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10 *Receiver for Receivership Entities*

11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

14
15 **SECURITIES AND EXCHANGE**
16 **COMMISSION,**

17 **Plaintiff,**

18 **vs.**

19 **TITANIUM BLOCKCHAIN**
20 **INFRASTRUCTURE SERVICES,**
21 **INC.; EHI INTERNETWORK AND**
22 **SYSTEMS MANAGEMENT, INC.**
23 **aka EHI-INSM, INC.; and MICHAEL**
24 **ALAN STOLLERY aka MICHAEL**
25 **STOLLAIRE,**

26 **Defendants.**

Case No. 18-cv-4315 DSF (JPRx)

RECEIVER’S NOTICE OF MOTION
AND MOTION TO UPHOLD
CLAIMANT MING ZHENG’S CLAIM
DETERMINATION (CLAIM #
1000177); SECOND DECLARATION
OF RECEIVER, JOSIAS N. DEWEY,
IN SUPPORT OF MOTION;
[PROPOSED] ORDER

Date: April 3, 2023

Time: 1:30 p.m.

Ctrm: 7D

Judge: Hon. Dale S. Fischer

1 **TO ALL PARTIES, CLAIMANTS, AND TO THEIR ATTORNEYS OF**
2 **RECORD:**

3 **PLEASE TAKE NOTICE THAT**, on April 3, 2023, at 1:30 p.m. or as soon
4 thereafter as the matter may be heard in Courtroom 7D of the Honorable Dale S.
5 Fischer, of the United States District Court for the Central District of California, located
6 at 350 West 1st Street, Los Angeles, California 90012, Josias N. Dewey, the Court
7 appointed Receiver (“Receiver”) for the estates of Defendants Titanium Blockchain
8 Infrastructure Services Inc. and its subsidiaries and/or affiliates (collectively, the
9 “Receivership Entities” or “TBIS”), will, and hereby does, move this Court for an order
10 upholding Claimant Ming Zheng’s Claim Determination (Claim #1000177)
11 (hereinafter, the “Motion”), with an allowed amount of \$15,763.52 (“Allowed
12 Amount”).

13 This Motion is based on this Notice, the accompanying Memorandum of Points
14 and Authorities, the First and Second Declarations of Josias N. Dewey, and all papers,
15 pleadings, documents, arguments of counsel, and other materials presented before or
16 during the hearing on this motion, and any other evidence and argument the Court may
17 consider.

18 This Motion is made following multiple written communications pursuant to
19 L.R. 7-3, which took place between October 20, 2022, through January 19, 2023. The
20 parties were unable to reach an agreement that would obviate the need for this Motion.

21 Dated: March 6, 2023

Respectfully submitted,
HOLLAND & KNIGHT LLP
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Jose A. Casal (*pro hac vice*)
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MEMORANDUM OF POINTS AND AUTHORITIES

Josias N. Dewey, the Court appointed Receiver (“Receiver”) for the estates of Defendants Titanium Blockchain Infrastructure Services Inc. and its subsidiaries and/or affiliates (collectively, the “Receivership Entities” or “TBIS”), hereby submits this Motion to Uphold Claimant Ming Zheng’s Claim Determination (Claim #1000177) (hereinafter, the “Motion”), seeking an Order from this Court upholding the Receiver’s Claim Determination with an allowed amount of \$15,763.52 (“Allowed Amount”).

Josias N. Dewey, in his capacity as Receiver, previously submitted one Declaration describing the Receivership’s¹ extensive communications with Zheng (Dkt. 119-1, the “First Dewey Decl.”), filed in connection with the Receiver’s Reply in Support of the Motion to Approve the Initial and Second Distributions (Dkt. 119), and hereby submits a second Declaration explaining Zheng’s loss calculation (the “Second Dewey Decl.”).

I. INTRODUCTION

On May 22, 2018, the Securities and Exchange Commission brought an emergency action for both securities fraud and the sale of unregistered securities against TBIS (Dkt. 1). As part of that action, and with the Defendants’ consent, this Court appointed Josias N. Dewey as receiver for TBIS (Dkt. 47–48).

