CAUSE NO. D-1-GN-24-001018

SAJID MAQSOOD, TRUSTEE OF THE SAJID	§	IN THE DISTRICT COURT
& JOAN M. MAQSOOD REVOCABLE TRUST,	§	
ET AL.,	§	
	§	
Plaintiffs,	§	
	§	TRAVIS COUNTY, TEXAS
V.	§	
	§	
PRIDE OF AUSTIN HIGH YIELD FUND I, LLC,	, §	
ET AL.,	§	
	§	
Defendants.	8	201 ST JUDICIAL DISTRICT

RECEIVER'S OTHER CLAIMS REPORT

Gregory S. Milligan, in his capacity as the Court-appointed receiver ("Receiver") for Defendant Pride of Austin High Yield Fund I, LLC ("POA" or the "Fund"), pursuant to the Agreed Order Appointing Receiver dated April 30, 2024 and amended May 6, 2024 (the "Receivership Order"), files this Other Claims Report (the "Report") and would respectfully show the Court as follows:

A. BACKGROUND

1. On June 17, 2024, this Court entered its *Order Granting Receiver's Motion to Approve (I) Proposed Claims Verification Procedures, and (II) Claims Bar Date* (the "*Claims Order*"). A copy of the Claims Order is attached as <u>Exhibit A</u>. The Claims Order divided claimants into two separate categories: (i) Investor Claimants¹; and (ii) Other Claimants².

i. Investor Claims Process

¹ "Investor Claimants" is defined in the Claims Order (and as used herein) as "those holding membership interests in POA".

² "Other Claimants" is defined in the Claims Order (and as used herein) as "those holding any other claims [separate from Investor Claims] against POA".

- 2. With respect to Investor Claimants, the onus was on the Receiver to "send notices to Investor Claimants, which shall include (i) cash invested into POA; (ii) cash paid out to Investor Claimants by POA; and (iii) the amount of reinvested dividends, if any (the "*Transaction History*"), per the books and records of POA (the "*Reconciliation Notice*")". Claims Order, ¶ 4(b).
- 3. As detailed in the *Receiver's Investor Claims Report*, filed with the Court on November 12, 2024, the Receiver sent the Transaction History and Reconciliation Notices to all known Investor Claimants. The Receiver then resolved, or the Court ruled upon, any objections by Investor Claimants to the Transaction History and Reconciliation Notices.

ii. Other Claims Process

- 4. With respect to Other Claims, the onus was on the Other Claimants to file a claim by submitting a Court-approved claim form with supporting documentation to the Receiver's claims agent. Id. at \P 7(a). Such claims were required to be submitted by October 16, 2024. The Receiver was then required to review all of the Other Claims that were timely filed and prepare this Other Claims Report. Id. In this Report, the Receiver is required to make a recommendation to the Court as to: (i) the allowability and amount of such Other Claim; and (ii) the priority of each Othe Claim. Id. To the extent any Other Claim is objectionable, the Receiver is required to state the basis for such objection in this Report. Id.
- 5. If Other Claimants disagree with the Receiver's objection to the portion of the Other Claims Report related to their Claim, they may file a written objection to the Other Claims Report within 14 days after the filing of the Other Claims Report. *Id.* If no objection to the Other Claims Report is timely filed, the Other Claims Report shall be the final, binding determination on each Other Claim. *Id.* If the parties are unable to resolve any disputes concerning the Other Claims Report, they will be brought to the Court for adjudication. *Id.*

B. CATEGORIES OF CLAIMANTS AND OBJECTIONS

6. Thirty-Seven Other Claims were filed by the Bar Date. The total sum of the filed Other Claims is \$10,069,184.72. Attached as <u>Exhibit A</u> to this Report is a table which provides a list of each claim and a recommendation as to its allowability and priority. The Receiver has organized the classes below in order of his recommended priority. A summary of the Receiver's recommendations, each of which is explained in detail herein, is demonstrated in the table below:

