal opinion was a forgery. Receiver's Aff. ¶ 48, Ex. 19.

r. Similarly, sales pitches to investors included a document entitled "Legal Principals of Trimed Corporation" that stated that "John A. Schifino" served as Tri-Med's "Securities Attorney." Receiver's Aff. ¶ 46, Ex. 35. Mr. Schifino, however, is not

a securities lawyer, and neither he nor his firms have ever represented Tri-Med or any other Defendant. *See* Receiver's Aff. ¶ 46, Ex. 36.

s. **Defendants Misrepresented That Tri-Med Was BBB Accredited.** Investors were falsely told that Tri-Med was accredited by the Better Business Bureau. Receiver's Aff. ¶ 31, Exs. 25, 26.

11. In short, the Receiver has uncovered this and other significant evidence that the "investment program" offered by Defendants through Tri-Med was a fraudulent scheme and Defendants' conduct violated Chapter 517. As part of that scheme, Defendants directly received or benefitted from over $4.4 million. Receiver's Aff. ¶¶ 15, 60, Ex. 5.

Defendants Were Advised By Tri-Med's Lawyers That They Were Violating Florida (And Federal) Securities Laws

12. Defendants knew they were violating Florida and federal securities laws by offering and selling the Tri-Med investments because Tri-Med's lawyers advised them of that fact. Although the Receiver need not establish this to prevail on this motion, it is discussed here to give the Court an indication of how brazen Defendants were.

13. Specifically, in 2012 Tri-Med's attorneys with Stoel Rives LLP ("**Stoel Rives**") gave Defendants a comprehensive memorandum that notified them they were violating state and federal securities laws. *See* Receiver's Aff. ¶ 50, Ex. 38.

14. The memorandum told Defendants they were violating securities laws by, among other things, not providing full and fair disclosure of information to investors; making inaccurate or misleading representations; advertising the Tri-Med "investment program" in newspapers and on Tri-Med's website; failing to register the securities and certain entities and individuals; and paying unlawful commissions. *Id.* at pp. 6 – 11.

15. This memorandum bluntly warned Defendants that,

> **"Tri-Med and its principals have potential exposure to liability for claims by purchasers, as well as exposure for sanctions by Federal securities regulators."**

Id. at p. 6. It also explained that,

> **"[u]ntil the Investors are repaid in full, the only way to eliminate the potential claims by purchasers would be to conduct a rescission offer to all prior purchasers who purchased" investments from Tri-Med.**

Id. ¶ 50, Ex. 38 at p. 9. The memo further warned that,

> **"Florida securities regulators could impose sanctions, require a rescission offer or pursue other civil or criminal liabilities."**

Id. at 10. The memo concluded:

> **"Tri-Med should discontinue all offers and sales of [investments]…immediately."**

Id.

16. Defendants ignored these warnings and proceeded with their scheme.

17. Approximately 1 year later, Defendants **again** were warned by the same lawyers:

> **"You still have all of the problems outlined in our memo and our recommendation remains that you shouldn't sell securities … unless you are doing everything else we recommend in our memo to comply with the securities law."**

Receiver's Aff. ¶ 53, Ex. 39. Defendants ignored this warning too, and their scheme was stopped only when the OFR filed this action.

After Receiving Legal Advice From Stoel Rives, Defendants Deceived Some Individuals Into Thinking They Had Stopped Soliciting Investors

18. After being told they were violating the law and should immediately stop their "investment program," Defendants deceived some individuals into thinking they had stopped as of January 1, 2013.

19. For example, in the first half of 2013 Attorney Marlowe learned that Stoel Rives had advised Defendants to stop soliciting investors. However, in July 2013 Attorney Marlowe learned that investors were still being solicited when he received a phone call from someone that

recently had been solicited to invest in Tri-Med. Receiver's Aff. ¶ 55, Ex. 40. Attorney Marlowe promptly wrote to Defendants Anderson and Nicholas Jr: "To make it even worse, [sales agent Bill Gross] … is apparently advertising [Tri-Med] … very heavily in newspapers and Gross was on a radio show promoting this investment…. How is this happening and what do we need to do about it?" *Id.*

20. In response, Defendant Anderson wrote a letter to Gross on July 2, 2013, falsely telling him that Tri-Med had stopped accepting money from investors on January 1, 2013. *See* Receiver's Aff. ¶ 56, Ex. 41.

