

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

FIRST STATE DEPOSITORY COMPANY,
LLC, ARGENT ASSET GROUP, LLC,
AND ROBERT LEROY HIGGINS,

Defendants.

Civil Action No. 22-1266-RGA

MEMORANDUM ORDER

Before me is the Receiver’s Amended Motion for an Order Establishing a Distribution and Claims Adjudication Process. (D.I. 91). The motion is joined by Claimants Maria and Veronica Carrozza. (D.I. 100). The motion is opposed by the Commodity Futures Trading Commission (CFTC). (D.I. 95). The opposition is joined by Claimant Robert Bohli. (D.I. 96). I have considered the briefing (D.I. 91, 95, 101) and joinders (D.I. 96, 100). For the reasons set forth below, the Receiver’s motion is GRANTED.

I. BACKGROUND

This motion arises from a lawsuit by the CFTC against First State Depository Company (“FSD”), Argent Asset Group (“Argent”), and their owner, Robert Leroy Higgins. FSD provided “depository storage services,” storing “precious metals and valuables” for its customers. (D.I. 2 ¶ 16). The complaint alleges that in the course of operating FSD and Argent, Mr. Higgins made various false and misleading statements and misappropriated customer funds and metals. (*See generally* D.I. 2). I granted the CFTC’s motion to appoint Mr. Kelly Crawford (“the Receiver”)

as an equity receiver to secure and recover the Defendants' assets. (D.I. 12, 57). All Defendants are in default. (D.I. 77).

The Receiver retained an accounting firm to inspect the Defendants' premises and review their records. (D.I. 91 at 2). While many assets were located and appropriately associated with customer accounts (D.I. 78 at 2), the missing assets are valued at \$58.9 to \$112.7 million. (D.I. 93 at 2). Many of the assets, missing and found, are "non-fungible, rare collectible items" that could not be immediately valued. (D.I. 78 at 3).

The Receiver's Motion proposes a plan to return all assets being held in custody and to compensate those customers of FSD who had assets missing by liquidating the Defendants' assets and any other excess or unidentified assets. (D.I. 91 at 3). Under the Receiver's plan, customers whose assets were not compromised will recover in full, less administrative expenses, while customers whose assets were compromised will receive whatever of their assets were found and a *pro rata* recovery. *Id.* The first group of uncompromised customers numbers about 1,083 customers (D.I. 82-1 at 10 of 72 tbl.1, hereinafter "Table 1") with assets valued at about \$21-\$31 million (D.I. 82-1 at 11 of 72 tbl.2, hereinafter "Table 2").¹ The second group of compromised customers numbers about 1,013 customers (Table 1) with assets valued at about \$87-\$159 million (Table 2).² For the second group, there are about \$26-\$42 million of assets identifiable with a particular customer (Table 2, D.I. 82-1 at 11 of 72 tbl.3, hereinafter "Table

¹ I reach 1,083 customers by summing 1,065 customers with no discrepancies and 18 customers with strictly excess inventory. For this and the following ranges of asset valuations, I round the lower bound down to the nearest whole million and upper bound up to the nearest whole million.

² I reach this range of valuations by summing the lower bounds of the found and missing assets and the upper bounds of the same reported in Table 2 and then rounding as described above in note 1.

3”)³ and commingled assets of about \$8-\$12 million available for distribution (Table 3),⁴ meaning that on average the second group is looking at a recovery of about 34-39%.⁵ If recovery were to be pro rata across all customers, on average all customers would be looking to recover about 42-46%.(Table 2, 3).⁶ The CFTC opposes the Receiver’s Motion to the extent that it does not provide for a *pro rata* distribution across all customers—uncompromised and compromised. (D.I. 95 at 1-2).

