

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

Commodity Futures Trading Commission,

Plaintiff,

vs.

Case No. 3:17-cv-774-J-32MCR

Jason B. Scharf (d/b/a Citrades.com and  
AutoTradingBinary.com); CIT Investments  
LLC; Brevspand EOOD; CIT Investments  
Ltd.; A&J Media Partners, Inc.; Michael  
Shah; and Zilmil, Inc.

Defendants.

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**JOINT MOTION OF RECEIVER AND ERIC SHAH, MANOJ SHAH, AND SUJATA  
SHAH FOR APPROVAL OF SETTLEMENT AGREEMENT AND ERIC SHAH,  
MANOJ SHAH, AND SUJATA SHAH’S REQUEST FOR BAR ORDER**

Kenneth Dante Murena (“the Receiver”), and Eric Shah, Manoj Shah, and Sujata Shah (together the “Shah Family”), notify the Court of their settlement in the matter styled *Kenneth Dante Murena, as Receiver for Zilmil, Inc. v. Eric Shah, Manoj Shah, and Sujata Shah*, Case No.: 3:19-cv-00856-TJC-PDB (the “Ancillary Case”), and jointly move the Court for approval of the Settlement and Release Agreement entered into by the parties, and the Shah Family seeks the entry of a bar order enjoining the parties in the instant matter (the “Main Case”), and other parties that have received actual notice of the Main Case, from bringing claims against the Shah Family for matters relating to Zilmil, Inc., and in support thereof, respectfully state:

**I.**

**Introduction**

The Receiver and the Shah Family have entered into a Settlement and Release Agreement that is subject to the Court’s approval (the “Settlement Agreement”), a copy of which is attached

hereto as **Exhibit A**. In exchange for the Shah Family paying the sum of One Million Three Hundred Forty-Seven Thousand Five Hundred Dollars (USD) (\$1,347,500.00) (the “Settlement Amount”) to the Receiver, the Shah Family will receive a full and general release of all claims of the Receiver against the Shah Family. The Settlement Agreement further provides for the Shah Family to seek the entry of a bar order (the “Bar Order”) enjoining (i) all parties in the Main Case and (ii) all persons who received actual notice of the Main Case, from bringing any claims against members of the Shah Family that relate to their dealings with Zilmil, Inc. (“Zilmil”) and Michael Shah (“Michael Shah, and together with Zilmil referred to as the “Zilmil Defendants”).

The parties request that the Court approve the Settlement Agreement and the entry of the proposed order attached to the Settlement Agreement as Exhibit A (“Approval Order”) and the Shah Family requests that the Approval Order includes a Bar Order attached hereto as **Exhibit B**.

## II.

### **Background and Joint Motion to Approve Settlement Agreement**

1. The Receiver, pursuant to his authority granted in the Main Case, filed the Ancillary Case on July 23, 2019, seeking to recover certain transfers allegedly made to the Shah Family by the Zilmil Defendants.

2. The Shah Family vigorously disputed the allegations made by the Receiver in the Ancillary Case. After months of active litigation, an initial mediation and the completion of significant discovery, the Receiver and the Shah Family participated in a second mediation and subsequent negotiations which resulted in an agreement to settle all matters between them with, without any admission of liability or wrongdoing by the Shah Family. The Shah Family and the Receiver executed the Settlement Agreement on September 10, 2020.

3. The Settlement Agreement provides for, *inter alia*, the following terms:

a. The Settlement Agreement is conditioned upon Court approval and the entry of the Approval Order.<sup>1</sup>

b. The Shah Family pays the Settlement Amount to the Receiver within the later of (i) sixty (60) days after the date of the Settlement Agreement or (ii) fifteen (15) days after the Court's entry of the Approval Order.

c. The Receiver and the Shah Family file a joint stipulation for dismissal of the Ancillary Case, with prejudice.

d. The Receiver and Eric Shah file an agreed Order in the Main Case denying the Receiver's Motion for Imposition of Constructive Trust on Funds, Assets, and Real Property Traceable to Zilmil, Inc. [ECF No. 268] as moot with respect to Eric Shah, with prejudice.<sup>2</sup>

e. The Receiver executes standalone general releases of the Shah Family and related persons in conformity with the Settlement Agreement.