21. Defendant Anderson's letter merely was intended to hide the truth. The truth was that Defendants raised approximately **$3,244,359** from investors between January 1 and July 1, 2013 – the time from when they supposedly stopped soliciting investors to the time Attorney Marlowe learned that was not true. *See* Receiver's Aff. ¶ 57.

22. When the potential investor who spoke to Attorney Marlowe learned that Defendants were not supposed to be soliciting investments, he wrote to Defendant E. Ager:

> **Eric. How in the world could you have pushed and prom[o]ted this investment so heavily to me last week on the phone. You had even told me you spoke to steven Marlowe [] attorney and you said he is accepting new investor money after I told u he said he is not….. Have jeremy anderson contact me at once. I am not happy. [T]his investment was closed on jan 1 [] 2013 to new investors yet u were pushing it and selling it to me last week.**

Receiver's Aff. ¶ 58, Ex. 40 (errors in original).

23. Shortly afterwards, Defendants Anderson, E. Ager, and I. Ager discussed Attorney Marlowe's questions about why investors were still being solicited. Defendant Anderson explained the need to deceive Attorney Marlowe about the continued solicitation of investors:

> **As far as Marlowe goes, [a]ll he wants to hear and know is that we are not soliciting [sic] investors, we being trimed, because that is what Stoel Rives recommended. He holds money in trust from Trimed and he gets the money from Trimed, to him it's Trimed's money and that is all he wants to know. If we tell him its john doe's money then he doesn't want it because he wants to only hold money for Trimed given to him by Trimed.**

Receiver's Aff. ¶ 59, Ex. 42.

Even Though Defendants Knew They Were Violating The Law, They Pressed Forward With Their Scheme

24. As paragraphs 12 through 23 show, Defendants knew they were violating state and federal securities laws, yet they pressed forward with their scheme and continued soliciting investors.

25. Their brazen and intentional conduct was evident from the beginning of their scheme, when, to falsely allay concerns that Tri-Med's "investment program" was a scam, Defendant Anderson misrepresented that auditors and securities lawyers had been retained.

26. Specifically, in response to an October 2011 email from Defendant I. Ager that their "investment program" could be a scam, Defendant Anderson misrepresented that an accounting firm had been retained to audit the investments, that law firm Broad & Cassel had been retained to represent Tri-Med, and that Marlowe McNabb would hold all investors' money in trust. *See* Receiver's Aff. ¶ 24, Ex. 17.

27. Further, also at the beginning of the scheme, Defendant I. Ager admitted that although the investments being sold through Tri-Med were pitched as being "backed" or "paid" by major insurance companies, that was not true.

28. In an email to sales agents, Defendant I. Ager wrote,

> **The only way that you can convince people today is with "the safety of this investment" The absolute magical words are [] (Which technically you cannot say!) "This is an insured investment".**

> ***SO – Although technically, it is not,*** **telling people that their principle [SIC] is going to be paid by "A Major Insurance Company" is exactly what they want to hear!**

Receiver's Aff. ¶ 30, Ex. 24 (emphasis added).

29. Other evidence also establishes that Defendants knew their conduct was unlawful, including evidence of instances in which they took steps to cover up their misconduct.

30. For example, some of the "loans" purportedly made with investors' money actually were never made or were made to others, and loan documents appear to have been fabricated to hide that at least some Defendants were taking investors' money out of Tri-Med for personal and unauthorized purposes. In one instance, Defendants fabricated a Promissory Note purportedly executed by a "Dr. Brad Meskerman" in Minnesota (where Defendant Anderson resides) in favor of Tri-Med for $60,000, but the Minnesota Health Licensing Boards have no record of a doctor bearing that name. *See* Receiver's Aff. ¶ 21, Ex. 13.