II. DISCUSSION

The Receiver and the CFTC agree that “a *pro rata* distribution is the most fair and equitable method of distribution in an equity receivership.” (D.I. 101 at 1). I, too, agree. The only disputed issue is whether those assets that “sit in segregated boxes in the vault of Defendant’s depository with the customer’s account number” (the “Located Assets”)⁷ are part of the receivership estate. *Id.* If they are part of the receivership estate, then they may be distributed on a *pro rata* basis either through liquidation or, for fungible assets, directly. However, if they are

³ Some compromised accounts are missing some assets but have extras of others. The tables do not report precisely how much is associated with compromised accounts but is not excess. This is a rough estimate inferred from the information provided.

⁴ I am counting the following as commingled assets, as reported in Table 3: Excess Inventory, Unassigned/Argent, R. Higgins’ Related Accounts. I rounded the ranges as described in note 1.

⁵ I ballpark average recovery by calculating recovery using all low estimates (39%) and all high estimates (34%), rounding to the nearest percent. For any individual, recovery may be substantially less than average, particularly for individuals for whom no inventory has been located. For them, using the same method as above, I estimate the likely recovery as closer to 10-13%.

⁶ I am calculating the overall pro rata average by simply using the total amount found versus the total amount that should have been found.

⁷ What I am calling the “Located Assets” does not include assets of customers registered for FSD’s “Silver Lease Program,” who “granted the Defendants ‘control’ over their silver.” (D.I. 101 at 2 n.1). The Receiver proposes to handle these customers’ recovery separately, and the CFTC does not seem to dispute this.

not part of the receivership estate, they must be returned to the customers to whom they belong. For the following reasons, I reluctantly conclude that they are not part of the receivership estate.

The Receiver argues that FSD's customers, and not the Defendants, hold title to the Located Assets. He notes that the assets are not "merely . . . traceable" but were actually "segregated in the manner of true trust accounts." *SEC v. Credit Bancorp*, 290 F.3d 80, 90 (2d Cir. 2002). The customers "did not ever authorize the Defendants to exercise any control over the assets." (D.I. 101 at 2). The Receiver likens these assets to those in safety deposit boxes at banks. He notes, "A receivership of a bank or a storage facility does not entitle the receiver to liquidate the assets in the safety deposit boxes or the storage units." *Id.*

The Receiver argues that because the customers continue to hold title to the Located Assets, under *SEC v. Black*, the assets must be returned. (D.I. 101 at 4). In that case, the Third Circuit affirmed the release and return of frozen funds from a receivership because "the Defendants did not have 'control' . . . so as to permit [the court] to freeze the funds." *SEC v. Black*, 163 F.3d 188, 196 (3d Cir. 1998). The Receiver also compares the present situation to a bankruptcy proceeding, where "assets lawfully held in trust" would not be part of the bankruptcy estate. (D.I. 101 at 6 (citing *City of Philadelphia v. Lieberman*, 112 F.2d 424, 426 (3d Cir. 1940))).

The CFTC takes the position that the Located Assets should be combined with the rest of the assets and distributed *pro rata* to all of FSD's customers. The CFTC notes that the return of the Located Assets would constitute "tracing," in which "customers who can trace their funds to a specific account or location have those funds returned in full, while customers who cannot do so are deprioritized." (D.I. 95 at 3). The CFTC then observes that "for purposes of equity, tracing principles can be suspended." *CFTC v. Eustace*, 2008 WL 471574, at *7 (E.D. Pa. Feb. 19,

2008) (citing *Cunningham v. Brown*, 265 U.S. 1 (1924)). The CFTC argues that any ownership by FSD customers is merely a matter of “contractual obligation” (D.I. 95 at 4), and that, at least in some Circuits, a “court is not required to distributed the assets in accordance with the contractual rights of the parties.” *SEC v. Quan*, 870 F.3d 754, 762 (8th Cir. 2017). The CFTC also argues that the FSD customers’ assets were “actually controlled by Defendants” because they were held on Defendants’ premises (D.I. 95 at 6), and “Defendants essentially treated FSD as their personal piggy bank.” (*Id.* at 8).

