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8 SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

9 In re:

10 AMERICAN EAGLE MORTGAGE 100,  
11 LLC; AMERICAN EAGLE MORTGAGE  
12 200, LLC; AMERICAN EAGLE  
13 MORTGAGE 300, LLC; AMERICAN  
14 EAGLE MORTGAGE 400, LLC;  
15 AMERICAN EAGLE MORTGAGE 500,  
16 LLC; AMERICAN EAGLE MORTGAGE  
17 600, LLC; AMERICAN EAGLE  
18 MORTGAGE MEXICO 100, LLC;  
19 AMERICAN EAGLE MORTGAGE  
20 MEXICO 200, LLC; AMERICAN EAGLE  
MORTGAGE MEXICO 300, LLC;  
AMERICAN EAGLE MORTGAGE  
MEXICO 400, LLC; AMERICAN EAGLE  
MORTGAGE MEXICO 500, LLC;  
AMERICAN EAGLE MORTGAGE  
MEXICO 600, LLC; AMERICAN EAGLE  
MORTGAGE I, LLC; AMERICAN EAGLE  
MORTGAGE II, LLC; and AMERICAN  
EAGLE MORTGAGE SHORT TERM, LLC.

Case No. 19-2-01458-06

RECEIVER'S MOTION TO APPROVE  
SETTLEMENT AGREEMENTS WITH  
PACIFIC PREMIER BANK AND  
RIVERVIEW BANK AND GRANT  
RELATED RELIEF

DATE: August 18, 2023  
TIME: 9:00 a.m.  
JUDGE: David E. Gregerson  
PLACE: Department No. 2

21 **I. RELIEF REQUESTED**

22 Clyde A. Hamstreet & Associates, LLC (the "Receiver"), the duly appointed general  
23 receiver in the above-captioned proceeding, respectfully moves this Court for an order pursuant  
24 to RCW 7.60.055(1) and 7.60.190(1), (6)(c), and (7) approving settlement agreements with  
25 Pacific Premier Bank ("Pacific Premier") and Riverview Bank ("Riverview," and together with  
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1 Pacific Premier, the “Bank Defendants”), entering a claims bar order against investors and  
2 defendants with respect to the Bank Defendants, and granting related relief.

## 3 4 **II. STATEMENT OF FACTS**

### 5 **A. Appointment of Receiver and Effect of Investor Claims**

6 On May 10, 2019, the Receiver was appointed to serve as the general receiver for the 15  
7 entities listed in the above caption (collectively, the “Pools”) with all powers afforded a receiver  
8 under the laws of the State of Washington pursuant to this Court’s Order Appointing General  
9 Receiver (the “Receivership Order”). As part of that appointment, the Court granted the Receiver  
10 exclusive authority over all of the Pools’ assets, wherever located, and all business operations of  
11 the Pools. The Receiver’s powers under the Receivership Order include the right to assert any  
12 rights, claims, and interests of the Pools.

13 Pursuant to the terms of the Receivership Order, the Receiver provided notice of this  
14 receivership proceeding to all creditors of the Pools, including all investors that purchased  
15 promissory notes from the Pools. On May 22, 2019, the Receiver mailed the Notice of  
16 Receivership and Claims Bar Date (the “Receivership Notice”), along with a proof of claim  
17 form, to all parties on the master mailing list, which advised creditors of the deadline to file  
18 proofs of claim.

19 On various dates between June 3, 2019, and August 22, 2019, the Receiver also caused  
20 the Receivership Notice to be published in the counties where the Pools owned real property.  
21 Specifically, as set forth in the Receiver’s March 5, 2021, Notice of Filing of Affidavits of  
22 Publication of Notice of Receivership and Claims Bar Date filed in this receivership proceeding,  
23 the Receiver provided notice of the receivership in 36 newspapers or other publications within  
24 Alaska, Arizona, California, Colorado, Nevada, New Mexico, Oregon, Texas, and Washington.

25 On November 22, 2019, based on findings that the Pools were operated by the Pools’  
26 managers as part of a Ponzi-like scheme, this Court entered an Order Consolidating Receivership

1 Estates in which the estates of the Pools were consolidated into a single Estate for the purposes  
2 of administering and distributing all property of the Pools' estates in this receivership  
3 proceeding.