31. There is, however, a licensed chiropractor in Minnesota named Dr. Bradley Meskimen who referred at least one patient to IPC (the clinic with which Defendant Anderson is intimately involved and which received Tri-Med investors' money), but swore under oath that he was unaware of Tri-Med and never borrowed money from it. Receiver's Aff. ¶ 21. Rather than going to Dr. Meskimen, $50,000 of that money went to fund a restaurant in Georgia. Receiver's Aff. ¶ 22, Ex. 15.

Defendants' Unlawful Conduct Caused A Bank To Freeze Tri-Med's Accounts And Bar Defendants From Continuing To Do Business There

32. Defendants' activities were so irregular and suspicious that Tri-Med's first bank, Bank of America, unilaterally froze Tri-Med's accounts and for some time refused to remit the frozen funds to Defendants, and then barred Defendants from conducting any further business with the bank. Receiver's Aff. ¶ 23, Ex. 16.

TMFL Was Created By Principals Of
Tri-Med And Funded With Scheme Proceeds

33. Some of Tri-Med investors' money was used to fund TMFL, which in turn was used to buy real estate.

34. According to records filed with the Florida Secretary of State, TMFL was formed on September 12, 2013, by Defendant Nicholas III, and listed its principal office as 3520 Woodridge Parkway, Palm Harbor, Florida, which is the residence of Defendant Nicholas III and his father, Defendant Nicholas Jr. (although it may no longer be their residence because the house has been foreclosed upon by a bank). Receiver's Aff. ¶¶ 62 - 63, Ex. 43. Defendant Nicholas III also was a Director and, on paper, Secretary and Treasurer of Tri-Med. Receiver's Aff. ¶ 2, Ex. 2 at ¶ 13. Defendant Nicholas Jr. was the *de facto* Secretary and Treasurer of Tri-Med. *Id.* at ¶ 21.

35. Defendant Nicholas III is listed as a member of TMFL (*id.*), and his "Accounting of Personal Assets of Anthony N. Nicholas, III" filed with this Court on March 14, 2014, lists 100% of the common stock of TMFL among his assets (Receiver's Aff. ¶ 64, Ex. 44).

36. Similarly, TMFL's Registered Agent is listed as Attorney Marlowe, the attorney whose law firm, Marlowe McNabb, investors falsely were told held their money in trust. Receiver's Aff. ¶ 65, Ex. 43.

37. Since TMFL's formation in September 2013, more than $450,000 of investors' money was transferred from a Tri-Med bank account, which like the others was funded with money from investors, to a TMFL bank account at Wells Fargo Bank as follows (Receiver's Aff. ¶¶ 66 - 67, Ex. 45):

- 09/23/2013: $100,000;
- 10/28/2013: $145,000;

- 11/06/2013: $175,298.41; and
- 01/15/2014: $30,000.

These transfers were the sole source of funds for TMFL. Receiver's Aff. ¶ 69.

38. Using this investor money, two residential real properties were purchased in TMFL's name (collectively, the "**TMFL Properties**"):

- 11029 117th Street, Seminole, FL 33778; and
- 9035 St. Regis Lane, Port Richey, FL 34668.

Receiver's Aff. ¶ 70, Exs. 46 – 47.

39. The closing documents for purchasing the TMFL Properties confirm that TMFL/Tri-Med were the only source of funds used to buy these properties. Receiver's Aff. ¶ 71. TMFL then paid for tens of thousands of dollars in renovations on each property also with investors' money received from Tri-Med. *Id.* ¶ 72, Ex. 48. None of the TMFL Properties are currently inhabited.