The CFTC further argues that neither principles from bankruptcy nor *Black* apply to the present case. The CFTC cites *Eustace*, which notes, “When an equity receivership is involved, case law concerning equity receiverships is generally more applicable than bankruptcy case law.” 2008 WL 471574, at *7. Then, the CFTC distinguishes between the level of control here and in *Black*, because the assets released in *Black* were held by third party financial institutions. The CFTC argues that in *Black* and similar cases, “the traceable proceeds were placed beyond the control of the defrauding entity.” (D.I. 95 at 7 (citing *SEC v. Bivona*, 2017 WL 4022485, at *7 (N.D. Cal. Sept. 13, 2017))).

I first note that none of the cases cited by either the Receiver or the CFTC concern the return or redistribution of physical assets, some of which are non-fungible, as is the case here. Thus, none applies cleanly to the present case.

Overall, I agree with the Receiver that FSD customers still hold title to the Located Assets. Their claims are more than a matter of mere “contractual rights.” Therefore, I think this is not simply an application of tracing. I defined the Receivership Estate—in an order drafted by the CFTC—as “all of the funds, properties, premises, accounts, income, now or hereafter due or owing to the Defendants, and other assets directly or indirectly owned beneficially or otherwise,

by the Defendants.” (D.I. 57 ¶ 60). If FSD customers still hold title to the Located Assets, they seem to fall outside this definition.

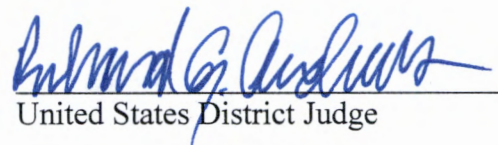
While Defendants did exercise more control over assets stored with FSD than a bank would have with a customer’s items placed in a safe deposit box, Defendants still exercised less control than in cases such as *Black*, where the defendant was authorized to manage client funds. *Black*, 163 F.3d at 192.

Although bankruptcy cases are not binding on my decision here, as equity proceedings, they are informative about how to treat assets held for others. The consensus in bankruptcy cases seems to be that such assets are not part of the bankruptcy estate. See *Torkelsen v. Maggio (In re Guild & Gallery Plus)*, 72 F.3d 1171, 1179-80 (3d Cir. 1996) (citing *United States v. Whiting Pools*, 462 U.S. 198 (1983)); *Lieberman*, 112 F.2d at 426. I think the same conclusion is sensible here.⁸

Therefore, the Receiver’s Motion (D.I. 91) is GRANTED, and I will sign the Receiver’s proposed order (D.I. 91, Ex. 2).

IT IS SO ORDERED.

Entered this 15 day of February, 2023


United States District Judge

⁸ I note that the Receiver’s plan is simpler than the CFTC’s and thus may be less expensive and more expeditious to implement. One consequence of the CFTC’s proposal is that it seems likely almost all the assets would have to be liquidated, and that decisions would have to be made asset-by-asset. The Receiver’s plan anticipates that a much greater percentage of the assets will not have to be liquidated. I mention this in a footnote because I see this as a collateral benefit of the Receiver’s plan, but not a reason to adopt the Receiver’s plan.

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FIRST STATE DEPOSITORY COMPANY,
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AND ROBERT LEROY HIGGINS,

Defendants.

CASE NO.: 1:22-cv-01266-RGA

~~[PROPOSED and AMENDED]~~ ORDER GRANTING
THE RECEIVER'S MOTION FOR ORDER ESTABLISHING
A DISTRIBUTION AND CLAIMS ADJUDICATION PROCESS

On this date, the Court considered the Receiver's ^{Amended} Motion for Order Establishing a
Distribution and Claims Adjudication Process ^(D.I. 91) (the "Motion").

The Court finds the Motion is just and appropriate and should be granted.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. DEFINITIONS.

Unless the context otherwise requires, the following terms shall have the meanings specified below:

1.1 **Approved Claim:** A Claim that has been timely filed with the Receiver and has been approved by the Court.

1.2 Claim:

a. Any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured, which right arose or accrued prior to September 29, 2022; or

b. Any right to an equitable remedy for breach of performance if such right gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, where such right arose or accrued prior to September 29, 2022; or

c. Any right to payment arising from the rejection by the Receiver of an executory contract or as a result of the Receivership Defendants' failure to complete its obligations under a lease; or

d. Any right to payment from the assets held by the Receiver.

