

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

**SECURITIES AND EXCHANGE COMMISSION**  
**Plaintiff,**

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**Civil Action No. 4:11-cv-655**

**v.**

**JAMES G. TEMME, and**  
**STEWARDSHIP FUND, LP,**  
**Defendants.**

**REPLY IN SUPPORT OF MOTION TO APPROVE SETTLEMENT AGREEMENT  
WITH HALO COMPANIES, INC.**

**COMES NOW**, Keith M. Aurzada, as receiver in the above-captioned matter (the “Receiver”) for James G. Temme (“Temme”), Stewardship Fund, LP, and all other entities directly or indirectly controlled by Temme or Stewardship Fund, LP, including, but not limited to Stewardship Advisors, LLC, d/b/a Stewardship Advisors, LP, Stewardship Asset Management Genpar I, LLC, Stewardship Group, LLC, Destiny Fund, LP, and Stewardship Management, LP (collectively, the “Receivership Entities”), and submits this Reply in Support of Motion to Approve Settlement Agreement with Halo Companies, Inc. (the “Motion”), as follows:

**I.**

**INTRODUCTION**

1. In the Motion, the Receiver seeks the Court’s approval of a settlement agreement (the “Settlement”) with Halo Companies, Inc. (“Halo”). The Receiver believes that the Settlement is in the best interest of the Estate and will maximize the recovery for the investors in the Receivership Entities. The Response in Opposition and Objection to the Motion [Dkt. No. 253], filed by the Stewardship Receivership Claimants Association (the “Association”) and the

Response in Opposition to the Motion [Dkt. No. 255], filed by the Wildcat and Skeleton Investors<sup>1</sup> object to the Motion and Settlement on the grounds that they (i) fail to value the stock that the Receiver intends to return to Halo; (ii) fail to identify and value the claims between the Receiver and Halo; (iii) provide no evidence of Halo's financial condition; (iv) fail to value the AMX system; and (v) seek to enjoin third-parties from suing Halo. The Receiver believes that each of the objections are resolved by this Reply or are without merit. As a result, the Receiver requests that the Court overrule the Objections and approve the Settlement.

## **II.**

### **REPLY**

#### **A. The Settlement**

2. In the Motion, the Receiver requests that the Court approve the Settlement with Halo. Under the terms of the Settlement:

- Halo will transfer to the Receiver \$250,000 by checks payable to "Keith Aurzada, Receiver" payable in monthly increments of \$20,833.33 for twelve months;
- Halo will provide the Receiver with continued access to and use of the AMX or other systems for the duration of receivership proceedings and Halo will not bring a claim for administrative expense for use of the AMX System;
- The Receiver will return to Halo the Shares;
- Halo will release any claims it may have against the Receivership Estate arising from their business dealings with the Receivership Entities and the Receiver shall release Halo from any claims relating to any transactions or business dealing with the Receivership Entities; and
- the Parties request that the Court enter an Order permanently barring or enjoining all Stewardship Creditors from commencing or continuing any legal proceeding against Halo arising out of or in connection with the investments made in any Receivership Entity and any transfers received by Halo from the Receivership Entities.

---

<sup>1</sup> The Wildcat and Skeleton Investors include, Bruce Berg, Stuart Cartner, Kevin Doyle, Walter Haydock, Edward Leh, Kevin Murphy, Philip Schantz, DAIS Partners, LP, Singer Bros., LLC, Skeleton Lake, LLC, and Wildcat Lake Partners.

3. The Receiver believes that the Settlement is in the best interest of the Estate and that it will maximize the recovery for the investors in the Estate.

**B. The Association**

4. In their Objection, the Association begins with a series of ad hominem attacks on the Receiver rather than criticisms of the Motion. For example, the Association alleges that the actions of the Receiver in this matter are not consistent with the interest of the Estate and that the Association, rather than the Receiver, has invested considerable time identifying assets and claims of the Estate.