4 As of May 28, 2021, the Receiver received proofs of claim of creditors reflecting 245  
5 discrete claims arising from investments in promissory notes issued by the Pools (collectively,  
6 the "Investors").<sup>1</sup> These claims represent the entirety of the promissory note-based claims against  
7 the Pools. The book value of the Investors' claims is \$64,435,084.41 in the aggregate. The  
8 Receiver then determined the allowed amounts of the Investors' claims using the money-in and  
9 money-out ("MIMO") method, with this Court's approval on July 2, 2021, in the aggregate  
10 amount of \$16,712,302.56. On September 21, 2021, the Court entered another order increasing  
11 the allowed amount of one of the Investors' MIMO claims by \$3,588.00, bringing the aggregate  
12 amount of Investors' MIMO claims to \$16,715,890.00. The Receiver made an initial pro rata  
13 distribution of \$2,946,978.67 to the Investors on the allowed MIMO claims.<sup>2</sup>

14 On December 2, 2022, the Court approved a reduction in the allowed amounts of MIMO  
15 claims held by Investors based on estimated recoveries from settlements with Davis Wright  
16 Tremaine LLP in the Anderson Litigation and the Beattie Litigation (each as defined below). The  
17 aggregate amount by which the MIMO claims of these Investors was reduced is \$2,962,000.00.  
18 The Receiver made a second pro rata distribution to the Investors on the revised allowed claims  
19 and Babeckos on its unsecured claim in the amount of \$1,200,000.00. The remaining amount of  
20 unpaid MIMO claims of the Investors and the unsecured claim of Babeckos presently is  
21 \$12,477,862.05 (assuming the Court reverses the December 2, 2022, reduction in allowed  
22 MIMO claims held by Investors involved in the Anderson Litigation and the Beattie Litigation).

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24 <sup>1</sup> See Receiver's Motion (1) to Fixed Allowed Amounts of Investor Claims and (2) For Authorization to Make  
Interim Distribution on Allowed Investor Claims.

25 <sup>2</sup> By Order dated October 8, 2021, the Court also allowed an unsecured claim of \$4,225.00 for Babeckos Portland  
26 Moorage ("Babeckos"), which is not an Investor, with the same priority as MIMO claims. Its first distribution was  
\$744.86.

1 To date, the Investors have received a total of \$4,146,626.42 from the Receiver for their  
2 participation in this receivership proceeding.<sup>3</sup>

3 **B. Adjunct Litigation against the Bank Defendants and Others**

4 On February 19, 2020, after months of diligent investigation, the Receiver filed the  
5 adjunct litigation *Clyde A. Hamstreet & Associates, LLC v. American Equities Inc. et al.*, Case  
6 No. 20-2-00507-06 (the “Adjunct Litigation”), asserting claims against American Equities, Inc.  
7 (“AEI”), American Eagle Mortgage Management, LLC (“AEMM”), Ross Miles and Beverly  
8 Miles, and Maureen Wile and Robert Wile (collectively, the “AEI Defendants”). The Receiver  
9 amended its complaint on August 28, 2020, to assert claims against Pacific Premier for  
10 negligence, aiding and abetting breaches of fiduciary duties, and breaches of fiduciary duties  
11 based on its alleged participation in or assistance to the alleged Ponzi scheme. The Receiver  
12 amended its complaint a second time on January 12, 2022, asserting claims against Riverview  
13 under the Uniform Fraudulent Transfer Act and for negligence, aiding and abetting breaches of  
14 fiduciary duties, and breaches of fiduciary duties. Both Bank Defendants deny that they are liable  
15 for any of those claims and have asserted numerous defenses to each of those claims.

16 The Receiver and the Bank Defendants have vigorously litigated the merits of the  
17 Receiver’s claims asserted in the Adjunct Litigation, including significant motion practice, the  
18 exchange of over 700,000 pages of discovery, and over 20 depositions. Each of the Parties also  
19 prepared and served detailed expert reports pertaining to both liability and damages.

20 On February 28, 2023, both Bank Defendants moved for summary judgment in the  
21 Adjunct Litigation seeking dismissal of all the Receiver’s claims against them. On March 28,  
22 2023, this Court held a hearing on the Bank Defendants’ motions for summary judgment. The  
23 Court denied the Bank Defendants’ motions as to the claims against them for aiding and abetting  
24 breaches of fiduciary duty and for negligence and granted the motions as to all other claims. At  
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26 <sup>3</sup> Babeckos has received \$1,097.11 on its unsecured claim.

1 the conclusion of that hearing, the Court encouraged the Parties to attempt to resolve the Adjunct  
2 Litigation with the assistance of a capable commercial mediator, noting that the Court considered  
3 the matter a very close case in terms of both liability and damages.

4 Following the summary judgment hearing, the Court set June 2, 2023, for a final pre-trial  
5 conference before a three-week jury trial to begin on June 12, 2023.

### 6 **C. Settlements with Bank Defendants**

7 On April 27, 2023, Pacific Premier and the Receiver participated in mediation with The  
8 Honorable Michael Hogan, former district court judge for the U.S. District Court for the District  
9 of Oregon. Although they did not settle that day, the Receiver and Pacific Premier continued to  
10 engage in extensive, arms'-length negotiations before reaching an agreement in principle on May  
11 3, 2023.

12 On May 8, 2023, Riverview and the Receiver participated in mediation with Chris Kent,  
13 a highly experienced and well-respected Portland, Oregon, commercial mediator. Although they  
14 did not settle that day, the parties continued to engage in extensive, arms'-length negotiations  
15 before reaching an agreement in principle on May 17, 2023.