		Receiver's Recommendation		
	Filed Claims	Allowed Claims		
i. Secured Tax Claim of Van Zandt County	\$93,959.99	\$0.00		
ii. General Unsecured Trade Claims	\$260,466.47	\$207,173.88		
iii. Investor Claims filed as Other Claims	\$4,100,470.07	\$43,504.00		
iv. Judgment Holders	\$5,614,288.19	\$179,302.08		
GUC Class Priority	\$10,069,184.72	\$429,979.96		
iv. Judgment Holders [Subordinated Portion]		\$5,426,243.34		

i. Secured Tax Claim of Van Zandt County

7. A claim was filed by the Van Zandt Appraisal District for ad valorem property taxes secured by a tax lien arising under Section 32.01 and 32.05 of the Texas Property Tax Code in the amount of \$93,959.99. This claim was secured by certain property located at 17389 I-20 S. Access Road, Canton, Texas 75103 (the "Canton Property"). The Receiver sold the Canton Property pursuant to the Order Granting Receiver's Motion to Approve the Sale of Certain Real Property and Related Improvements in Canton, Texas (the "Canton Sale Order"). Consistent with the Canton Sale Order, the property taxes due and owing to the Van Zandt Appraisal District were paid at the closing of the sale of the Canton Property. Accordingly, this claim is moot and is designated as such on Exhibit A.

ii. General Unsecured Trade Claims

- 8. The General Unsecured Trade Claims (the "GUCs") are claimants to whom POA owed money for the purchase of goods or services prior to the appointment of the Receiver on April 30, 2024. There were 10 GUCs filed totaling \$260,466.47. Of the 10 GUCs filed, three are listed as "moot". Three were related to goods and services provided by trade creditors performing work at 3204 Overcup Drive, Austin, Texas 78704 (the "Overcup Property") prior to the appointment of the Receiver. As the Receiver has detailed in previous status reports, the Overcup Property is owned by POA and, at the time of the appointment of the Receiver, was in the construction process. POA had failed to pay those creditors at the Overcup Property, and they had stopped doing work and, in some instances, recorded mechanics and materialmen's liens on the Overcup Property.
- 9. Once the Receiver took over the construction process at the Overcup Property, he determined it was in the best interest of the Receivership Estate to remit payment to these trade creditors so that they would (a) remove their liens; and (b) finish their work. The Receiver has made payment to three of those GUCs in the aggregate amount of \$46,005.59 in order to progress the Overcup Property towards completion so that the Receiver can monetize the Overcup Property³. Because those three claims have previously been paid in order to advance the administration of the Receivership Estate, they are categorized as moot on Exhibit A.
- 10. One other GUC is listed as "Disallowed (duplicate)", which is that of Zack Construction because it filed the same claim twice. Accordingly, one of the claims of Zack Construction a trade creditor that did pre-receivership work at the Canton Property is objected to on the basis of it being a duplicate.

³ The Receiver was expressly granted this authority in the Claims Order. See <u>Claims Order</u>, ¶ 7(a) ("In the course of administration of the Receivership Estate, the Receiver may, in his sole discretion, pay Other Claims prior to the filing of the Other Claims Report so long as such information is noted on the Other Claims Report when filed.").

iii. Investor Claims filed as Other Claims

- 11. As detailed above and in the Claims Order, Investor Claims are not Other Claims (*i.e.*, such holders are not creditors) and therefore were not required to, nor were they supposed to, file Other Claims. Nevertheless, 13 Other Claims were filed by 12 Investor Claimants. The total dollar amount of Investor Claims filed as Other Claims is \$4,100,470.07. As detailed in Exhibit A, each of these Investor Claims that were filed as Other Claims are objected to by the Receiver. The basis for such objection is that they are not Other Claims and should not have been filed as such.
- 12. To be clear, the Receiver is not taking the position that the investors that filed Other Claims have no claim and will get no distributions. Rather, they are being objected to as Other Claims because they are not Other Claims, and will instead be treated as Investor Claims. The Receiver recommends that Investor Claims, as reconciled by the Receiver through the Investor Claims Process, (not the 13 filed as Other Claims) have priority over the Judgment Holders, as detailed below.
- 13. One Investor Claimant, Tordun Holdings, filed an Other Claim seeking a redemption of their equity interest in the amount of \$108,750.68 and an attorneys' fees claim in the amount of \$43,504 related to pre-receivership litigation against POA that was stayed as a result of the Receivership Order. The Receiver objects to the redemption claim on the basis that it is not an Other Claim and Tordun does not have standing to assert an Other Claim and is rather restricted to its Investor Claim being addressed in the Investor Claims Process as contemplated in the Claims