**(i) The Receiver has Generated over a Million Dollars and Relieved the Estate of over a Million Dollars of Claims without Selling Any Estate Assets**

5. Contrary to the Association's allegations, to date the Receiver's efforts have resulted in the Estate acquiring close to \$2 million worth of assets and relieving the Estate of over a million dollars in potential claims without selling Estate assets. The Receiver has entered into settlement agreements with: Stewardship Fund No. 2, L.P., Stewardship Fund No. 3, L.P., Stewardship Fund No. 4, L.P., Stewardship Fund No. 5, L.P, Danny R. Curtis and Stacy Curtis, GMAC Mortgage, LLC, Harbour Portfolio I, LLC, Harbour Portfolio II, LLC, Harbour Portfolio IV, LLC, Cavco Holdings, LLC, Robert and Elizabeth Boyce and ER, LLC, MC Smith Realty, LLC, MCS Small Cap Fund I, LP, MCS Stewardship No. 2 Invest, LP, MCS Stewardship No. 3 Invest, LP, JEG Property Investments, L.P. f/k/a Beracah Valley Enterprises, LP, NG Roth Investments, LLC, JG Roth Investments, LLC, JG Roth, LLC, HNG ESA, LLC, JDG ESA, LLC, SKG ESA, LLC, REG ESA, LLC, JAG ESA, LLC, John Graves, Nicole Graves, JEG Property Investments 401k Trust, and American Mutual, L.P.

6. Those settlements have resulted in the Estate acquiring, among other things: a 40% interest in approximately 350 mortgages and associated promissory notes, approximately

600 mortgages and associated promissory notes, and cash payments of over \$1,400,000. Each of those assets have been acquired despite the fact that the Receiver has not yet sold **any** hard assets of the Estate, but rather alleged and settled potential claw-back claims. Moreover, the settlements have resulted in investors relinquishing more than a million dollars' worth of claims against the Estate.

7. Furthermore, the Association has not yet identified a single asset or claim that has resulted in a benefit to the Estate. Each of the above-referenced settlements was the result of the Receiver's investigation and negotiations with investors.

8. In fact, the only claims the Association seems to have investigated are potential claims against Halo, which the Association apparently believes orchestrated the downfall of the Receivership Entities. However, the Association has not yet identified **any** evidence that would assist the Receiver in asserting claims against Halo. The only potential claims against Halo that the Receiver has evidence to support are described below and, in the Receiver's opinion, are best waived in exchange for the consideration provided in the Settlement.

**(ii) The Association was Instrumental in Defrauding Torok of \$450,000**

9. Most astounding, however, is the Association's assertion that its efforts prevented the Receiver from selling the Lakeside Assets at a reduced price. The Lakeside Assets were acquired by the Receiver in settlements with the Harbour and Cavco entities. As with all other settlements the Receiver has brokered, the Lakeside Assets were acquired by the Receiver's assertion of potential claims against Harbour and Cavco—not the sale of Estate assets.

10. In August 2012, Halo assisted the Receiver in identified a potential buyer (Lakeside Portfolio Management, LLC) for the Lakeside Assets and the Receiver filed a motion seeking authorization to sell the Lakeside Assets for \$195,000 (the "Lakeside Sales Motion").

The sale of the Lakeside Assets was subject to a public auction in which any interested party could outbid Lakeside.

11. The Association objected to the sale of the Lakeside Assets (which were non-performing mortgages), alleging that they were more valuable if they were held by the Receiver and sold at a later date as performing mortgage. Moreover, the Association requested that the Receiver retain Wingspan Portfolio Management to evaluate whether it was in the Estate's best interest to immediately sell the Lakeside Assets or hold them for sale later. The Receiver paid Wingspan \$75,000 to evaluate the Lakeside Assets. Wingspan concluded that it was in the Estate's best interest to immediately sell the Lakeside Assets and concluded that the sales price of \$195,000 was a fair price. Based on the continued delay brought about by the Association's objection, the Lakeside Sales Motion was denied by the Court. Regardless, the Receiver and Halo continued to market the Lakeside Assets.

12. On November 27, 2012, the Receiver received a non-binding letter of intent from HP Debt Exchange, LLC ("HP") to purchase the Lakeside Assets for \$250,000 (the "Letter of Intent"). Unbeknownst to the Receiver, after HP offered to purchase the Lakeside Assets, it fraudulently purported to sell them to Mark Torok and related entities for \$450,000.

13. As detailed in the Receiver's Motion for Contempt filed against HP [Dkt. No. 203], the Association was instrumental in defrauding Torok. Without authority from the Court or the Receiver, the Association entered into a Master Services Agreement (signed by Linda Hayes)<sup>2</sup> with HP that provided for HP to act as a broker for the sale of the Lakeside Assets on behalf of the Association. Not only was the Master Services Agreement a violation of the Receivership Orders in this case, it was also used to convince Torok that HP had the authority to

---

<sup>2</sup> Linda Hayes is not a member of the Association (as she is a net winner in her dealings with the Receivership Entities), however, she frequently serves as a spokesperson for the Association.

sell the Lakeside Assets on behalf of the Estate—which it did not. As a result of the Master Services Agreement and the conduct of HP, Torok was defrauded out of \$450,000.