On August 21, 2020, the Court entered an Order Approving Claims Process and Bar Date (Dkt. 96). The Receiver’s approved Claims Process defined two different classes of eligible investor claimants:

- (1) those induced into purchasing BAR or TBAR, constituting unregistered securities, directly from TBIS (collectively, the “Direct Purchasers”), and

¹ The “Receivership” shall include acts taken by the Receiver himself and acts taken by his Released Professionals. As defined by the Distribution Plan, the “Released Professionals” include, but are not limited to, his legal counsel (H&K) and claims administrator (RCB Fund Services LLC) (*see* Dkt. 107-1 at 6).

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1 (2) those who purchased BAR or TBAR from someone other than TBIS
2 (collectively, the “Secondary Market Purchasers”) at a price inflated
3 due to TBIS misrepresentations, and then who realized a loss in value
4 caused by the TBIS fraud disclosure.

5 (Dkt. 94 at 5–6). These two distinct classes of victims were created because Direct
6 Purchasers are afforded a statutory presumption of loss; whereas, Secondary Market
7 Purchasers are not. *See id.* at 5.

8 Namely, Direct Purchasers “are entitled to a presumption of loss generally based
9 on the *difference between what they paid for the BAR or TBAR and the price they*
10 *obtained when they sold the same*, or if they have not sold their BAR or TBAR, the
11 current value of the same.” *Id.* at 6 (emphasis added). Conversely, “Secondary Market
12 Purchasers must show that their loss was caused by TBIS’s fraud. As a result, those
13 Secondary Market Purchasers *who sold prior to the fraud disclosure*—and who
14 suffered loss based on market price fluctuations unrelated to any TBIS
15 misrepresentations—*should not be victims of the TBIS fraud.*” *Id.* (emphasis added).
16 Therefore, any tokens that fall into this category are disallowed (not included) for loss
17 calculation purposes.

18 On May 9, 2022, the Court granted the Receiver’s Distribution Plan in all
19 respects (Dkt. 109). In explaining the methodology for calculating allowed amounts,
20 Section 3.1 of the Distribution Plan states that:

21 the Receiver considered the net harm to each Claimant as determined
22 on a money-in/money-out basis (or net investment). . . For Investor
23 Claims, the Allowed Amount was calculated as the Claimant’s
24 principal amount investment in BAR or TBAR (minus) any subsequent
25 sales of BAR or TBAR, *evaluated on a first-in/first-out basis* [“FIFO”].

26 (Dkt. 107-1 at 9) (emphasis added).

27 On March 3, 2021, Claimant Ming Zheng (“Zheng”) submitted Claim #1000177
28 (the “Disputed Claim”). Second Dewey Decl. at ¶3. On October 20, 2022, the Receiver
made an initial Claim Determination, stating an allowed amount of \$0 for the Disputed

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1 Claim based on the records submitted by Zheng at that time (hereinafter referred to as
 2 “Initial Claim Determination” and attached to the Second Dewey Decl. as **Exhibit**
 3 “**A**”).² *Id.* That same day, Zheng contacted the Receiver to dispute the Allowed
 4 Amount because it failed to include tokens that he purchased on exchanges. *Id.* at ¶4.
 5 As required by the claim submission procedures, the Receiver reminded Zheng that he
 6 must submit exchange records to support any secondary market purchases; once the
 7 records were received, the Receiver recalculated Zheng’s loss and, on October 25,
 8 2022, the Receivership sent Zheng a new Claim Determination with an Allowed
 9 Amount of \$15,763.52 (the “Second Claim Determination”). Second Dewey Decl. at
 10 ¶4; (see Dkt. 119-1 at Ex. 1). Between October 26, 2022, and January 7, 2023, Zheng
 11 and the Receiver remained in contact regarding the calculation of Zheng’s Second
 12 Claim Determination, including several detailed explanations as to why Zheng’s
 13 calculation was incorrect (see First Dewey Decl. at ¶¶7–21).