16 Effective as of June 23, 2023, Pacific Premier and the Receiver executed a formal  
17 settlement agreement, a copy of which is attached to the Declaration of Hannah Schmidt (the  
18 "Schmidt Decl.") as Exhibit 1, memorializing the terms of the settlement with Pacific Premier  
19 (the "Pacific Premier Agreement").

20 Likewise, effective as of June 23, 2023, Riverview and the Receiver executed a formal  
21 settlement agreement, a copy of which is attached to the Schmidt Decl. as Exhibit 2,  
22 memorializing the terms of the settlement with Riverview Bank (the "Riverview Agreement,"  
23 and together with the Pacific Premier Agreement, the "Bank Settlement Agreements").<sup>4</sup>  
24

25 \_\_\_\_\_  
26 <sup>4</sup> Terms used in this motion that are defined in the Bank Settlement Agreements, unless expressly otherwise defined  
herein, have the same meaning as in the Bank Settlement Agreements.

1 Under the terms of the Bank Settlement Agreements, Pacific Premier and Riverview will  
2 each pay \$9.5 million for a total of \$19 million (the “Settlement Payments”) to the Receiver.  
3 These Settlement Payments will enable the Receiver to seek to restore the reduced amounts of  
4 the claims of Investors who are involved in the Anderson Litigation and Beattie Litigation to  
5 their original MIMO amounts, pay the entire MIMO amounts of the allowed claims of Investors,  
6 pay the entire unsecured claim of Babeckos, and make a pro rata distribution on the book amount  
7 of Investors’ claims above the allowed amounts of their MIMO claims, subject to a separate  
8 order of this Court. In return, the Bank Defendants seek global peace with respect to all claims  
9 that have been, or could have been, asserted against them, or any of their respective affiliates,  
10 representatives, and insurers as set forth in the releases in the Bank Settlement Agreements,  
11 arising out of the events leading to these proceedings. Obtaining such global peace is a critical  
12 and material component of the Bank Settlements.

13 Accordingly, the Bank Settlements are conditioned on, among other things, the Court’s  
14 approval and entry of the claims bars enjoining all Investors from asserting, maintaining, or  
15 prosecuting claims arising out of the events leading to these proceedings against either of the  
16 Bank Defendants or any of their respective affiliates, representatives, and insurers, including the  
17 claims asserted against the Bank Defendants in *Anderson, et al. v. Davis Wright Tremaine LLP,*  
18 *et al.*, Case No. 3:20-cv-01194-AR, pending in the U.S. District Court, District of Oregon (the  
19 “Anderson Litigation”), and in *Sherry Beattie, et al. v. Davis Wright Tremaine LLP, et al.*, Case  
20 No. 20CV09419, currently pending in the Circuit Court of the State of Oregon, Multnomah  
21 County (the “Beattie Litigation”). Both the Anderson Litigation and the Beattie Litigation base  
22 their claims for relief against the Bank Defendants on the same facts that the Receiver alleges in  
23 the operative complaint in the Adjunct Litigation. *Compare* Declaration of Edward T. Decker  
24 (the “Decker Decl.”) Ex. A *with* Decker Decl. Exs. B and C.<sup>5</sup>

25 \_\_\_\_\_  
26 <sup>5</sup> For the Court’s convenience, the Receiver has prepared a chart comparing its operative complaint with the  
complaints in the Anderson Litigation and the Beattie Litigation. *See* Decker Decl. Ex. D.

1 Both Bank Defendants rely heavily on liability insurance policies to fund the defense of  
2 the claims asserted against them by the Receiver and by certain Investors. Further litigation will  
3 continue to deplete the funds available from the Bank Defendants' insurers. The Receiver does  
4 not know if it would be able to collect on a judgment anywhere close to the amounts of the  
5 Settlement Payments (as defined below) absent the compromises made by the Bank Defendants  
6 under the Bank Settlements.

7 The Receiver has filed a motion to be heard concurrently with this motion, to restore the  
8 amount of MIMO claims, no longer deducting the pending estimated Davis Wright Tremaine  
9 Recoveries for the Investors who are plaintiffs in the Anderson Litigation and the Beattie  
10 Litigation. The total allowed amount of Investors' MIMO claims and the general unsecured  
11 claim of Babeckos will then again be \$16,720,115.56.<sup>6</sup> The claims motion will also allow the  
12 book value claims in the amount above the MIMO claims, an aggregate amount of  
13 \$47,028,184.55.

14 The Receiver intends to make a distribution of \$17 million to Investors and Babeckos out  
15 of the Settlement Payments. This means that, if both motions are granted, the MIMO claims and  
16 the general unsecured claim of Babeckos will be paid in full (the remaining balance after the first  
17 and second interim distributions being \$12,477,862.05). And Investors will receive a further pro  
18 rata distribution of approximately 9.6% on the incremental amount of their allowed claims  
19 between book value and MIMO.