14. Upon learning about the conduct of the Association and HP, the Receiver filed a motion for contempt against HP. The motion was granted and HP was ordered to pay the \$450,000 it received from Torok into the Court registry. The Receiver is now attempting to acquire the \$450,000 in the Court registry for the benefit of the Estate. This potential recovery by the Receiver is not the result of the Association's honest efforts to help the Estate, rather it is an inadvertent consequence of the Association's misdeeds that benefit the Estate to the great detriment of Torok. The Receiver does not believe that he could have obtained \$450,000 for the Lakeside Assets in a true market transaction, untainted by fraudulent representations about the ownership and quality of the assets.<sup>3</sup>

**(iii) The Association has Not Provided the Receiver with any Evidence to Support a claim against Halo or any other Party**

15. Although the Association has continually asserted that Halo and its principals may be the subject of claims by the Estate (including claims for fraud and conversion of Estate property), it has not provided the Receiver with any evidence support the alleged claims. In fact, the only “evidence” provided by the Association to support a potential claim against Halo is the email attached as Exhibit D to its objection. However, as described below, the email supports Halo's position that payments received from the Receivership Entities were payments for services rendered rather than loans. Further, the Receiver's investigation has not provided evidence to support the claims alleged by the Association.

---

<sup>3</sup> The Receiver still believes that \$195,000 was a fair price for the Lakeside Assets, In fact, on August 6, 2013, the Receiver received an offer to purchase the Lakeside Assets for \$150,000 from a third party.

16. Likewise, the Association has not provided the Receiver with any evidence of a potential claim against any other third party.

**C. Halo Stock**

17. The Association objects to the Settlement on the grounds that the Halo stock in the Receiver's possession is worth over \$9 million and, therefore, the Settlement payment of \$250,000 is insufficient.

18. Under the Settlement, the Receiver will return to Halo 17,808,000 shares of Halo common stock and 90,000 shares of Series X stock. The Association asserts that the common stock is worth \$.49 per share and, therefore, has a value in excess of \$8.7 million. A quick review of the historical prices for Halo stock presents a different picture. Attached hereto as Exhibit A are the historical prices for Halo common stock. Since January 21, 2013, Halo stock has been trading at \$.05 per share or less. Indeed, from June 24 to August 12, Halo stock was trading below \$.01 per share. The \$.49 per share price is based on a single sale of only 100 shares of Halo stock in mid-August 2013. Based on the historical prices for Halo stock contained in Exhibit A, the Receiver believes that the actual market price for Halo stock is less than \$.01. Moreover, the Receiver believes that the sale of over 17 million shares would inundate the market driving the price of Halo common stock back to less than \$.01 per share—assuming a market for such a large volume of Halo common stock exists (the Receiver does not believe that such a market exists).

19. Equally important to the Receiver's analysis, however, is the fact that the Estate's claim to the Halo stock is dubious. The Receivership Entities acquired the Halo common stock through their ownership in Equitas Asset Management, LLC ("Equitas").<sup>4</sup> On or about

---

<sup>4</sup> Attached as Exhibit B is the 8-K for Halo dated December 13, 2010, which includes a copy of the Assignment and Contribution Agreement.

December 13, 2010, Halo entered into an agreement in which it provided 21,200,000 shares of Halo common stock to Equitas in exchange for certain guaranteed performance metrics. The agreement, however, provided a claw-back provision that required Equitas to return the Halo common stock if Equitas did not generate certain cash-flow requirements (including cash-flows of \$3 million in the first year). No cash was ever remitted to Halo under the agreement and, as a result, on August 25, 2011, Halo demanded the return of its common stock from the members of Equitas.<sup>5</sup> Despite this demand, Jay Temme did not relinquish the 17,808,000 shares of Halo common stock in his possession before the Receiver was appointed.

20. The Receiver has evaluated the Estate's ownership claim to the Halo common stock, the cost to litigate ownership of the Halo common stock, the likely outcome of any such litigation, and the likely sales price of the Halo common stock and determined that the value of the Halo common stock to the Estate it is less than \$250,000. As a result, the Receiver believes that the Settlement is in the best interest of the Estate.