14 On January 7, 2023, Zheng emailed the Court’s clerk alleging that the Receiver’s
 15 loss calculation deliberately disregarded the FIFO rule in violation of Section 3.1 of
 16 the Distribution Plan and that the Receiver “consistently evade[d] claimant’s
 17 questions” (Dkt. 119-1 at Ex. 2)³. The latter argument has already been addressed and
 18 briefed in the Reply Memorandum in Support of the Receiver’s Motion to Approve the
 19 Initial and Second Distributions. *See id.* Despite Zheng’s obligations to work with the
 20 Receiver in good faith to resolve the Disputed Claim and the Receiver’s repeated
 21 requests for a teleconference, Zheng has categorically refused (see First Dewey Decl.
 22 at ¶¶22–27). As a result, this Motion will focus only on Zheng’s loss calculation and
 23 why the Court should approve the Receiver’s Allowed Amount for the Disputed Claim.
 24

25 ² All exhibits directly referred to herein by exhibit number (*i.e.*, Exhibits A through E)
 26 are attached to the Second Dewey Declaration.

27 ³ On January 19, 2023, Zheng sent the Court’s clerk a second email, which is attached
 28 to the Second Dewey Decl. as **Exhibit “B”**; however, the core allegations remain
 materially the same as Zheng’s first email to the Court’s clerk. *See* Second Dewey
 Decl. ¶ 6.

1 **II. BASIS FOR RELIEF**

2 **A. The Court Has Authority to Consider This Disputed Claim and**
3 **Determine the Appropriate Allowed Amount.**

4 Courts presiding over equity receiverships have extremely broad power to
5 supervise the receivership and promote an orderly and fair administration of
6 receivership assets. *SEC v Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). “The power of
7 a district court to impose a receivership or grant other forms of ancillary relief does not
8 in the first instance depend on a statutory grant of power from the securities laws.
9 Rather, the authority derives from the inherent power of a court of equity to fashion
10 effective relief.” *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). As the
11 appointment of a receiver is authorized by the broad equitable powers of the court, any
12 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*, 953
13 F.2d 1560, 1570 (11th Cir. 1992).

14 The Ninth Circuit has explained that:

15 A district court’s power to supervise an equity receivership and to
16 determine the appropriate action to be taken in the administration of the
17 receivership is extremely broad. The district court has broad powers
18 and wide discretion to determine the appropriate relief in an equity
19 receivership. The basis for this broad deference to the district court’s
20 supervisory role in equity receiverships arises out of the fact that most
21 receiverships involve multiple parties and complex transactions. A
22 district court's decision concerning the supervision of an equitable
23 receivership is reviewed for abuse of discretion.

24 *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). (citations
25 omitted); *see also Commodities Futures Trading Comm'n. v. Topworth Int'l, Ltd.*, 205
26 F.3d 1107, 1115 (9th Cir. 1999) (“This court affords ‘broad deference’ to the court's
27 supervisory role, and ‘we generally uphold reasonable procedures instituted by the
28 district court that serve th[e] purpose’ of orderly and efficient administration of the
receivership for the benefit of creditors.”).

1 It is well settled that a district court has the authority to implement a distribution
 2 plan in a receivership case and to use summary proceedings to evaluate claims and
 3 claim priority, provided that the parties have an opportunity to be heard to argue their
 4 claims. *SEC v. Byers*, 637 F.Supp.2d 166, 184 (S.D.N.Y. 2009) (collecting cases). A
 5 summary proceeding is the preferred course of action in a federal receivership because
 6 it “reduces the time necessary to settle disputes, decreases litigation costs, and prevents
 7 further dissipation of receivership assets.” *Id.* (quoting *Elliot*, 953 F.2d at 1566); *see*
 8 *also SEC v. Wencke*, 783 F.2d 829, 837–38 (9th Cir. 1986) (rejecting challenge to
 9 district court’s use of summary proceedings).