### 20 **III. EVIDENCE RELIED UPON**

21 The Receiver relies on the Schmidt Decl., the Decker Decl., and the GR 14.1(b)  
22 Appendix submitted contemporaneously herewith and the files and records herein.

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26 <sup>6</sup> Claims that were released by certain Investors pursuant to settlement agreements with the Receiver will not be restored.

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**IV. LEGAL ISSUES**

Should the Court enter an order pursuant to RCW 7.60.190(6)(c) approving the Bank Settlement Agreements?

Should the order include bar orders pursuant to RCW 7.60.055(1) and RCW 7.60.190(1) and (7) and under equitable principles against the Investors and the AEI Defendants to enjoin their claims against the Bank Defendants?

**V. AUTHORITY AND ARGUMENT**

The Court should approve the Bank Settlement Agreements. The Receiver will have given proper and sufficient notice of the hearing on this motion pursuant to RCW 7.60.190(6)(c), and the Bank Settlement Agreements are fair and equitable. The Court should also grant bar orders against the Investors and AEI Defendants to enjoin their claims against the Bank Defendants as well as the related deemed assignment of the Investors' claims against the Bank Defendants to the Receiver.

**A. The Court should approve the Bank Settlement Agreements.**

Under the Receivership Act, the Receiver's power to take certain actions is subject to this Court's approval after 30 days' written notice to persons on the master mailing list. The actions include "any motion or other proceeding involving any proposed . . . (c) [c]ompromise or settlement of a controversy that might affect distribution to creditors from the estate . . . ." RCW 7.60.190(6). The Receivership Act further provides that "[p]ersons on the master mailing list shall be served with all pleadings . . . ." *Id.*

The Bank Settlement Agreements are fair and equitable and in the best interest of creditors. In determining that the Bank Settlements Agreements are fair and equitable, the Court may consider the following factors: "(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; [and] (d) the paramount interest of the creditors and a proper deference to their reasonable views in the



1 premises.” *Charter Private Bank v. Sacotte*, 181 Wn. App. 1032, 2014 WL 2796554, at \*3 (June  
2 16, 2014) (unpublished opinion) (quoting *In re A & C Props.*, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir.  
3 1986)).

4 The Bank Settlement Agreements were reached following an extensive investigation of  
5 the facts and law and resulted from vigorous, good faith, arms’-length, mediated negotiations  
6 involving experienced and competent counsel. The claims asserted by the Receiver against the  
7 Bank Defendants contain complex and novel issues of law and fact that would require, at  
8 minimum, a three-week jury trial and likely substantial pre- and post-trial briefing to litigate to  
9 conclusion, with significant uncertainty regarding whether such claims would be successful. A  
10 significant risk exists that future litigation costs would dissipate the assets of the Pools, and a  
11 significant risk exists that further litigation against the Bank Defendants by the Receiver and by  
12 certain Investors would deplete the funds available to the Bank Defendants to satisfy any  
13 judgments against them. The Investors will receive a significant partial satisfaction of their  
14 claims from the Settlement Payments. Accordingly, the Court should approve the Bank  
15 Settlement Agreements as fair and equitable.

16 **B. The Court should grant bar orders against the Investors and the other**  
17 **defendants in the Adjunct Litigation to enjoin their claims against the Bank**  
18 **Defendants as well as the related deemed assignment of the Investors’ claims**  
**against the Bank Defendants to the Receiver.**

19 Under RCW 7.60.190(1) and 7.60.190(7), the Investors, as creditors and parties in  
20 interest who received notice of this receivership proceeding in accordance with RCW 7.60.210,  
21 or as creditors or other persons who submitted written claims in this receivership proceeding or  
22 otherwise appeared and participated in this receivership proceeding, “are bound by the acts of the  
23 receiver with regard to management and disposition of estate property whether or not they are  
24 formally joined as parties” and are also “bound by any order of the court with respect to the  
25 [receivership proceeding,]” whether or not they have appeared or objected to the action or  
26 proposed action or have been joined formally as parties to any particular action.

1 The Court has broad authority and jurisdiction under RCW 7.60.055(1) to, among other  
2 things, determine all controversies relating to the distribution of the Pools' property and to issue  
3 any orders that will protect the Estate from loss or damage. *See Gloyd v. Rutherford*, 62 Wn.2d  
4 59, 62 (1963) (“A court of equity has power, on appointing a receiver, to make such orders with  
5 respect to assets of the insolvent within the jurisdiction as will protect them against loss or  
6 damage.”); *S.E.C. v. Kaleta*, 530 F. App'x 360, 362 (5th Cir. 2013) (holding that a court  
7 overseeing an equity receivership has “broad powers and wide discretion to determine the  
8 appropriate relief in an equity receivership”). The Court’s equitable powers are limited only to  
9 the extent “provided for by [Chapter 7.60 RCW.]” RCW 7.60.055(1). Nothing in that chapter  
10 limits the Court’s authority to issue claims bar orders or to provide for the deemed assignment of  
11 certain claims to the Receiver as requested here. Additionally, the Court has exclusive in rem  
12 jurisdiction over the Pools’ property. *See Great Am. Ins. Co. v. 1914 Comm. Leasing, LLC*, 22  
13 Wn. App. 2d 1020 at \*5 (2022) (explaining that RCW 7.60.055(1) provides that “[t]he  
14 receivership has subject matter jurisdiction over all controversies relating to the collection,  
15 preservation, application and distribution of estate property”); *State v. Superior Court of Clallam*  
16 *City*, 87 Wn. 498, 503 (1915) (explaining that initiation of receivership proceedings gives the  
17 receivership court “the exclusive right to control the property” of the receivership entity); *see*  
18 *also Pacific Marine Ins. Co. v. State ex rel. Dept. of Revenue*, 181 Wn. App. 730, 739 (2014)  
19 (explaining that a Washington receivership court can issue orders that are controlling over any  
20 separate action that “could conceivably have any effect on the estate being administered”).