21. In addition to the Halo common stock, the Receiver is in possession of 90,000 shares of Halo Series X stock. The Series X stock was issued for cash paid by the Receivership Entities to Halo. The Series X stock receives a liquidated preference of \$10 per share above the trading price of Halo common stock.

22. However, Halo has also issued Series E stock that is likewise senior to Halo's common stock and Series Z stock that "has liquidation and other rights in preference to all other equity investments." *See* Halo 10-Q, attached as Exhibit C to the Association's Objection.

23. Moreover, Series X stock is not voting stock, has no redemption rights, and is not transferrable. As a result, the Receiver cannot liquidate the Series X stock and cannot monetize

---

<sup>5</sup> Attached as Exhibit C is a copy of the Demand Letter from Halo.



it unless and until Halo decides to redeem the stock or is liquidated—assuming there is sufficient equity to pay the Series X stock. Furthermore, based on Halo’s 10-Q, the Receiver does not believe that a liquidation of Halo would result in any payments to holders of Series X stock. Halo’s 10-Q balance sheet indicates cash of approximately \$82,000, assets of approximately \$750,000 and liabilities of over \$2.8 million. As a result, there is negative equity in Halo of approximately \$2.1 million.

24. As a result of the illiquidity of the Series X stock, the likelihood of receiving payments on account of the Series X stock, and the indefinite holding period, the Receiver values the 90,000 shares of Series X stock at less than \$250,000. As a result, the Receiver believes that the Settlement is in the best interest of the Estate.

**D. Potential Claims between the Receivership Entities and Halo**

25. The Association further objects to the Settlement on the grounds that the Receiver does not identify or value the potential claims between the Receivership Entities and Halo.

26. The Receiver has evaluated the potential costs and recovery of any potential claim against Halo and believes that there is little likelihood of success. Not only does the Receiver expose the Estate to significant litigation costs and substantial legal hurdles to proving any claim, the Receiver suffers from a crippling lack of evidence. Most of the transactions between Halo and the Receivership Entities were not properly documented (if documented at all). As a result, the Receiver will need to rely extensively on testimonial evidence to prove the Estate’s claims against Halo, as well as defending against potential claims asserted by Halo. However, most interactions between Halo and the Receivership Entities were verbal conversations between Temme and Cade Thompson (the CEO of Halo). Temme has refused to testify in this matter and, in fact, has asserted his Fifth Amendment privilege. Moreover, informal meetings between the Receiver and Temme have not yielded any evidence supporting any claims against Halo.

**(i) Funds Provided to Halo**

27. The most significant potential claim between the Receivership Entities and Halo that the Receiver has evidence to support relates to approximately \$1.2 million in funds transferred from the Receivership Entities to Halo in 2010 and 2011. Based on the timing of the transfers of funds and the relationship between the Receivership Entities and Halo, the Receiver has alleged a fraudulent transfer claim against Halo in the amount of \$1.2 million. Halo claims that the majority of the \$1.2 million was payment for services rendered and expenses incurred by Halo and that the remaining funds were provided in exchange for the Series X stock discussed above.

28. In their objection, the Association objects to the Settlement on the grounds that the Receiver fails to provide a value of the potential fraudulent transfer claim and provides no evidence that the funds were provided as payments on a debt rather than a loan. Specifically, the Association complains that they have seen no invoices that evidence a debt owed by the Receivership Entities for services rendered by Halo.

29. The Association, however, misinterprets the burden of potential litigation against Halo for a fraudulent transfer claim. The Receiver bears the burden of establishing that the funds transferred to Halo were in the form of a loan rather than payments on an antecedent debt. The Receiver has reviewed the electronic files of the Receivership Entities, including email accounts, servers, and laptops and has found no documentation supporting the allegation that the funds provided to Halo were in the form of a loan. Moreover, the Receiver has scoured the physical files from the Receivership Entities and has not located any loan documents, loan proposals, or other documents evidencing a loan between the Receivership Entities and Halo.

30. In fact, the only evidence that the funds transferred to Halo were in the form of a loan are the representations of Jay Temme, who has asserted his Fifth Amendment right in this

matter and refuses to testify. Furthermore, Mr. Temme has not provided the Receiver with any information or pointed to any documents that would assist the Receiver in proving that the funds transferred to Halo were a loan. As a result, the Receiver will face great challenges meeting his burden of proving a fraudulent transfer.