Order. With respect to the attorneys' fees portion of the claim, the Receiver recommends that such amounts be allowed and afforded the same priority as the GUCs⁴.

iv. Judgment Holders

- 14. Prior to the appointment of the Receiver, certain investor members in POA filed lawsuits and obtained judgments against POA and other parties (the "Judgment Holders"). Certain of those Judgment Holders have filed Other Claims. Eight of the Judgment Holders⁵ obtained judgments for damages arising from the purchase of their membership interests in POA. Four of the Judgment Holders⁶ obtained judgments related to their claims against POA for access to books and records. All of the Judgment Holders' judgments contain attorneys' fees awards and some of the Membership Judgment Holders judgments contain additional monetary components related to interest and penalties for POA's failure to comply with court orders prior to the appointment of the Receiver. The total dollar value of the Judgment Holders' Other Claims is \$5,614,288.19.
- 15. The issue of the allowance and priority of these claims is of critical importance in this receivership. The Judgment Holders are seeking to be paid in full, as creditors, before Investor Claimants receive any distributions from the Receivership Estate. If that occurs, it will materially impact the recovery that Investor Claimants not holding judgments obtain because it will reduce the distributable proceeds by more than \$5.6 million. In order to avoid this inequitable outcome, the Receiver makes the following proposals with respect to the Membership Judgment Holders and the Record Judgment Holders.

⁴ As detailed herein, the Receiver proposes allowance of certain attorneys' fees claims. To be clear, however, the Receiver is only proposing that attorneys' fees claims that are being allowed (i) are for the amounts that were filed by the Bar Date; and (ii) are not for any attorneys' fees incurred after the appointment of the Receiver.

⁵ These Judgment Holders are referred to as the "*Membership Judgment Holders*" and are listed as such in <u>Exhibit A</u>.

⁶ These Judgment Holders are referred to as the "Record Judgment Holders" and are listed as such in Exhibit A

Membership Judgment Holders. Because the damages that form the basis the Membership Judgment Holders judgments arise from their purchase of membership interests in POA, they have effectively converted their membership interests in POA into judgments that they wish to be treated as creditor claims. Accordingly, the Receiver proposes that the Membership Judgment Holders Other Claims should be subordinated to the Investor Claimants and not paid until Investor Claimants have been paid the full amount of their adjudicated claim⁷. To be clear each of the Membership Judgment Holders also have Investor Claims, which will remain undisturbed. These claimants did incur attorneys' fees in the prosecution of their claims for which they should receive some credit. Accordingly, the Receiver proposes that the attorneys' fees portion of the Membership Judgment Holders Other Claims be separately allowed and afforded the same priority as the GUCs. The Receiver submits that this proposal puts the Membership Judgment Holders on equal footing with the Investor Claimants and they will not be punished (nor afforded favorable treatment) for having hired a lawyer and asserted their rights.

attorneys' fees claim in connection with their claim for books and records that was awarded to them in their judgments. The Record Judgment Holders judgments do not contain damages arising from the purchase of their membership interests. Accordingly, the Receiver proposes that the attorneys' fees claimed in the Record Judgment Holders Other Claims be allowed and afforded the same priority as GUCs. The Receiver submits that this proposal puts the Record Judgment Holders on equal footing with the Investor Claimants and they will not be punished (nor afforded favorable treatment) for having hired a lawyer and asserted their rights.