10 Accordingly, this Court has broad discretion in calculating, determining, and
 11 allowing/disallowing amounts of claims. Moreover, the claim form approved by the
 12 Court included certain consent and attestation provisions: namely, that claimants’
 13 “consent to this Court’s exclusive jurisdiction for any disputes related to the claims”
 14 (Dkt. 94 at 11, Ex. B); Zheng’s claim submission also included this attestation. *See*
 15 Second Dewey Decl. ¶3. Therefore, Zheng has consented to this Court’s jurisdiction
 16 and the Court is authorized to make a determination regarding the Disputed Claim.
 17 Additionally, Zheng has sent two emails to the Court raising arguments in support of
 18 his objection; consequently, together with this Motion, the issue has been fully briefed
 19 and is ripe for the Court’s consideration.

20 **B. The Objection Procedures Permit Court Intervention Under Limited**
 21 **Circumstances.**

22 The Receiver’s Claims Process Motion, approved by this Court on August 21,
 23 2020 (Dkt. 96), states that “each claimant [is] given **30 days** from the date the Receiver
 24 sends the Claim Determination to submit an objection” to the Receiver via email (Dkt.
 25 94 at 12). Furthermore, the Receiver “will receive and consider timely objections on a
 26 case-by-case basis” and will then communicate his ultimate decision. *Id.* In the event
 27 of disagreement, Claimants are first required to “work in good faith with the Receiver
 28

1 to attempt to resolve [their] objection[s] before submitting the objection to the Court
2 for determination” (Dkt. 119-1 at Ex. 1). If no resolution can be reached, Claimants
3 have the right to “file the objection with the Court within **SIXTY (60) days** of the date
4 of the Receiver’s Notice of Determination.” *Id.* (emphasis in original). The Receiver
5 then has **sixty days** from the date of that filing to respond. *Id.*

6 To date, the Receiver reviewed more than 1,000 claim submissions—of which,
7 672 Claimants received Allowed Amounts and 63 Claimants submitted objections.
8 First Dewey Decl. at ¶3. Together with the cooperation of the Claimants, the Receiver
9 successfully resolved 62 of the 63 objections. *Id.* at ¶4. Zheng is the only Claimant who
10 has sought Court intervention. *Id.*

11 On January 7, 2023, Zheng emailed his objection to the Court’s clerk (Dkt. 119-
12 1 at Ex. 2). This is both untimely (as occurring beyond the 60-day window) and
13 improper (as submitted via email rather than filed) (*see id.* at Exs. 1 and 2). Although
14 Zheng did not properly “file” an objection with the Court, the Receiver has construed
15 Zheng’s emails to the clerk as providing notice of the objection. Therefore, the
16 Receiver is required to make this separate filing with the Court as he is unable to resolve
17 Zheng’s Disputed Claim during the specified timeframes and must submit the same
18 prior to the expiration of the 60-day deadline—expiring on March 8, 2023.

19 As more fully set out below, the Receiver again concludes that the Allowed
20 Amount of \$15,763.52 is correct. The Receiver has sent ten emails to Zheng, answering
21 the posed questions and explaining the Receivership’s loss calculation; nevertheless,
22 Zheng refuses to accept these explanations. *See* First Dewey Decl. at ¶¶8–27. Despite
23 Zheng’s obligations to work with the Receiver in good faith to resolve this Disputed
24 Claim, Zheng has also refused three requests from the Receiver to meet via
25 teleconference in order to reach a resolution. *Id.* Therefore, at this stage, Zheng’s
26 intentions are clear; Zheng is unwilling to resolve this Disputed Claim with the
27 Receiver. As a result, the Receiver respectfully requests that the Court issue an Order
28

1 upholding Zheng’s Allowed Amount and resolving this Disputed Claim.