31. Moreover, Halo has provided the Receiver with invoices for services rendered that are consistent with the payments sent to Halo. Attached hereto as Exhibit C is a true and correct copy of a letter dated January 30, 2012, from John Scheef III to the Receiver. The invoices do not cover the time period in which the Receivership Entities made transfers to the Halo, however, the amounts of the invoices are consistent with the payment amounts made to Halo.

32. The funds transferred from the Receivership Entities to Halo were made in twenty six (26) wire transfers made over the course of nine months (from April to December 2011), often two or three payments per month. The payment amounts were wildly inconsistent and ranged from \$1,100 to 100,000. Given the sporadic timing and varying amounts, the transfers are consistent with payments for services rendered rather than a loan.

33. Based on the lack of documents evidencing a loan, the lack of any testifying witness, and the timing and amounts of the payments, the Receiver believes that the chances of succeeding on a claim for fraudulent transfers is low. As a result, the Receiver believes that the Settlement is in the best interest of the Estate.

**(ii) Other Potential Claims**

34. In addition to the claim for fraudulent transfer, the Receiver has also evaluated other potential claims against Halo related to the potential merger of Halo and Stewardship Fund, LP that was contemplated in 2011, the ownership of AMX (discussed in detail *infra*), and claims related to the Series X stock. Each of these potential claims, however, suffers from the same

fatal flaws as the fraudulent transfer claim—namely, there are no documents supporting the claims and the most important, if not the only, witness is Jay Temme, who refuses to testify.<sup>6</sup>

35. Moreover, Halo has potential claims against the Estate that are released as part of the Settlement. For example, Halo is waiving its claim to \$375,000 in fees owed by the Estate, waiving any fees it could charge in connection with the use of AMX, and waiving its potential claim for breach of the Assignment and Contribution Agreement. As with the Estate's potential claims, the Estate suffers from critical defects in defending against claims asserted by Halo, including that the Estate's prime witness is Temme, who refuses to testify.

36. As a result of the lack of documentary and testimonial evidence in support of the Estate's potential claims and in defense of the potential claims asserted by Halo, the Receiver believes that the Settlement is in the best interest of the Estate.

**E. Halo's Financial Condition**

37. The Receiver has taken the position that Halo's tenuous financial condition also supports accepting the Settlement rather than litigating its claims. The Association has objected to the Settlement on the grounds that the Receiver has offered no evidence of Halo's financial condition.

38. In contradiction to their allegation, the Association has attached to their objection Halo's most recent 10-Q, which demonstrates Halo's tenuous financial condition. In the 10-Q (attached as Exhibit C to the objection) Halo reports assets of approximately \$750,000 (including less than \$83,000 in cash) and liabilities of over \$2.8 million. From a balance sheet perspective,

---

<sup>6</sup> The email exchange provided by the Association between Scott Doores and Halo does not support the contention that a loan existed between Stewardship Fund and Halo. Rather, it supports the contention that Halo was charging Stewardship Fund periodic fees because Halo is a "fee for service asset management firm."

Halo is insolvent and it is unclear how long their cash will hold out. Based on the current, publicly-reported, financials, Halo's financial future seems uncertain.

39. The Association seems to value Halo based exclusively on the potential value of AMX.<sup>7</sup> Even taking into account the potential value of the AMX software, the Receiver believes that Halo's precarious financial position bodes in favor of accepting the Settlement rather than engaging in costly, protracted litigation that could, itself, result in Halo becoming judgmentproof.

#### **F. AMX**

40. As described in the Motion, AMX is a software platform that houses and tracks information related to the properties and mortgages that are serviced by Halo. The Association has long claimed that AMX is owned by the Estate and that AMX is a very valuable asset. The Receiver has engaged in extensive efforts to try to prove the Estate's ownership of AMX to no avail.

41. Indeed, after the Association first claimed that the Estate owned the AMX system the Receiver and his team conducted a full search of all physical and electronic files of the Receivership Entities for any evidence of the Estate's ownership. None was found.