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⁷ The Receiver further submits and requests that the Court order that the subordinated portion of any Membership Judgment Holders' Other Claim may not be used to offset any claims the Receiver may have against any Membership Judgment Holder unless (i) there is a recovery on account of the subordinated portion of the Membership Judgment Holders Other Claim, and (ii) then only to the extent of such recovery.

- 18. The Receiver submits that this is the most equitable way to order the priority of payment with respect to the equity stakeholders in this case. Tex. Civ. Prac. & Rem. Code § 64.004 provides that "[u]nless inconsistent with this chapter or other general law, the rules of equity govern all matters relating to the appointment, powers, duties, and liabilities of a receiver and to the powers of a court regarding a receiver." There is a dearth of state law interpreting priority of payments in a receivership under Texas state law. However, there is an abundance of federal case law contemplating priority of payments in equity receiverships, the reasoning of which this Court should adopt.
- 19. A district court has "broad powers and wide discretion to determine the appropriate relief in an equity receivership." SEC v. Safety Fin. Serv., Inc., 674 F.2d 368, 372-73 (5th Cir. 1982). In approving a distribution plan of receivership funds, "the district court, acting as a court of equity, [is] afforded the discretion to determine the most equitable remedy." SEC v. Forex Asset Mgmt. LLC, 242 F.3d 325, 332 (5th Cir. 2001). The court's "primary job . . . is to ensure that the proposed plan of distribution is fair and reasonable." SEC v. Wealth Mgmt. LLC, 628 F.3d 323, 332 (7th Cir. 2010) (citing Official Comm. of Unsecured Creditors of WorldCom, Inc. v. SEC, 467 F.3d 73, 84 (2d Cir. 2006)). In crafting an equitable plan of distribution, the court is not bound to follow any particular plan or method of distribution simply because it is "permissible under the circumstances." United States v. Durham, 86 F.3d 70, 73 (5th Cir. 1996). The court is afforded broad discretion to determine "a logical way to divide the money," and tailor a distribution plan accordingly. Forex, 242 F.3d at 331 (citing Durham, 86 F.3d at 73); see also Wealth Mgmt. LLC, 628 F.3d at 333 ("[D]istrict courts supervising receiverships have the power to 'classify claims sensibly." (quoting SEC v. Enter. Tr. Co., 559 F.3d 649, 652 (7th Cir. 2009))).

- 20. The Receiver submits that his proposed order of priority is the most sensible and most equitable. To allow the Judgment Holders to receive 100% of the amounts contemplated in their judgments before Investor Claimants receive any funds at all would be inequitable because it would in effect be a ruling that investors in POA that had superior information about the conduct of the Fund and/or the resources to hire a lawyer and turn their equity interests into a judgment should be afforded *much* better treatment than the investors that may not have had similar information or resources to hire counsel. Additionally, allowing the Judgment Holders to receive 100% of the amounts contemplated in their judgments before Investor Claimants receive any funds has the snowball effect of diluting the remaining Investor Claimants recovery pool by \$5.6 million further diminishing the ultimate recovery to Investor Claimants.
- 21. Some of the Membership Judgment Holders have filed Abstracts of Judgment creating judgment liens on certain property owned by POA. To the extent the Court thinks it is necessary that any liens be unwound and their secured status undone before approving the subordination suggested herein, the Receiver anticipates initiating a lawsuit soon under Chapter 24 of the Tex. Bus. Comm. Code to avoid those liens as constructively fraudulent transfers⁸.

v. The IRS

22. As the Receiver has noted in his *Third Status Report*, he has discovered that POA failed to file tax returns for the past seven years. Weaver & Tidwell is currently in the process of constructing those late tax returns to be filed. The Receiver, through Weaver and Tidwell, is investigating the potentially significant late fees and/or penalties which might be assessed as a

⁸ The Receiver is aware of Section 8(d) of the Receivership Order, which provides that "[t]o the extent the Receiver desires to commence a new cause of action that collaterally attacks a previously signed order, he will first need to request approval by the Court." The Receiver submits that commencing such an action is not in violation of Section 8(d) of the Receivership Order because it will not be attacking any order or judgment previously signed. Instead it will be attacking the filing of the abstract of judgment which created the judgment lien.

result of the late filings. The Receiver is working with his tax professionals and counsel in an effort to mitigate or eliminate any such potential liabilities, but to the extent that one exists, this Report may be amended to address the liabilities, if any, to the IRS.