4. The Receiver has diligently investigated all claims he believes he could have brought against the Shah Family. Among other things, the Receiver obtained thousands of pages of documents relating to Zilmil and the Shah Family, deposed multiple witnesses during the Ancillary Case, and engaged in multiple mediations and conferences with the Shah Family and their counsel. The Receiver's claims against the Shah Family involve disputed facts and legal issues that would require substantial time and expense to litigate further, with uncertainty as to the

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<sup>1</sup> The Settlement Agreement, while contingent upon the entry of an Approval Order, is not contingent upon inclusion of the Bar Order in the Approval Order. *See Exhibit A* at Section II.A and II.E. The inclusion of the Shah Family's ability to seek the Bar Order was a material inducement for their agreement to the Settlement Agreement and payment of the Settlement Amount.

<sup>2</sup> Further, the Receiver has filed, with Defendant Michael Shah, a Joint Motion of Receiver and Defendant Michael Shah for Approval of Settlement Agreement and for Related Relief [ECF No. 305] to approve a settlement with Michael Shah, which is also contingent upon Court approval.

outcome of such litigation and any ensuing appeal. Throughout the litigation of the Ancillary Case, the Receiver and Shah Family were each represented by experienced and diligent counsel who vigorously advanced their respective client's position, creating the risk of litigation in terms of time, expense and uncertainty of outcome.

5. If approved, the Settlement Agreement will result in a substantial recovery for the Receivership Estate. Because the Settlement Amount is a reasonable calculation of the Receiver's risk-adjusted recovery should the Ancillary Case proceed to trial, and collection, the terms of the Settlement Agreement are fair, reasonable, and beneficial to the Receivership Estate.

### **III.**

#### **Shah Family's Motion for Bar Order**

6. The Bar Order is a key settlement term for the Shah Family. The Shah Family seeks a global resolution with respect to all claims that could be asserted against them concerning their former relationship with Zilmil and any transfers from the Zilmil Defendants. The parties affected by the Bar Order will be limited to only those parties that have received actual notice of the Main Case and would be creditors or victims of the Zilmil Defendants previously apprised of the Receivership Estate and the potential to recover for transfers made by the Zilmil Defendants to the Shah Family.

7. Specifically, the Bar Order will apply only to the following persons or entities: (i) Jason B. Scharf, individually and d/b/a Citrades.com and AutoBinaryTrading.com, (ii) CIT Investments, LLC, (iii) Brevspand EOOD, (iv) CIT Investments, Ltd., (v) A&J Media Partners, Inc., (vi) Michael Shah, (vii) Zilmil, Inc., (viii) the Commodities Futures Trading Commission, and by extension, the United States of America, and (ix) the other persons who have received

actual notice of the Main Case, including any who received a claims notice or filed a claim pursuant to the Receiver's Motion to (A) Approve Noticing of Claims Process and (B) Plan of Distribution filed in the Main Case [ECF No. 229] (the "Claims Process").

8. The Shah Family propose that the Court set a hearing on this Motion to occur no earlier than thirty (30) days after the filing of this Motion, so that any affected parties may appear and have any objections to the relief sought herein considered by the Court before the entry of an Approval Order with a Bar Order.

### III.

#### **Relief Requested**

The Shah Family respectfully request the entry of the Approval Order, to include the Bar Order, after a hearing on this Motion.

### IV.

#### **Basis for Relief**

"A district court has broad powers and wide discretion to determine relief in an equity receivership." *SEC. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). In actions such as the Main Case and the Ancillary Case, a district court has the power to approve a settlement that is fair, adequate and reasonable, and is the product of good faith after an adequate investigation by the receiver. *See Sterling v. Steward*, 158 F.3d 1199, 1202 (11th Cir. 1998) ("Determining the fairness of the settlement is left to the sound discretion of the trial court and we will not overturn the court's decision absent a clear showing of abuse of that discretion.").