42. Subsequently, the Receiver held a meeting at his offices with representatives of the Association and Mr. Temme and his counsel. Among the topics of discussion was the ownership of AMX and evidence supporting the Estate's claim of ownership of AMX. In front of the Receiver and the Association, Mr. Temme was allowed to search his laptop and other electronic and physical files for evidence of the Estate's ownership of AMX. Mr. Temme found

---

<sup>7</sup> The Association apparently believes that Halo has underreported its assets in its 10-Q by not accounting for the value of AMX. In the Receiver's experience, publicly traded companies with publicly available financials do not underreport assets.

no supporting documentation and, instead, asserted that the only evidence is a physical document in the possession of the FBI. The Receiver and his team have reviewed the documents held by the FBI and found no such documentation. As a result, Mr. Temme stated that he and his counsel would visit the FBI office to locate the documents evidencing the Estate's ownership of the AMX software. No such documents have been provided to the Receiver.

43. Despite Mr. Temme's professions regarding his desire to assist the Receiver in attempting to locate assets of the Estate, the Receiver has held several informal meetings with Mr. Temme and his counsel (and on occasion the Association), and Mr. Temme has not yet assisted the Receiver in locating any assets of the Estate.

44. In an attempt to locate any circumstantial evidence that the Estate has an ownership interest in AMX, the Receiver has contracted Jeff Hamm. Mr. Hamm is employed by Logos Data Services, and was as the only technical/IT person used by the Receivership Entities. Mr. Hamm maintained all of the Receivership Entities' computer systems, including the Tracker, Datapoint, and other systems used to track and maintain assets before AMX. Moreover, Mr. Hamm helped to migrate all data to AMX for the Receivership Entities' data systems. Mr. Hamm has informed the Receiver that he did not develop or help to develop AMX and, to the best of his knowledge, AMX was created by Halo before it began its relationship with the Receivership Entities.

45. Rather, the coding for AMX was exclusively written by employees of Halo, namely Jamin Blount. Attached hereto as Exhibit D is the Affidavit of Jamin Blount. Mr. Blount served as the main creator and coder of AMX. At all relevant times Mr. Blount has been an employee of Halo. Moreover, the AMX system is housed on Halo servers and is maintained by Mr. Blount and his team.

46. Based on the lack of documentary evidence supporting the Estate's claim to ownership of AMX, the fact that the main (if not only) relevant witness in support of the Estate's claim is Mr. Temme, and the fact that no Stewardship Fund employee or contractor created, coded, or maintained AMX, the Receiver believes that the Estate's claim to ownership of AMX is spurious. As a result, the Receiver has not spent Estate resources valuing AMX. Rather, the Receiver has secured (at no cost to the Estate) continued access to AMX because it serve a useful and valuable purpose for the Receiver and the Estate.

**G. Injunction of Claims against Halo**

47. In the Settlement, the Receiver seeks to enjoin creditors and investors (the "Bar Order") in the Receivership Entities from commencing or continuing any litigation against Halo related to the investments in the Receivership Entities or transfers made from the Receivership Entities to Halo. The Association and the Wildcat and Skeleton Investors object on the grounds that the Court does not have authority to enter the Bar Order.

48. To the contrary, a district court has broad authority to issue blanket stays of litigation (such as the proposed Bar Order) to help further the goals of the receivership by preserving property of the Receivership Entities. *SEC v. Kaleta*, Civ. Act. No. 4:09-3674, 2012 WL 401069, at \*3-4 (S.D. Tex. Feb. 7, 2012) (citing *SEC v. Byers*, 609 F.3d 87, 92 (2d Cir. 2010); *SEC v. Stanford Int'l Bank Ltd.*, 424 F. App'x. 338, 340-41 (5th Cir. 2011); *Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 551-52 (6th Cir. 2006)).

49. The *Kaleta* case speaks directly to the facts of this case. In *SEC v. Kaleta*<sup>8</sup> certain investors "who were allegedly defrauded by Receivership Entities in violation of federal securities law ... challenged the district court's approval of a negotiated settlement between the

---

<sup>8</sup> No. 12-20633, (5<sup>th</sup> Cir. June 19, 2013).

court-appointed Receiver and third parties [] who were closely affiliated with the Receivership Entities [] challenging the court's entry of a bar order enjoining them and other investors from commencing or continuing any legal action." The Fifth Circuit upheld the district court's approval of the settlement agreement, including the bar order, based on the district court's "wide discretion" to fashion ancillary relief including "injunctions to stay proceedings by non-parties to the receivership."