WHEREFORE, the Receiver requests the Court approve the Report and grant any further relief to which the Receiver may show himself entitled.

Dated: January 20, 2025 Respectfully submitted,

HOLLAND & KNIGHT LLP

By: <u>/s/ Trip Nix</u>

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ATTORNEYS FOR GREGORY S. MILLIGAN, RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that, on January 20, 2025 a true and correct copy of the foregoing motion was served electronically upon all counsel of record via eFileTexas.

<u>/s/ Trip Nix</u> Trip Nix



						Receiver's Recommendations for:
Claim ID	Date Filed	Creditor Name	Basis For Claim	Amount of Filed Claim	Allowable Amount of Claim	Priority of Claim
Secured Tax Claim of 35116323	of Van Zandt County 7/9/2024 Van Zandt Ap	opraisal District	Ad Valorem Taxes; Secured by Tax Lien Sec. 32.01 and 32.05 of the Texas Property Tax	\$93,959.99	\$0.00 Mo	oot
			Code. Secured to extent of collateral value	\$93,959.99	\$0.00	
eneral Unsecured				. ,		
35115997	7/8/2024 Barrett Floori		Work performed (tile + flooring)	\$25,679.40	\$0.00 Mc	
35887153		uxe / CCG Development, LLC	Custom Cabinets	\$17,692.50	\$0.00 Mg	
35914889		Holdings, LLC dba Harney Partners	Professional fees/ expenses	\$25,938.80		UC Class Priority
35916985	10/15/2024 Holland & Kn	. 	Legal fees	\$23,972.50		UC Class Priority
35914999	10/15/2024 Husch Black	Well LLP C d/b/a Macauley Technologies	Legal fees	\$125,236.03		UC Class Priority
35914760 35111076	6/28/2024 Macadiey LL		Unpaid goods/services Legal fees	\$2,633.69 \$17,995.50		UC Class Priority UC Class Priority
35912022		scape Group dba TurfPro Landscape Design	Unpaid invoices for landscaping/draingage	\$6,744.05		UC Class Priority UC Class Priority
35833943	9/4/2024 Zack Constru		Work completed	\$7,287.00		UC Class Priority
35833928		uction Co, LLC (Duplicate of 35833943)	Work completed	\$7,287.00		sallowed (Duplicate)
		action 60, EEO (Duplicate of 33033343)	work completed	\$260,466.47	\$209,807.57	Sanowed (Duplicate)
vestor Claims filed 35111607	d as Other Claims 7/1/2024 Bruner, Allys		Invested capital + reinvested dividends	\$110,279.88	\$0.00 Di	sallowed as not an Other Claim
35116438		on (Duplicate of 35111607)	Invested capital + reinvested dividends	\$110,279.88		sallowed as not an Other Claim
35120951	7/30/2024 Daugherty, N		Throdou daphar Tomrodou arriadhad	\$242,000.00		sallowed as not an Other Claim
35120953	7/30/2024 Digss, Barba			\$63,750.00		sallowed as not an Other Claim
35120955		ra, Custodian for Chajuann Little Field		\$12,750.00		sallowed as not an Other Claim
35109732	6/18/2024 Foskey, Mere		Invested capital	\$60,000.00		sallowed as not an Other Claim
35109584	6/25/2024 Grasso, Joe,		Invested capital	\$1,750,000.00	\$0.00 Di	sallowed as not an Other Claim
35887150	9/14/2024 Kovich, Mich	ael Peter	Traditional IRA	\$377,682.98	\$0.00 Di	sallowed as not an Other Claim
35109725	6/11/2024 Middleton, R	obert	Invested capital	\$794,922.42	\$0.00 Di	sallowed as not an Other Claim
35109724	6/11/2024 Middleton, St	usan	Invested capital	\$186,893.00	\$0.00 Di	sallowed as not an Other Claim