A district court also has the power to enter a "bar order" that permanently enjoins certain third parties from bringing any claims against a settling party that could have been asserted by or through the receivership or in connection with the facts giving rise to the receivership. *See SEC*

*v. Kaleta*, 530 Fed. Appx. 360 (5th Cir. 2013) (approving bar order in receivership). Bar orders are appropriate “to assist the parties in reaching a settlement.” *Matter of Munford, Inc.*, 97 F.3d 449, 455 (11th Cir. 1996) (approving a bar order in a bankruptcy case).

Bar orders such as that being sought in this case have been approved by the Eleventh Circuit and in this District. *See e.g. In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d 1070, 1076 (11th Cir. 2015) (approving a bar order in a chapter 11 bankruptcy case); *In re U.S. Oil and Gas Lit.*, 967 F.2d 480 (11th Cir. 1992) (approving bar order in a class action); SEC v. Nadel, No. 8:09-cv-87-T-26TBM, 2012 U.S. Dist. LEXIS 195974, at \*7 (M.D. Fla. Feb. 10, 2012) (Bar order approved in settlement involving Ponzi scheme receivership case). The Court is further empowered to fix the procedures for the grant of such relief, as long as due process has been afforded to affected persons. *See Elliott*, at 1566.

**A. *The Settlement Agreement is fair, adequate, and reasonable.***

To approve a settlement in an equity receivership, the court must find that the settlement is fair, adequate and reasonable, and not the product of collusion between the parties. *See Sterling*, 158 F.3d at 1203. To determine whether the settlement is fair, the court examines the following factors: “(1) the likelihood of success; (2) the range of possible [recovery]; (3) the point on or below the range of [recovery] at which settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.” *Id.* at 1203 n.6.

The Settlement Agreement should be approved based on an evaluation of the factors in *Sterling*. Before entering into the Settlement Agreement, the Receiver and his counsel carefully considered and dutifully investigated all potential claims of the Receivership against the Shah Family, the defenses asserted by the Shah Family, the delay and expense of continuing to litigate

such claims, the uncertainty of outcome in the litigation and the possibility of the appeal of any adverse outcome. The Receiver entered into the Settlement Agreement after extensive and arm's length negotiations conducted between the Parties and their experienced counsel in good faith. The Settlement Agreement was therefore not the product of collusion.

The entire process of negotiating the terms of the proposed settlement occurred over a period of months, and only after significant discovery and a summary judgment hearing in the Ancillary Case and Main Case. The proposed settlement is the product of well-informed Parties and provides for a payment of \$1,347,500.00 to the Receiver. This recovery is well within the range of reasonableness and will provide the Receiver significant liquidity to maximize the value of the assets owned by the Receivership Entities for the benefit of claimants under the Claims Process and other creditors, including any parties subject to the Bar Order that participate in the Claims Process.

**B. *The Bar Order is Necessary and Appropriate Ancillary Relief.***

*i. The Court has the authority to approve the Bar Order.*

This power to enter bar orders is consistent with the district court's "broad powers and wide discretion to determine relief in an equity receivership [that] derives from the inherent powers of an equity court [to] fashion relief." *See Elliott*, 953 F.2d at 1566. Further the Eleventh Circuit has expressly held that district courts have the power to enter bar orders. *See Seaside Engineering & Surveying*, 780 F.3d at 1081 (affirming entry of a bar order through a chapter 11 plan where "fair and equitable").

*ii. The Court should approve the Bar Order.*

Whether a bar order should be approved turns on the specific facts and circumstance of each individual case. *See Kaleta*, 530 Fed. Appx at 362 ("receivership cases are highly fact-

specific”). In this case, there are ample facts establishing that the Bar Order is necessary and appropriate ancillary relief.

Here, the scope of the Bar Order is limited to those parties that have received notice of the Main Case and are thereby aware of the potential for claims against the Shah Family for transfers received from the Zilmil Defendants. This finite universe of persons, having received actual notice of the Main Case proceeding, will not be denied due process by the imposition of the Bar Order because they have had adequate notice of the proceeding and have had ample opportunity to seek redress.