1.3 Claimant: Any person, corporation, or other entity entitled to assert a claim against the Receivership Defendants, the Receiver, or against any property owned by the Defendants, or property in the possession of the Receiver, and includes the holder of a Depository Claim, an Unsecured Creditor Claim, a Secured Claim, a Silver Lease Claim, or a Purchase Money Claim.

1.4 Claims Bar Date: Forty five (45) days from the date of this Order. The deadline by which Claims must be received by the Receiver, or if mailed to the Receiver, the deadline by which the Claim must be postmarked. Untimely Claims will not be allowed unless further ordered by this Court.

1.5 Claims Report: The Receiver’s report filed with the Court describing the Claims received by the Receiver and setting forth his recommendations concerning those Claims.

1.6 Compromised FSD Customer: An FSD customer whose holdings at the FSD premises have been compromised and have valuables not located by the Receiver from what should be at the premises assigned to that FSD customer, or have different valuables at the FSD premises assigned to that FSD customer than should be present.

1.7 Comprised FSD Customer – Lease Program: A Compromised FSD Customer who participated in The Maximus Program or Silver Lease Program, as identified in the Plaintiff’s Complaint.

1.8 Consignment Claim: A Claimant who delivered metals, coins, or other valuables they own to one of the Defendants to sell on their behalf to a third party, and either the valuables were sold by the Defendants and the proceeds of such sale were not delivered to the Claimant, or the Defendants are in possession of the metals, coins, or other valuables of the Claimant.

1.9 Court: The United States District Court for the District of Delaware, assigned Civil Action No. 1:22-cv-01266-RGA.

1.10 Depository Claim: A Claim by a person or entity, acting on their own behalf, or on behalf of someone else, who deposited metals, currency, or other valuables with Defendant First State Depository Company, LLC for storage., and the person or entity did not participate in the Silver Lease Program or the Maximus Program.

1.11 Proof of Claim: The Proof of Claim form attached as Exhibit A to the *Claims Motion* and hereby approved.

(D, 1. 91-3)

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1.12 Purchase Money Claim: A Claimant who directly, or through their custodian, provided monies to any of the Receivership Defendants to purchase metals or other assets on their behalf, and the metals or assets were not purchased or delivered to the Claimant or the Claimant's designee.

1.13 Receiver: Kelly M. Crawford.

1.14 Receivership Date: September 29, 2022, the effective date of the orders of the Court placing the assets of the Receivership Defendants in receivership.

1.15 Receivership Defendants: First State Depository Company, LLC, Argent Asset Group LLC, and Robert Leroy Higgins.

1.16 Secured Claim: A Claim secured by a properly-perfected lien on property of the Receivership Defendants or any other property in the possession of the Receiver (collateral) that gives the Claimant the right to be paid from the property before Claimants who do not have liens on the property. A Secured Claim does not include a Depository Claim or a Silver Lease Claim.

1.17 Silver Lease Claim: A Claim by a person or entity, acting on their own behalf, or on behalf of someone else, who deposited metals, currency, or other valuables with the Defendants for storage, and the person or entity participated in the Silver Lease Program or the Maximus Program.

1.18 Uncompromised FSD Customer: An FSD customer whose holdings at the FSD premises have not been compromised and all assets of the FSD customer have been located by the Receiver's Accountants.

1.19 Unsecured Claim: A claim against the Receivership Defendants or property in the possession of the Receiver that is not a Secured Claim, Consignment Claim, Depository Claim or a Silver Lease Claim. A claim may be partially secured and partially unsecured if the

net realizable value of the property on which a creditor has a lien (collateral) is less than the amount of the claim.