21 “Public policy in Washington favors the settlement of cases in whole or in part, and  
22 defendants who wish to settle should be able to do so without fear of being re-exposed to  
23 litigation and liability after settlement.” *Puget Sound Energy v. Certain Underwriters at Lloyd’s,*  
24 *London*, 134 Wn. App. 228, 248–49 (2006).

25 Because Washington law is generally silent on the issues surrounding the entry of claims  
26 bar orders, Washington courts look to other decisions, including under federal law, to confirm its

1 authority to issue bar orders as part of a negotiated settlement in multiparty, complex litigation.  
2 *Id.* at 250. In those contexts, courts consistently hold that a receivership court has authority to  
3 enter orders barring claims against a settling party that are derivative of or dependent on the  
4 equity receiver’s claims against that settling party, particularly in complex Ponzi scheme cases.  
5 *See, e.g., Zacarias v. Stanford Int’l Bank*, 945 F.3d 883, 897–900 (5th Cir. 2019) (holding that a  
6 receivership court has authority to approve settlement and enter order barring investor claims  
7 against settling defendants relating to the Ponzi scheme, including actions in other courts,  
8 because any proceeds of the claims are potential assets of the receivership); *S.E.C. v. Stanford*  
9 *Int’l Bank, Ltd.*, 927 F.3d 830, 840 (5th Cir. 2019) (“Once assets have been placed in  
10 receivership, it is a recognized principle of law that the district court has broad powers and wide  
11 discretion to determine the appropriate relief in an equity receivership. . . . Courts have  
12 accordingly exercised their discretion to issue bar orders to prevent parties from initiating or  
13 continuing lawsuits that would dissipate receivership assets or otherwise interfere with the  
14 collection and distribution of the assets.”); *S.E.C. v. DeYoung*, 850 F.3d 1172, 1183 (10th Cir.  
15 2017) (approving claims bar order as part of settlement between court-appointed receiver and  
16 settling bank because the receiver’s broad equitable authority allowed it to resolve claims and  
17 obtain highest potential recovery for the estate and its investors); *S.E.C. v. Adams*, No. 3:18-cv-  
18 252, 2021 WL 8016843, at \*2 (S.D. Miss. Feb. 25, 2021) (confirming that receivership courts  
19 “utilize bar orders if they are both necessary to effectuate a settlement and fair, equitable, and  
20 reasonable, and in the best interest of the receivership estate”). In this regard, federal courts have  
21 found individual investors’ claims to be “derivative” of an estate’s claims where they are based  
22 on the same set of operative facts that harmed the estate. *See e.g., In re Bernard L. Madoff Inv.*  
23 *Securities LLC*, 740 F.3d 81, 91 (2d Cir. 2014) (finding individual investors’ securities law  
24 claims were barred where they were based on the same facts as trustee’s claims against settling  
25 party); *Zacarias*, 945 F.3d at 899-901 (finding individual investors’ misrepresentation claims  
26

1 were subject to bar order because they were based on the same facts as claims asserted by  
2 receiver).

3 In addition, Washington law recognizes that “[a]nyone foolish enough to settle without  
4 barring contribution is courting disaster” and therefore trial courts have the equitable power to  
5 issue orders barring claims against a settling defendant “[b]ecause it is consistent with the public  
6 policy in Washington of encouraging settlement.” *Puget Sound Energy*, 134 Wn. App. at 250.

7 Finally, other receivership courts have entered orders providing for the deemed  
8 assignment of investors’ claims against third parties to a receiver to achieve global resolution of  
9 disputes. In the federal receivership of Sunwest Management, Inc., the court approved a plan of  
10 distribution to investors under which investors were deemed to assign their claims against third  
11 parties to the receiver in exchange for distributions deriving from settlements with those third  
12 parties. *See S.E.C. v. Sunwest Management et al.*, Case No. 09-6056-HO (D. Or. May 24, 2011)  
13 (holding investors had assigned claims to receiver and could no longer pursue them).