2 **III. THE ALLOWED AMOUNT IS PROPERLY CALCULATED AND**
3 **SHOULD BE UPHELD BY THE COURT.**

4 On October 20, 2022, the Receivership sent Zheng his Initial Claim
5 Determination with an allowed amount of \$0. *See* Second Dewey Decl. at ¶3; Ex. A.
6 Later that day, Zheng responded with an email explaining that additional tokens were
7 purchased on exchanges. *Id* at ¶4. Because the claim submission instructions
8 specifically requested exchange documents where applicable, the Receivership verified
9 that Zheng had not made such submission. *Id*. Accordingly, the Receivership sent
10 Zheng an email reminding of this obligation. *Id*. Thereafter, Zheng successfully
11 provided purchase/sales records for an exchange named IDEX, which are attached to
12 the Second Dewey Decl. as **Exhibit “E”**. *Id*.

13 Incorporating the new transaction data from these records, on October 25, 2022,
14 the Receivership sent Zheng the Second Claim Determination with an Allowed
15 Amount of \$15,763.52. Second Dewey Decl. at ¶4; (*see* Dkt. 119-1 at Ex. 1). Zheng’s
16 Disputed Claim contests this amount in two primary respects. First, Zheng requests an
17 explanation for the change in the allowed loss amount. Second, Zheng argues that the
18 Second Claim Determination is incorrect because the Receivership misapplied the
19 FIFO rule as specified in Section 3.1 of the Distribution Plan. *See* Ex. B. Zheng is
20 mistaken as to both.

21 **A. Zheng’s Loss Amount Changed Between the Initial and Second Claim**
22 **Determinations Because of New Transactional Data.**

23 Zheng’s allowed loss amount changed from \$0 to \$15,763.52 because of the new
24 exchange records. As explained in the Claims Process Motion:

25 TBIS conducted its ICO on the Ethereum Network, which is a publicly-
26 viewable online ledgers distributed among a global network of
27 computers, theoretically impervious to alteration, and an accurate and
28 immutable transaction archive. The Ethereum Network stores
transactional information which the Receiver and Counsel can use to

1 help determine the validity of claims and eligibility of *most claimants*.
2 . . . The web portal will also solicit additional information from claimants
3 with *complicated transaction histories or involving cryptocurrency*
4 *exchanges*.

5 (Dkt. 94 at 11) (emphasis added). Because Zheng transferred tokens to at least three
6 different exchanges, Zheng was required to support the claim submission with
7 exchange records, yet Zheng failed to cooperate with this request initially. *See* Second
8 Dewey Decl. at ¶4. Absent such records, the Receivership’s Initial Claim
9 Determination was limited to “the transaction quantities, dates, senders, and recipients
10 of all BAR and TBAR issued by TBIS” and publicly available on the Ethereum
11 Network (*see* Dkt. 94 at 12).

12 In other words, the Receivership searched Zheng’s addresses on the public
13 network and determined that Zheng sent and received tokens from three different
14 exchanges; however, any transaction *details* of trades that occurred on those exchange
15 are generally not accessible on the public network. As a result, without Zheng
16 providing the requested exchange documents, the Receivership’s loss calculation
17 assumes that any transfers to an exchange or other unclaimed address are sales by
18 default. Under these circumstances, the Receivership determined that Zheng did not
19 suffer any loss. Nevertheless, claimants have the right to object to any determination
20 so long as they provide the appropriate supporting documentation. Zheng did exactly
21 this here, and once Zheng supplied the appropriate exchange records, the Receivership
22 recalculated Zheng’s loss as \$15,763.52 (*see* Dkt. 119-1 at Ex. 1). This is the loss
23 amount subject of Zheng’s Disputed Claim.

24 **B. Zheng’s Allowed Amount of \$15,763.52 is Correct and Should be**
25 **Upheld by the Court.**

26 Zheng believes that the loss amount should be \$30,018.75 (Ex. D), despite that
27 the Receivership’s Second Claim Determination awarded Zheng an Allowed Amount
28 of \$15,763.52 (*see* Dkt. 119-1 at Ex. 1). The differing results can generally be

1 explained by Zheng’s misunderstanding of the disallowance rule and the categories of
2 eligible tokens. *See* Second Dewey Decl. at ¶12. In support of its position, the
3 Receivership manually audited Zheng’s loss and has attached its results as **Exhibit**
4 “C” to the Second Dewey Declaration.