50. Federal courts have considered the following non-exclusive factors in connection with determining whether to enter this relief: (1) the value of the proposed settlement; (2) the value and merits of the Receiver's potential claims; (3) the value and merits of any foreclosed parties' potential claims; (4) the complexity and costs of future litigation; (5) the risk that litigation would dissipate the receivership assets; (6) the implications of any satisfaction of an award on other claimants; and (7) any other equities attendant to the situation. *See Kaleta*, 2012 WL 401069, at \*4. Here, these factors weigh in favor of entry of the Bar Order, as: (1) Halo has agreed to make a substantial payment of \$250,000 to the Estate; (2) the settlement payment by Halo represents a significant recovery for the Estate, while avoiding the costs and burden associated with protracted litigation; and (3) the actions sought to be enjoined by the Bar Order would seek recovery from Halo that is consistent with the Court's Receivership Orders. As a result, the Receiver respectfully requests that the Court enter the Bar Order based on equitable principals and pursuant to the Settlement Agreement.

#### **H. Fairness to Third Parties**

51. In their objection to the Motion, the Wildcat and Skeleton Investors allege that the Settlement is unfair to third parties that have "independent claims against Halo." To the extent third parties have claims against Halo that are independent of their investment in the



Receivership Entities or transfers between Receivership Entities and Halo, such claims are not subject to the Bar Order and, therefore, not effected.

52. To the extent third parties' claims arise from their investment in the Receivership Entities or transfers between Receivership Entities and Halo, such claims are property of the Estate or will have a significant and substantial impact on the Estate and, therefore, may be enjoined and the claims will be resolved through the Receivership claims process.

**I. Payments to Halo from Investor Funds**

53. In their objection, the Wildcat and Skeleton Investors allege that the Settlement should be denied because it is likely that the source of payments to Halo were investors funds and, as a result, the funds should be returned and the Settlement denied. The Receiver agrees that investors funds were likely the source of payments to Halo. That is the very nature of a Ponzi scheme. Funds from investors are not invested as they should be, but rather are used to funds payments to other investors and creditors. The fact that Halo likely received Ponzi payments is not grounds to deny the Settlement.

**III.**

**RELIEF REQUESTED**

The Receiver seeks immediate approval of the Compromise Settlement Agreement and Mutual Release. The Receiver believes that the Agreement maximizes value of the Receivership Estate. For these reasons, the Receiver seeks immediate approval of the Motion and the Compromise and Settlement Agreement.

Dated: September 24, 2013

**BRYAN CAVE LLP**

By: //s// Bradley J. Purcell  
Keith Miles Aurzada  
State Bar No. 24009880  
Jay L. Krystinik  
State Bar No. 24041279  
Bradley J. Purcell  
State Bar No. 24063965  
2200 Ross Avenue, Suite. 3300  
Dallas, Texas 75201  
(214) 721-8000  
(214) 721-8100 Fax  
[keith.aurzada@bryancave.com](mailto:keith.aurzada@bryancave.com)  
[jay.krystinik@bryancave.com](mailto:jay.krystinik@bryancave.com)  
*Counsel for Keith Miles Aurzada, Receiver*

**CERTIFICATE OF CONFERENCE**

I have discussed the relief requested herein with David Reece of the Securities and Exchange Commission. The relief requested herein is not opposed by the Securities and Exchange Commission.

//s// Bradley J. Purcell  
Bradley J. Purcell

**CERTIFICATE OF SERVICE**

I certify that on September 24, 2013, I served a true and correct copy of the foregoing pleading by United States First Class Mail, postage prepaid, to the following in accordance with the Federal Rules of Civil Procedure:

David Reece  
United States Securities and Exchange Commission  
Burnett Plaza, Suite 1900  
801 Cherry Street  
Fort Worth, Texas 76102

John Helms, Jr.  
Helms, Roberts & Diaz LLP  
6060 N. Central Expressway, Suite 560  
Dallas, Texas 75206  
COUNSEL FOR JAMES G. TEMME

J. Mitchell Little  
SCHEEF & STONE, L.L.P.  
2601 Network, Blvd., Suite 102  
Frisco, Texas 75034  
214.472.2140 (Direct)  
214.472.2100 (Phone)  
214.472.2150 (Fax)  
mitch.little@solidcounsel.com  
COUNSEL FOR HALO COMPANIES, INC.

Moreover, the foregoing will be uploaded to [www.stewardshipfundreceivership.com](http://www.stewardshipfundreceivership.com)

//s// Bradley J. Purcell

Bradley J. Purcell