2. NOTICE OF RIGHT TO FILE CLAIMS AND CLAIMS BAR DATE.

2.1 Notice to Claimants: The Receiver shall notify each Claimant of the Claims Bar Date and the Claimant's right to file a Claim as provided herein. Notices to Claimants shall be accompanied by a copy of the Proof of Claim form as may be appropriate, and any other information the Receiver deems appropriate. The Notice to Claimants shall be deposited in the United States mail, postage pre-paid, addressed to the Claimant at the most-recent address contained in the records of the Receiver within ten days after the entry of this Order, or sent by electronic mail with receipt confirmed by electronic mail.

2.2 Notice by Publication: The Receiver shall also publish at least once, in a publication with national circulation, within fifteen days after the entry of this Order, notice of the right of a depositor or creditor to file a claim with the Receiver and the deadline for claims to be filed.

3. FILING OF CLAIMS.

3.1 Filing Claims: Any Claimant asserting a Claim against the Receivership Defendants, the Receiver, or claiming an interest in the property in the possession of the Receiver, regardless of whether the Claim has been acknowledged by the Receiver, shall submit to the Receiver a Proof of Claim on or before the Claims Bar Date. The Proof of Claim shall be deemed filed on the date it is received by the Receiver, or if the Claim has been mailed the date of postmark. The Proof of Claim shall be on the form approved by the Court and provided by the Receiver and shall contain all of the information requested in the form.

3.2 Place to File Claims: All Claims shall be filed with the Receiver by electronic mail to kelly.crawford@solidcounsel.com or by mailing, postage prepaid, or delivering a properly-completed Proof of Claim with all required supporting documentation to the Receiver at the following address:

Kelly M. Crawford, Receiver
500 North Akard, Suite 2700
Dallas, Texas 75201

3.3 Prohibition Against Filing Claims with Court: No Claim shall be filed with the Court and any Claim so filed shall not be considered properly-filed as required under this Order.

3.4 Supporting Documentation: Unless previously provided by a Claimant to the Receiver, each Claim shall include as an attachment all documentation supporting the claim. Original documents should not be filed with the Claim. If a supporting document is not available, the Claimant must attach an explanation of why the document is not available.

4. THE RECEIVER'S CLAIMS REPORT AND THE COURT'S ADJUDICATION OF CLAIMS.

4.1 Receiver's Classification of Claims: Upon receipt of a Claim, the Receiver shall classify the Claim as belonging to one or more of the following classes:

- Uncompromised FSD Customer
- Compromised FSD Customer
- Compromised FSD Customer – Silver Lease Program
- Purchase Money Claimant
- Consignment Claim
- Unsecured Claim
- Secured Claim

4.2 Receiver's Claims Report: On or before seventy five days following entry of this Order, the Receiver shall file with the Court his Claims Report setting forth all Claims filed with the Receiver together with the Receiver's classification and recommendations concerning all Claims.

4.2 Notice to Claimants: The Receiver shall provide notice to each Claimant of the Receiver's classification and recommendation concerning the Claimant's Claim by electronic mail with the receipt confirmed by electronic mail, or in writing and deposited in the United States mail, postage pre-paid, addressed to the Claimant at the most recent address contained in the records of the Receiver within five (5) days of the date for filing the Receiver's Claims Report.

4.3 Copy of Claims Report: Every Claimant shall have the right to obtain a copy of the Claims Report, however, the Receiver may charge a reasonable fee for providing a copy of the Claims Report not to exceed the cost of copying and postage.

4.4 Service of Claims Report: The Claims Report shall be served on all Claimants together with a Notice of Hearing which shall notice the person served of the Court's hearing scheduled on the Receiver's recommendation, if any, and the procedures and deadline for filing objections to the Receiver's recommendations. Such information shall also be posted on the Receiver's website. Service of the Claims Report shall be made by electronic mail with the receipt confirmed by electronic mail or by depositing it in the United States mail, postage pre-paid, addressed to the recipient at the address set forth in the Receiver's records.