14 It is appropriate to enter the proposed bar orders and to grant the related deemed  
15 assignment of the Investors’ claims against the Bank Defendants to the Receiver in the  
16 circumstances. The claims of the Receiver against the Bank Defendants in the Adjunct Litigation  
17 and the claims of plaintiff-Investors against the Bank Defendants in the Anderson Litigation and  
18 in the Beattie Litigation derive from the same nucleus of operative facts. Neither Pacific Premier  
19 nor Riverview would have agreed to the terms of the Bank Settlements in the absence of the  
20 assurance of “global peace” with respect to all claims that have been, or could be, asserted  
21 against them or their respective affiliates, representative, and insurers arising from their  
22 respective transactions or dealings with any of the Pools, AEI, or AEMM. Deemed claim  
23 assignments and the claims bars provided in the proposed order granting this motion are  
24 necessary and appropriate to effectuate the Bank Settlement Agreements. The entry of the  
25 proposed order is an essential component to achieve the Bank Settlement Agreement.

26 ///

1           WHEREFORE, the Receiver respectfully requests that the Court grant this motion and  
2 such other relief as is just and proper. A proposed order is attached hereto as Exhibit A.

3           DATED this 30<sup>th</sup> day of June, 2023.

4                                   MILLER NASH LLP

5  
6                                   /s/ John R. Knapp, Jr.  
7                                   John R. Knapp, Jr., P.C., WSB No. 29343  
8                                   David A. Foraker, OSB No. 812280  
                                  (admitted *pro hac vice*)

9                                   Attorneys for Receiver  
10                                  Clyde A. Hamstreet & Associates, LLC

# EXHIBIT A

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SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

In Re:

AMERICAN EAGLE MORTGAGE 100, LLC; AMERICAN EAGLE MORTGAGE 200, LLC; AMERICAN EAGLE MORTGAGE 300, LLC; AMERICAN EAGLE MORTGAGE 400, LLC; AMERICAN EAGLE MORTGAGE 500, LLC; AMERICAN EAGLE MORTGAGE 600, LLC; AMERICAN EAGLE MORTGAGE MEXICO 100, LLC; AMERICAN EAGLE MORTGAGE MEXICO 200, LLC; AMERICAN EAGLE MORTGAGE MEXICO 300, LLC; AMERICAN EAGLE MORTGAGE MEXICO 400, LLC; AMERICAN EAGLE MORTGAGE MEXICO 500, LLC; AMERICAN EAGLE MORTGAGE MEXICO 600, LLC; AMERICAN EAGLE MORTGAGE I, LLC; AMERICAN EAGLE MORTGAGE II, LLC; and AMERICAN EAGLE MORTGAGE SHORT TERM, LLC.

Case No. 19-2-01458-06

[PROPOSED] ORDER APPROVING SETTLEMENTS WITH PACIFIC PREMIER BANK AND RIVERVIEW BANK, ENTERING CLAIMS BARS, AND GRANTING RELATED RELIEF

THIS MATTER having come before the Court on the Motion to Approve Settlement Agreements with Pacific Premier Bank and Riverview Bank and Grant Related Relief (the "Motion") filed by Clyde A. Hamstreet & Associates, LLC, the duly appointed general receiver herein (the "Receiver"). The Motion concerns proposed settlements (each a "Bank Settlement," and collectively, the "Bank Settlements") between the Receiver and Pacific Premier Bank ("Pacific Premier") and between the Receiver and Riverview Bank ("Riverview" and together

1 with Pacific Premier, the “Bank Defendants”), two of the defendants in the adjunct litigation  
2 *Clyde A. Hamstreet & Associates, LLC v. American Equities Inc. et al.*, Case No. 20-2-00507-06  
3 (the “Adjunct Litigation”). The Receiver, Pacific Premier, and Riverview are referred to together  
4 as the “Parties.”

5 Following notice of the proposed settlements as required by RCW 7.60.190(6)(c), and  
6 having considered the filings and heard the arguments of counsel, the Court hereby makes the  
7 following findings and conclusions:

8 A. On May 10, 2019, the Receiver was appointed to serve as the general receiver for  
9 the 15 entities listed in the above caption (collectively, the “Pools”) with all powers afforded a  
10 receiver under the laws of the State of Washington pursuant to this Court’s Order Appointing  
11 General Receiver (the “Receivership Order”). As part of that appointment, the Court granted the  
12 Receiver exclusive authority over all of the Pools’ assets, wherever located, and all business  
13 operations of the Pools. The Receiver’s powers under the Receivership Order include the right to  
14 assert any rights, claims, and interests of the Pools.

15 B. Pursuant to the terms of the Receivership Order, the Receiver provided notice of  
16 this receivership proceeding to all creditors of the Pools, including all investors that purchased  
17 promissory notes from the Pools. On May 22, 2019, the Receiver mailed the Notice of  
18 Receivership and Claims Bar Date (the “Receivership Notice”), along with a proof of claim  
19 form, to all parties on the master mailing list, which advised creditors of the deadline to file  
20 proofs of claim.