40. The acquisition of the TMFL Properties with investors' money also is confirmed by Defendants' Accounting. In the section titled "Real Estate and Intellectual Properties," the Accounting lists "Five Properties," with a collective value of $569,428.50, and described as, "[f]ive real estate properties currently being held in TriMed Corp **mostly by the entity 'TMFL Holdings'"**. Receiver's Aff. ¶ 15, Ex. 5 (emphasis added).

41. The Receiver also discovered that TMFL has two bank accounts at Wells Fargo Bank that have a current collective cumulative balance of $10,582.62.

42. Because evidence establishes that (a) TMFL was funded with Tri-Med investors' money and (b) that money was used to buy the TMFL Properties, TMFL should be included in this Receivership so the Receiver can protect it and its assets for the benefit of the Receivership

estate and, ultimately, victims of Defendants' fraud. Unless TMFL is added to this Receivership, the TMFL Properties are at risk.

MEMORANDUM OF LAW

The Court's power to supervise a receivership like this one and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). "It is well established that the court which appoints a receiver may issue orders as are necessary and proper for the property and interests of those concerned." *City of Kissimmee v. Department of Environmental Regulation*, 753 So. 2d 770, 772 (Fla. 5th DCA 2000). The Court's power includes the ability to expand the scope of the receivership when it appears that receivership assets have been transferred or otherwise dissipated. *Puma Enterprises Corp. v. Vitale*, 566 So. 2d 1343, 1345 (Fla. 3d DCA 1990).

I. TMFL SHOULD BE ADDED TO THIS RECEIVERSHIP BECAUSE IT WAS FUNDED WITH INVESTORS' MONEY AND IT CURRENTLY HOLDS TITLE TO VALUABLE ASSETS PURCHASED WITH THOSE PROCEEDS

Among the factors to be considered in deciding whether to expand a receivership are (1) commingling of funds; (2) the unauthorized diversion of funds or assets to other than corporate purposes and to the detriment of creditors; and (3) the co-identity of officers, directors, or principals. *See SEC v. Elmas Trading Corp.*, 620 F. Supp. 231, 234 (D. Nev. 1985), aff'd, 805 F.2d 1039 (9th Cir. 1986); *see also Elliott*, 953 F.2d at 1565, n.1 (holding that court may extend equitable receivership over related entities). A more flexible approach is warranted in cases like this one that involve enforcement of securities laws. *Elmas Trading Corp.*, 620 F. Supp. at 233. A key goal for expansion of a receivership is "to ensure that all available assets are brought within the receivership and may properly be distributed to creditors." *Id.* That is precisely the purpose of this motion and, as explained below, the facts here warrant expansion of this Receivership to include TMFL.

A. All Relevant Funds Came From Tri-Med And Its Investors

As *Elmas Trading* explained, it is crucial that the alleged wrong-doers not be able to dissipate money rightfully belonging to investors into entities related to or affiliated with the receivership entity. 620 F. Supp. at 233-34 (expansion of receivership warranted to include related entities upon showing of *inter alia* a comingling of funds that presents "an element of injustice or fundamental unfairness"). The extensive evidence submitted with the Receiver's Affidavit establishes Tri-Med investors' funds served as the sole source of funding for TMFL: it establishes that the only source of funding for TMFL was transfers from Tri-Med and, in turn, Tri-Med received its funding from its investors. *Id.* at 235 ("it also appeared that several of these entities relied heavily on Elmas and ROBL for any business transactions. This raises the inference of intertwined operations and mere corporate shells."); Receiver's Aff., ¶¶ 66 – 69, 71, Exs 45 – 47. This is corroborated by the Accounting, which concedes the TMFL Properties are considered by Defendants as Tri-Med's assets. Receiver's Aff. ¶ 15, Ex. 5.