The limited universe of persons with respect to whom the Bar Order is sought have all received notice of the Claims Process and have the opportunity to file a claim in the Claims Process for any claims against the Zilmil Defendants that would underpin their right to recover against the Shah Family for transfers received by them. Any claims against the Shah Family with respect to the transfers alleged as received would necessarily require that the claimant be a creditor or victim of the Zilmil Defendants in the first place. Further, it has now been over three (3) years after the commencement of the Main Case and more than four (4) years after nearly all of the alleged transfers. As such, the statute of limitations has run for nearly all transfers from the Zilmil Defendants alleged as received by the Shah Family.

In this case, the Receiver has done an ample job of protecting the interest of parties who would be entitled to claim against the Shah Family for any transfers they received from the Zilmil Defendants. The Settlement Amount paid by the Shah Family will provide significant liquidity and funds to satisfy claimants and creditors under the Claims Process, including any brought by any of the parties for whom the Bar Order is sought. The limited number of parties affected by the Bar Order have received notice and an opportunity to be heard on their claims. The entry of

the Bar Order is therefore necessary and appropriate ancillary relief because it is narrow in scope and has been specifically tailored to its unique circumstances of the case. The Shah Family is seeking closure for these issues and a Bar Order provides that.

***C. Imposing the Bar Order Complies with Due Process, as the Impacted Persons Have Been Afforded Notice and an Opportunity to be Heard.***

“Due process requires notice and an opportunity to be heard.” *Elliot*, 953 F.2d at 1566. The procedures required to satisfy due process vary “according to the nature of the right and to the type of proceedings.” *Id.* “[A] hearing is not required if there is no factual dispute.” *Elliot*, 953 F.2d at 1566. Ultimately, due process when considering the entry of a Bar Order requires procedures that are “fair.” *See Id.* As set forth above, the facts of this case satisfy the fairness required.

All parties that will be impacted by the Bar Order have received notice of the Main Case proceeding and have had an opportunity to present their claims. By setting a hearing on the matter, the Court will further ensure that all affected parties have an opportunity to present any objections before the Bar Order is entered. Further, all such parties have the ability to recover amounts owed by the Zilmil Defendants, which is a predicate for any claims against the Shah Family, through the Receiver’s Claims Process. As such, all impacted parties will have received a full and fair opportunity to evaluate claims against the Zilmil Defendants, and by extension against the Shah Family for any transfers received by them, and receive compensation for any such wrongdoing. The affected parties will further have an opportunity to object to the imposition of the Bar Order at a hearing on the matter. It is further anticipated that the amount of funds available will be sufficient to pay 100% of any claims actually brought through the Claims Process, which underscores the fairness of the Bar Order for the Shah Family.

V.

**Conclusion**

WHEREFORE, the Receiver and the Shah Family jointly move for entry of an Order approving the Settlement and Release Agreement, and the Shah Family separately move the Court for inclusion of the Bar Order language in the form attached hereto as **Exhibit B**, and for such further relief as the Court deems just and proper.

**LOCAL RULE 3.01(g) CERTIFICATION**

The undersigned counsel for the Receiver and the Shah Family have conferred and their respective clients agree to the relief requested herein of approval of the Settlement Agreement. Pursuant to the terms of the Settlement Agreement, the Receiver consents to the entry of the Bar Order requested by the Shah Family. Further, the Receiver has conferred with counsel for the CFTC who confirmed that the CFTC consents to the approval of the Settlement Agreement but does not consent to the entry of the Bar Order sought herein.

/s/ Russell Landy  
Russell Landy, Esq.  
Florida Bar No.: 44417

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*Counsel for Eric Shah, Manoj Shah, and  
Sujata Shah*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on September 24, 2020, I electronically filed the foregoing  
with the Clerk of the Court by using the CM/ECF system.

*/s/ Russell Landy*

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Russell Landy, Esq.