5 Overall, Zheng purchased 54,255.82 tokens—of which 26,115 were allowed
6 ICO purchases, 12,229.19 were allowed as secondary market purchases, and 15,911.64
7 were disallowed because they were sold before May 29, 2018 (hereinafter “Cut-off
8 Date”). Second Dewey Decl. at ¶7. Specifically, Zheng sold a total of 42,026.64 tokens
9 prior to the Cut-off Date. *Id.* As Zheng has emphasized, pursuant to Section 3.1 of the
10 Distribution Plan, these sales must be accounted for on a FIFO basis. *Id.* at ¶8.
11 Accordingly, Zheng’s first purchase was 26,115 ICO tokens. *Id.* Because this is a direct
12 purchase from the ICO, the loss from these tokens is offset by any subsequent sales.
13 *Id.* Therefore, for Zheng’s first 26,115 tokens sold, the Receivership calculated that
14 Zheng’s proceeds were \$17,732.09. *Id.*; *see also* Ex. C at Transactions 8–18, 25–36.
15 These proceeds from the sale of ICO tokens are subtracted from Zheng’s overall loss.

16 Next, the 26,115 ICO token sales are subtracted from Zheng’s *total* token sales
17 of 42,026.64—leaving 15,911.64 token sales outstanding. Second Dewey Decl. at ¶9.
18 Pursuant to FIFO, the calculation looks for the next set of tokens “in” or purchased;
19 here, the next set of token purchases occurred on January 27, 2018, through secondary
20 markets. *See* Ex. C at Transactions 3–7. All of Zheng’s remaining purchases occurred
21 on the secondary markets. *Id.* at Transactions 19–24. As explained above (*see supra*
22 Section I), any secondary market tokens sold before the Cut-off Date are disallowed
23 (not included) for loss calculation purposes. Because the remaining 15,911.64 tokens
24 fall into this category, they are illegible and must be disallowed. *See* Second Dewey
25 Decl. at ¶9; *see id.* at Transactions 3–7, 19–23, 37–43. After satisfying all 42,026.64
26 token sales, Zheng is left with 12,229.19 secondary market purchases that are allowed
27 and should be added to the total loss calculation. *See* Ex. C at Transactions 23–34.
28

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1 Zheng’s total investment in these secondary market tokens was \$8,501.08. *See id.*

2 In conclusion, the Receivership added Zheng’s total USD investment in the ICO
3 (\$24,805.11) to the Allowed Secondary Market Purchases (\$8,501.08), and subtracted
4 Zheng’s proceeds from the first 26,115 token sales (\$17,732.09). Second Dewey Decl.
5 at ¶10. The Receivership’s manual recalculation resulted in a loss of \$15,574.11⁴. Ex.
6 C. This recalculation was primarily conducted for explanatory and auditing purposes—
7 utilizing Zheng’s specific transactional data with the goal of independently verifying
8 the loss. This result accomplishes the goals of the Receivership pursuant to the claims
9 process established by the Court and justifies the Receiver’s recommendation to uphold
10 the Second Claim Determination’s Allowed Amount of \$15,763.52.

11 **C. Zheng’s Calculation Mistakenly Ignores the Disallowance Rule and**
12 **Improperly Claims Ineligible Tokens.**

13 Zheng’s supplied calculation, attached to the Second Dewey Decl. as **Exhibit**
14 **“D”**, suffers from four flaws. *See* Second Dewey Decl. at ¶12. In the first three of
15 Zheng’s mistakes, Zheng includes secondary market purchases that should have been
16 disallowed; the final issue is that Zheng attempts to make a claim for ineligible tokens.