B. More Than $450,000 In Investor Funds Were Diverted To TMFL

The Receivership should be expanded to include TMFL also because TMFL was funded through the unauthorized diversion of $450,000 raised from Tri-Med investors to their detriment. As explained above in paragraphs 4 and 10, although investors were told they were investing in Tri-Med and that the proceeds of their investment would be used to buy LOPs, since September 2013 more than $450,000 of investors' money was transferred from Tri-Med to TMFL and used to buy and renovate the TMFL Properties. *See* Receiver's Aff. ¶¶ 66 – 67, Ex. 45. Despite using investors' money to buy the TMFL Properties, those properties were not titled in the name of Tri-Med, but rather in TMFL's name. Receiver's Aff. ¶¶ 70 – 71, Exs. 46 – 47. Thus, the evidence establishes that investor funds were diverted to TMFL without disclosing it to or receiving authorization from Tri-med investors.

C. TMFL And Tri-Med Shared Common Officers And Principals

The Receivership also should be expanded to include TMFL because the third factor – co-identity of officers, directors, or principals – is present. As detailed above, TMFL was formed by Defendant Nicholas III, who was listed as a member of TMFL in corporate formation documents and who disclosed in his Personal Accounting that he owned 100% of the common stock of TMFL. Receiver's Aff. ¶ 64, Ex. 44. Defendants Nicholas III was Tri-Med's Director and, on paper, Secretary and Treasurer. Receiver's Aff.¶ 2, Ex. 2 at ¶ 13. Further, the listed principal address for TMFL was the same address as Defendants Nicholas Jr. and Nicholas III's home address. Receiver's Aff. ¶ 62, Ex. 43. Defendant Nicholas Jr. was Tri-Med's *de facto* Secretary and Treasurer. Receiver's Aff. ¶ 2, Ex. 2 at ¶ 21. TMFL also listed its registered agent as Attorney Marlowe, whose law firm, Marlow McNabb, was the same firm identified in Tri-Med offering documents as the firm that would hold investor funds in its trust accounts. Receiver's Aff., ¶ 62, Ex. 43. Additionally, the documents for purchasing the TMFL Properties were executed by Defendant Nicholas III. Receiver's Aff. ¶ 70, Ex. 46 – 47.

In sum, the evidence submitted by the Receiver easily satisfies all of the factors identified in *Elmas Trading*, and thus the Receivership should be expanded to include TMFL to protect Tri-Med investors.

II. ADDITION OF TMFL TO THE RECEIVERSHIP IS ALSO CONSISTENT WITH THE RECEIVER'S DUTIES PURSUANT TO THE ORDER APPOINTING RECEIVER

Expansion of this Receivership to include TMFL is consistent with directives in this Court's Order Appointing Receiver. In relevant part, that Order states

> **In the event that the Receiver discovers that funds of investors in the scheme that is the subject of this case have been transferred to other persons or entities, the Receiver shall apply to this Court for an Order giving the Receiver possession of such funds and, if the Receiver deems it advisable, *extending***

> ***this receivership over any person or entity holding such investor funds*.**

Order Appointing Receiver, Section VIII(l) (Receiver's Aff. ¶ 2, Ex. 3.) (emphasis added). The Receiver's evidence establishes that TMFL is an "entity holding … investor funds" because it was funded with investors' money and that money was used to buy and renovate the TMFL Properties. Receiver's Aff. ¶¶ 70 – 71, Exs. 46 – 47.

This Court's Order Appointing Receiver already requires the Receiver to "marshal and safeguard" all of the assets of the Receivership Entities and to take whatever actions are necessary for the protection of the investors. Order Appointing Receiver, Section VIII(l) (Receiver's Aff. ¶ 2, Ex. 2). As this motion and the Receiver's Affidavit establish, adding TMFL to this Receivership would marshal and safeguard Tri-Med assets and protect its investors.

CONCLUSION

Because (1) the Court has the authority to expand the receivership to include TMFL; (2) the evidence establishes investor funds were transferred from Receivership Entities to TMFL and used to buy and renovate the TMFL Properties, which are presently titled in the name of TMFL; and (3) expansion of the receivership is necessary for the protection of investors and the Receivership Estate, the Receiver respectfully requests that this Court enter an Order expanding the Receivership to include TMFL Holdings, LLC.

s/Gianluca Morello

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 28, 2014, 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:

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