35744920	8/23/2024 R Stephens I	Family Partnership - 33369	Invested capital	\$200,000.00	\$0.00 Di	sallowed as not an Other Claim
35110469	6/12/2024 Spoon, Glend		Invested capital + reinvested dividends	\$39,657.21		sallowed as not an Other Claim
35914919	10/14/2024 Tordun Holdi	ngs, LLC	Invested capital + attorney fees	\$152,254.70 \$4,100,470.07	\$43,504.00 All \$43,504.00	lowed portion only shall have GUC Class Priority
ludgment Holders				4 ., ,	¥ 10,00 1100	
35894419	9/27/2024 Tolia 2013 R	evocable Trust & Anish Tolia IRA	Membership Judgments	\$506,308.44	\$34,615.11 Gl	UC Class Priority
35894419	9/27/2024 Tolia 2013 R	evocable Trust & Anish Tolia IRA			\$471,693.33 Re	emaining balance of claim subordinated to Investor Claimants
35918295	10/17/2024 Arizpe, John	and Judy	Membership Judgments	\$923,769.62		UC Class Priority
35918295	10/17/2024 Arizpe, John	and Judy			\$903,194.33 Re	emaining balance of claim subordinated to Investor Claimants
35918294	10/17/2024 Gardner, Ric	hard and Lorena	Membership Judgments	\$378,773.85		UC Class Priority
35918294	10/17/2024 Gardner, Ric	hard and Lorena	· ·		\$358,198.56 Re	emaining balance of claim subordinated to Investor Claimants
35918299		ia Lloyd, Individually and as the Independent Executor of the Estate Lloyd, deceased, and on behalf of the James L. Lloyd IRA and	Membership Judgments	\$1,722,012.56	\$10,287.64 GU	UC Class Priority
25040200	James L. Llo				¢4 744 704 00 Da	amaining halanga af alaim auhardinatad ta laucatar Claimant
35918299	-	ia Lloyd, Individually and as the Independent Executor of the Estate Lloyd, deceased, and on behalf of the James L. Lloyd IRA and			\$1,711,724.92 RE	emaining balance of claim subordinated to Investor Claimant
	James L. Llo					
35918298	10/17/2024 Walton, Jeffr	^	Membership Judgments	\$816,251.97	\$43,277.67 GU	UC Class Priority
35918298	10/17/2024 Walton, Jeffr	ey	, ,	. ,	\$772,974.30 Re	emaining balance of claim subordinated to Investor Claimant
35917000	10/14/2024 Eagle Eye Ro Ehrenfeld Ir	evocable Trust (Superseding (Claim # 35917020, Lesley	Record Judgments	\$8,742.77	\$8,742.77 Gl	UC Class Priority
35917020		feld Irrevocable Trust (superceded by 35917000, Eagle Eye Rev.	Record Judgments	\$8,742.77	\$0.00 Di	sallowed as Superseded
35152414	8/13/2024 Gousman 20	13 Fam Trust	Record Judgments	\$8,742.77	\$8,742.77 Gl	UC Class Priority
35887148	9/16/2024 O'Connor, Da		Membership Judgments	\$388,479.87		UC Class Priority
35887148	9/16/2024 O'Connor, Da					emaining balance of claim subordinated to Investor Claimants
35887224	9/16/2024 O'Connor, M		Membership Judgments	\$294,330.77		UC Class Priority
35887224	9/16/2024 O'Connor, M					emaining balance of claim subordinated to Investor Claimant
35918452	10/21/2024 Parate, Milino		Record Judgments	\$8,742.77		UC Class Priority
35887142		n and Courtenay, Trustees of the Wallpe Family Trust of 2008	Record Judgments	\$8,742.77		UC Class Priority
35887222	9/16/2024 Wootten, Gra		Membership Judgments	\$540,647.26		UC Class Priority
35887222	9/16/2024 Wootten, Gra	aham				emaining balance of claim subordinated to Investor Claimants
				\$5,614,288.19	\$5,069,898.16	