21 C. On various dates between June 3, 2019, and August 22, 2019, the Receiver also  
22 caused the Receivership Notice to be published in the counties where the Pools owned real  
23 property. Specifically, as set forth in the Receiver’s March 5, 2021, Notice of Filing of Affidavits  
24 of Publication of Notice of Receivership and Claims Bar Date filed in this receivership  
25 proceeding, the Receiver provided notice of the receivership in 36 newspapers or other  
26 publications within Alaska, Arizona, California, Colorado, Nevada, New Mexico, Oregon,



1 Texas, and Washington.

2 D. On November 22, 2019, based on findings that the Pools were operated by the  
3 Pools' managers as part of a Ponzi-like scheme, this Court entered an Order Consolidating  
4 Receivership Estates in which the estates of the Pools were consolidated into a single Estate for  
5 the purposes of administering and distributing all property of the Pools' estates in this  
6 receivership proceeding.

7 E. As of May 28, 2021, the Receiver received proofs of claim of creditors reflecting  
8 245 discrete claims arising from investments in promissory notes issued by the Pools  
9 (collectively, the "Investors"). These claims represent the entirety of the promissory note-based  
10 claims against the Pools. The book value of the Investors' claims is \$64,435,084.41 in the  
11 aggregate. The Receiver then determined the allowed amounts of the Investors' claims using the  
12 money-in and money-out ("MIMO") method, with this Court's approval on July 2, 2021, which  
13 aggregate \$16,712,302.56. On September 21, 2021, the Court entered another order increasing  
14 the allowed amount of one of the Investors' MIMO claims, bringing the aggregate amount of  
15 Investors' MIMO claims to \$16,715,890.00. The Receiver made an initial pro rata distribution of  
16 \$2,946,978.67 to the Investors on the allowed MIMO claims. By Order dated October 8, 2021,  
17 the Court also allowed an unsecured claim of \$4,225.00 for Babeckos Portland Moorage  
18 ("Babeckos"), which is not an investor, with the same priority as MIMO claims. Its first  
19 distribution was \$744.86.

20 F. On December 2, 2022, the Court approved a reduction in the allowed amounts of  
21 MIMO claims held by Investors based on estimated recoveries from settlements with Davis  
22 Wright Tremaine LLP in the Anderson Litigation and the Beattie Litigation (each as defined  
23 below). The aggregate amount by which the MIMO claims of these Investors was reduced is  
24 \$2,962,000.00. The Receiver made a second pro rata distribution to the Investors on the revised  
25 allowed claims and Babeckos on its unsecured claim in the amount of \$1,200,000.00. The  
26 remaining amount of unpaid MIMO claims of the Investors presently is \$12,477,862.05

1 (assuming the Court reverses the December 2, 2022, reduction in allowed MIMO claims held by  
2 Investors involved in the Anderson Litigation and the Beattie Litigation).

3 G. To date, the Investors have received a total of \$4,146,626.42 from the Receiver  
4 for their participation in this receivership proceeding, and Babeckos has received \$1,097.11 on  
5 its unsecured claim.

6 H. On February 19, 2020, after months of diligent investigation, the Receiver filed  
7 the Adjunct Litigation asserting claims against American Equities, Inc. (“AEI”), American Eagle  
8 Mortgage Management, LLC (“AEMM”), Ross Miles and Beverly Miles, and Maureen Wile and  
9 Robert Wile. The Receiver amended its complaint on August 28, 2020, to assert claims against  
10 Pacific Premier for negligence, aiding and abetting breaches of fiduciary duties, and breaches of  
11 fiduciary duties based on its alleged participation in or assistance to the alleged Ponzi scheme.  
12 The Receiver amended its complaint a second time on January 12, 2022, asserting claims against  
13 Riverview under the Uniform Fraudulent Transfer Act and for negligence, aiding and abetting  
14 breaches of fiduciary duties, and breaches of fiduciary duties. Both Bank Defendants deny that  
15 they are liable for any of those claims and have asserted numerous defenses to each of those  
16 claims.

17 I. The Receiver and the Bank Defendants have vigorously litigated the merits of the  
18 Receiver’s claims asserted in the Adjunct Litigation, including significant motion practice, the  
19 exchange of over 700,000 pages of discovery, and over 20 depositions. Each of the Parties also  
20 prepared and served detailed expert reports pertaining to both liability and damages.

21 J. On February 28, 2023, both Bank Defendants moved for summary judgment in  
22 the Adjunct Litigation seeking dismissal of all the Receiver’s claims against them. On March 28,  
23 2023, this Court held a hearing on the Bank Defendants’ motions for summary judgment. The  
24 Court denied the Bank Defendants’ motions as to the claims against them for aiding and abetting  
25 breaches of fiduciary duty and for negligence and granted the motions as to all other claims. At  
26 the conclusion of that hearing, the Court encouraged the Parties to attempt to resolve the Adjunct

1 Litigation with the assistance of a capable commercial mediator, noting that the Court considered  
2 the matter a very close case in terms of both liability and damages.