17 **1. Zheng fails to account for the 15,911.64 disallowed tokens.**

18 Specifically, in “FIFO Item #2” and “FIFO Item #4”, Zheng *includes* secondary
19 market purchases for approximately 6,955 and 2,189 tokens, respectively. *See* Ex. D.
20 This is incorrect because these tokens are disallowed. *See* Second Dewey Decl. at ¶13–
21 14; Ex. C at Transactions 3–7, 19. As a result, Zheng incorrectly added more than
22 \$12,000 to the loss calculation. *See id.* Similarly, in “FIFO Item #5”, Zheng improperly
23 allows all 13,616.16 tokens. *See* Ex. D. Instead—because of a remaining disallowed
24 token balance of 3,152.90—only 10,463.26 tokens should have been allowed. *See*

25 _____
26 ⁴ The recalculated Allowed Amount differs slightly from the Second Claim
27 Determination because, for the purposes of standardizing the review of Zheng’s
28 objection, this recalculation relied on the specific pricing data included in Zheng’s
exchange records. Second Dewey Decl. at ¶10, n.5.

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1 Second Dewey Decl. at ¶15; Ex. C at Transaction 23. In summary, Zheng failed to
2 account for any of the 15,911.64 disallowed tokens, misapplying the Court-approved
3 loss methodology.

4 **2. Zheng’s Replacement Tokens are ineligible.**

5 In “FIFO Item #9” Zheng claims \$4,608.38 for 13,616.16 tokens that were never
6 airdropped (hereinafter “Replacement Tokens”). See Ex. D. According to the Claims
7 Process Motion, this is an ineligible claim against the Receivership Entities (see
8 generally Dkt. 94). Namely, on February 22, 2018, prior to the Receiver’s appointment,
9 an unidentified party illicitly gained access to the virtual assets raised by TBIS,
10 transferring all of the raised funds away from TBIS’s control. See *id.* at 3. The illicit
11 transfers included a substantial portion of the BAR tokens that TBIS had held in
12 reserve; as a result, TBIS publicly disclaimed the BAR token and announced plans to
13 issue a second virtual token called TBAR. See *id.* Thereafter, TBIS airdropped the
14 replacement TBAR tokens to all holders of BAR⁵. See *id.*

15 As addressed in Section I of this Motion, the Claims Process Motion defined
16 only two categories of eligible investor claimants—Direct Purchasers and Secondary
17 Market Purchasers. Zheng’s Replacement Tokens do not fit into either category
18 because Zheng did not *purchase* them from the ICO or any secondary market.
19 Moreover, the Claims Process Motion specifically states that ineligible claimants
20 include those “that do not meet any of the above criteria.” See *id.* at 8. Zheng’s
21 Replacement Tokens fall into this category and are thereby ineligible as an investor
22 claim.

23 Even assuming, *arguendo*, that the Replacement Tokens were eligible, granting
24 Zheng’s request would improperly double-count tokens towards the loss amount.
25 Specifically, Zheng requests \$4,608.38 for the 13,616.16 TBAR tokens that TBIS
26

27 ⁵ This type of transaction on the blockchain, whereby an issuer gratuitously transfers
28 tokens to an address, is commonly referred to as an “airdrop.”

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1 promised would replace investors’ BAR holdings. *See* Ex D. Zheng’s corresponding
2 BAR holdings are the 13,616.16 tokens that Zheng purchased from Tidx (another
3 cryptocurrency exchange) on February 21, 2018. *See id.* According to Section 3.1 of
4 the Distribution Plan, the Receiver is required to consider “the net harm to each
5 Claimant as determined on a *money-in/money-out basis* (or net investment). . . For
6 Investor Claims, the Allowed Amount was calculated as the Claimant’s *principal*
7 *amount investment* in BAR or TBAR (minus) any subsequent sales of BAR or TBAR
8 . . .” (Dkt. 107-1 at 9) (emphasis added).

9 With respect to the 13,616.16 tokens, Zheng’s investment occurred *at the time*
10 *of BAR purchase* and is credited to the overall loss amount accordingly (*e.g.*, as part of
11 the secondary purchase loss). *See* Ex. C at Transaction 23. Therefore, accepting
12 Zheng’s request to include the Replacement Tokens would both double count these
13 same tokens and be inconsistent with Section 3.1 of the Distribution Plan.