4.5 Objections: The Receiver, or any Claimant or other party-in-interest may file an objection to any Claim as provided in this Order. All objections to any part of the Claims Report

shall be filed with the Receiver and not with the Court. The objections shall be sent to the Receiver by email or set forth in writing and deposited in the United States mail on or before Ninety Five (95) days from the date of this Order, postage pre-paid, addressed to the Receiver at:

Kelly M. Crawford, Receiver
500 North Akard, Suite 2700
Dallas, Texas 75225

4.6 Filing of Objections by the Receiver: The Receiver shall file with the Court not later than ninety five days following entry of this Order, a copy of all timely objections received by the Receiver together with the Receiver's response to those objections and shall serve a copy of same on all persons who served the Receiver with objections as provided above.

4.7 Hearing Date: Unless the Court determines a hearing is not necessary, a hearing will be held by the Court on a date set by the Court regarding the Claims Report and the Receiver's classification and recommendations regarding the claims and any objections thereto.

4.8 Final Adjudication of Claims: Following the Court's hearing, the Court shall enter an order approving or rejecting the Claims filed with the Receiver.

4.9 Uncompromised FSD Customer Claim: For those Uncompromised FSD Customers who reach agreement with the Receiver regarding the inventory at the Premises assigned to the customer, and pay the Surcharge to the Receiver as set forth in Section 5 of this Order, the Receiver shall be authorized to deliver the inventory to the Uncompromised FSD Customer and in the Claims Report the Receiver shall identify only the account number for the Uncompromised FSD Customer. In such instance, the Uncompromised FSD Customer shall have no further Claim in the receivership. If the Uncompromised FSD Customer and the Receiver cannot reach an agreement regarding classification of the claim, the inventory at the

Premises assigned to the customer, or the payment of the Surcharge to the Receiver, the dispute shall be submitted to the Court and included by the Receiver in the Claims Report.

5. THE SURCHARGE TO UNCOMPROMISED FSD CUSTOMERS.

5.1 Assessing the Surcharge. The Receiver shall assess a surcharge to each member of the Uncompromised FSD Customer class for the administrative costs associated with storing, securing, identifying, and handling the assets. On or before ten days following receipt of the Proof of Claim from an Uncompromised FSD Customer, the Receiver shall notify the Uncompromised FSD Customer by electronic mail or first class mail of the Surcharge payable by that customer to the Receiver and the calculation of the Surcharge. No Expense Surcharge shall be assessed against anyone in the “Impaired FSD Customer” class.

5.2 The Surcharge Amount. The Surcharge is 5.6 percent of the value of the holdings of the Uncompromised FSD Customer, as calculated by the Receiver’s Accountants, and as set forth in the Receiver’s Motion.

5.3 The Receiver’s Use of the Surcharge. The Receiver is authorized to pay from the Surcharge monies received the following expenses incurred from October, 2022 through April, 2023:

Security Instruments fees for providing alarm services

Pinkerton fees for providing security

Baker Tilly fees and expenses, as approved by the Court

Insurance premiums

Lease Payments for the months of October, 2022 through April, 2023

Utilities

Receiver's fees and expenses, including fees and expenses of the Receiver's attorneys and paralegal, as approved by the Court

If the Receiver determines the Surcharge is inadequate and should be increased because the administrative expenses are higher than expected, the Receiver shall request such increase from the Court.

5.4 Payment of the Surcharge. Payment of the Surcharge to the Receiver is required prior to the Receiver's delivery of any assets to the Uncompromised FSD Customer. If a member of the Unimpaired FSD Customer class fails to pay the Surcharge within 20 days after it is assessed by the Receiver, the Receiver shall be authorized to sell sufficient holdings of the member of the Unimpaired FSD Customer class to pay the Surcharge.

6. RETURNING ASSETS ON DEPOSIT WITH FSD TO THE FSD CUSTOMERS.

6.1 When Distribution of Assets Can be Made to FSD Customers: Once the Receiver and the FSD Customer agree upon the classification of the customer; the inventory, if any, that is not located; and the value of the inventory not located; the Receiver is authorized to deliver the inventory to the FSD Customer pursuant to the terms of this Order. If an agreement cannot be reached between the Receiver and the FSD Customer regarding the classification of the customer; the inventory, if any, that is not located; or the value of the inventory not located, the dispute between the Receiver and the FSD Customer shall be submitted to the Court and the Receiver shall not be authorized to deliver the inventory to the FSD Customer until the Court has ruled on the dispute.