14 In summary, the Second Claim Determination awarded Zheng an Allowed
15 Amount of \$15,763.52. Zheng’s objection incorrectly calculates a total loss of
16 \$30,018.75, and notably, if his calculations used the *correct* application of FIFO, his
17 total calculated loss would be \$10,342.71. *See* Second Dewey Decl. at ¶17. Relying on
18 the transaction history provided by Zheng’s exchange records, the Receivership
19 attempted to standardize its review by aligning the variables of its manual recalculation
20 with Zheng’s own pricing assumptions. The conclusion was a loss of \$15,574.11—or
21 \$189.41 less than the Second Claim Determination. Accordingly, the Receiver
22 respectfully requests that the Court uphold the Second Claim Determination’s **Allowed**
23 **Amount of \$15,763.52** and resolve Zheng’s Disputed Claim in all other respects.

24 **IV. CONCLUSION**

25 For the reasons set forth herein, Zheng’s objection is meritless and is based on a
26 misunderstanding of the Court-approved loss calculation procedures. Despite repeated
27 efforts by the Receiver to settle this confusion and Zheng’s own obligations to work
28

1 with the Receiver in good faith to resolve the dispute, Zheng unconditionally rejected
2 the Receiver’s requests to meet, and instead, sought the Court’s intervention.

3 As explained throughout, the Receivership’s calculation of Zheng’s loss is
4 correct and was administered pursuant to the approved Claims Process and Distribution
5 Plan. On the other hand, Zheng’s calculation improperly includes disallowed and
6 ineligible tokens. As a result, the Receiver respectfully requests that the Court resolve
7 Zheng’s Disputed Claim by entering an Order upholding the Receiver’s Second Claim
8 Determination for the stated Allowed Amount of \$15,763.52 and authorizing him to
9 distribute Zheng’s *Pro Rata* Share of the same via USD check⁶.

11 Dated: March 6, 2023

Respectfully submitted,
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/s/Kristina S. Azlin
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*Attorneys for Josias Dewey,
Court-appointed Receiver for
Receivership Entities*

22 _____
23 ⁶ Although Zheng originally chose an Ether preference in his Distribution Election,
24 Zheng’s Allowed Amount is currently held in the Reserve Fund as USD. This is
25 because, on the Distribution Date, the Receiver liquidated all Tradable Cryptocurrency
26 Assets (including Zheng’s portion) for USD in an effort to minimize any price volatility
27 that could adversely affect the overall value of the Reserve Fund (*see* Dkt. 121 at ¶8).
28 Accordingly, to reduce unnecessary transaction costs, the Receiver recommends that
Zheng’s *Pro Rata* Share be Distributed via USD check, which was also the default
Distribution method used for Allowed Claims that failed to timely submit a
Distribution Election.

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 11-6.1

The undersigned, counsel of record for Josias N. Dewey, the Court appointed Receiver for the estates of Defendants Titanium Blockchain Infrastructure Services Inc. and its subsidiaries and/or affiliates, certifies that this brief contains **4304 words**, which complies with the word limit of L.R. 11-6.1.

DATED: March 6, 2023

By: /s/Kristina S. Azlin

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 400 S. Hope Street, 8th Floor, Los Angeles, CA 90071.

On **March 6, 2023**, I served the document described as the **RECEIVER’S NOTICE OF MOTION AND MOTION TO UPHOLD CLAIMANT MING ZHENG’S CLAIM DETERMINATION (CLAIM # 1000177); SECOND DECLARATION OF RECEIVER, JOSIAS N. DEWEY, IN SUPPORT OF MOTION; [PROPOSED] ORDER** on the interested parties in this action as follows:

(BY Electronic Transfer to the CM/ECF System) In accordance with Federal Rules of Civil Procedure 5(d)(3) and Local Rule 5-4, I uploaded via electronic transfer a true and correct copy scanned into an electronic file in Adobe “pdf” format of the above-listed document(s) to the U.S. District Court Central District of California’s Electronic Case Filing (CM/ECF) system on this date.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on **March 6, 2023**, Los Angeles, California.

/s/Kristina S. Azlin
Kristina S. Azlin (SBN 235238)

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