6.2 Delivery Instructions: Each FSD Customer shall be responsible for providing to the Receiver instructions for the Receiver's delivery of the FSD Customer's assets. If the assets

are held for an FSD Customer as part of an IRA, the custodian of the IRA shall be responsible for providing instructions for the Receiver's delivery of the FSD Customer's assets.

6.3 Shipping and Handling Fees: Each FSD Customer shall be responsible for paying all shipping and handling fees that may be charged by the Receiver or a third party for packaging and delivering the assets to the FSD Customer, and such payment shall be made prior to delivery.

6.4 Insurance for the Delivery: Each FSD Customer shall be responsible for procuring and paying the cost of insurance to cover the risk of the inventory being lost or stolen during delivery to the FSD Customer. The Receiver shall not be responsible for any inventory lost or stolen during delivery from 100 Todds Lane, Wilmington, Delaware to the destination designated by the FSD Customer.

7. DETERMINING THE CLAIMS OF THE IMPAIRED FSD CUSTOMER AND IMPAIRED FSD CUSTOMER-LEASE PROGRAM.

7.1 Classifying the Claim: Once the Receiver receives the Proof of Claim Form from a FSD Customer and determines the FSD Customer is in the "Impaired FSD Customer" class, and further determines whether the FSD Customer was part of the Lease Program and should be in the "Impaired FSD Customer – Lease Program" class, the Receiver shall contact the customer with the Receiver's recommendation for the class in which the FSD Customer shall be placed.

7.2 The Amount of the Claim: The Receiver shall determine the claim amount of the FSD Customer in the Impaired FSD Customer class and the FSD Customer in the Impaired FSD Customer – Lease Program class, by determining the quantity and type of asset that was supposed to be on deposit at the Premises and that cannot be located. Using the values as of October 4, 2022 as determined by the Receiver's Accountants, the Receiver shall determine the

dollar amount of the asset that could not be located and that amount shall be the claim amount for that Claimant. The Receiver shall include his recommendation regarding the claim amount for the Claimant in the Receiver's Claims Report.

8. DETERMINING THE CLAIMS OF CLAIMANTS OTHER THAN FSD CUSTOMERS.

8.1 Classifying the Claim: The Receiver shall review the Proofs of Claim received from all other Claimants, besides those of the FSD Customers, and make a recommendation regarding the classification of the claim to the Court in the Receiver's Claims Report.

8.2 The Amount of the Claim: The Receiver shall review the Proofs of Claim received from all other Claimants, besides those of the FSD Customers, and make a recommendation regarding the amount of the claim to the Court in the Receiver's Claims Report.

9. DEADLINES.

In order to accomplish the foregoing, the Court sets the following deadlines for the claims adjudication process:

10 days from the date of this Order: Deadline for Receiver to mail Proof of Claim Forms to known claimants

15 days from the date of this Order: Deadline for Receiver to publish notice of right to file a claim in *USA Today* or the *Wall Street Journal* or *New York Times*

45 days from the date of this Order: Deadline for Claimants to return the Completed Proof of Claim Form to the Receiver

75 days from the date of this Order: Deadline for the Receiver to file his Claims Report with the Court and provide it to the Claimants.

95 days from the date of this Order: Deadline for Claimants to serve the Receiver with any objections to the Receiver's recommendations in the Claims Report

115 days from the date of this Order: Deadline for the Receiver to file with the Court any objections to his claims recommendations that could not be resolved, and the Receiver's response to such objections

Court's discretion

Hearing to adjudicate claims, if Court determines necessary.

Any distribution of the assets of the Defendants recovered by the Receiver is dependent upon a future order of this Court and no distributions will be made without express authorization from the Court.

Signed this 15th day of February, 2023.


UNITED STATES DISTRICT COURT JUDGE