3 K. Following the summary judgment hearing, the Court set June 2, 2023, for a final  
4 pre-trial conference before a three-week jury trial to begin on June 12, 2023.

5 L. Both Bank Defendants rely heavily on liability insurance policies to fund the  
6 defense of the claims asserted against them by the Receiver and by certain Investors. Further  
7 litigation will continue to deplete the funds available from the Bank Defendants' insurers.  
8 Moreover, each of the Bank Defendants is contending with a dispute with its insurance carriers  
9 as to the extent of coverage available for this matter. The Receiver does not know if it would be  
10 able to collect on a judgment anywhere close to the amounts of the Settlement Payments (as  
11 defined below) absent the compromises made by the Bank Defendants under the Bank  
12 Settlements.

13 M. On April 27, 2023, Pacific Premier and the Receiver participated in mediation  
14 with The Honorable Michael Hogan, former district court judge for the U.S. District Court for  
15 the District of Oregon. Although they did not settle that day, the Receiver and Pacific Premier  
16 continued to engage in extensive, arms'-length negotiations before reaching an agreement in  
17 principle on May 3, 2023.

18 N. On May 8, 2023, Riverview and the Receiver participated in mediation with Chris  
19 Kent, a highly experienced and well-respected Portland, Oregon, commercial mediator. Although  
20 they did not settle that day, the parties continued to engage in extensive, arms'-length  
21 negotiations before reaching an agreement in principle on May 17, 2023.

22 O. Effective as of June 23, 2023, Pacific Premier and the Receiver executed a formal  
23 settlement agreement, a copy of which is attached to the Declaration of Hannah Schmidt (the  
24 "Schmidt Decl.") as Exhibit I, memorializing the terms of the Bank Settlement with Pacific  
25 Premier (the "Pacific Premier Agreement").  
26

1 P. Likewise, effective as of June 23, 2023, Riverview and the Receiver executed a  
2 formal settlement agreement, a copy of which is attached to the Schmidt Decl. as Exhibit 2,  
3 memorializing the terms of the Bank Settlement with Riverview (the “Riverview Agreement,”  
4 and together with the Pacific Premier Agreement, the “Bank Settlement Agreements”). Terms  
5 used in this Order that are defined in the Bank Settlement Agreements, unless expressly  
6 otherwise defined herein, have the same meaning as in the Bank Settlement Agreements.

7 Q. Under the terms of the Bank Settlement Agreements, Pacific Premier and  
8 Riverview will each pay \$9.5 million for a total of \$19 million (the “Settlement Payments”) to  
9 the Receiver. These Settlement Payments will enable the Receiver to seek to restore the reduced  
10 amounts of the claims of Investors who are involved in the Anderson Litigation and Beattie  
11 Litigation to their original MIMO amounts, pay the entire MIMO amounts of the allowed claims  
12 of Investors, pay the entire unsecured claim of Babeckos, and make a pro rata distribution on the  
13 book amount of Investors’ claims above the allowed amounts of their MIMO claims, subject to a  
14 separate order of this Court. In return, the Bank Defendants seek global peace with respect to all  
15 claims that have been, or could have been, asserted against them, or any of their respective  
16 affiliates, representatives, and insurers as set forth in the releases in the Bank Settlement  
17 Agreements, arising out of the events leading to these proceedings. Obtaining such global peace  
18 is a critical and material component of the Bank Settlements.

19 R. Accordingly, the Bank Settlements are conditioned on, among other things, the  
20 Court’s approval and entry of the claims bars enjoining all Investors from asserting, maintaining,  
21 or prosecuting claims arising out of the events leading to these proceedings against either of the  
22 Bank Defendants or any of their respective affiliates, representatives, and insurers, including the  
23 claims asserted against the Bank Defendants in *Anderson, et al. v. Davis Wright Tremaine LLP,*  
24 *et al.*, Case No. 3:20-cv-01194-AR, pending in the U.S. District Court, District of Oregon (the  
25 “Anderson Litigation”), and in *Sherry Beattie, et al. v. Davis Wright Tremaine LLP, et al.*, Case  
26 No. 20CV09419, currently pending in the Circuit Court of the State of Oregon, Multnomah

1 County (the “Beattie Litigation”). Both the Anderson Litigation and the Beattie Litigation base  
2 their claims for relief against the Bank Defendants on the same facts that the Receiver alleges in  
3 the operative complaint in the Adjunct Litigation.

4 S. On June 30, 2023, the Receiver filed the Motion. The Receiver  
5 contemporaneously filed a Motion (1) to Maintain and Restore MIMO Claims of Certain  
6 Investors and Allow Book Value Claims, (2) for Authorization to Make a Third Interim  
7 Distribution on Allowed Investor Claims and the Babeckos Claim, and (3) for Authorization to  
8 Make Additional Interim Distributions From Time to Time (the “Claims Motion”). The Claims  
9 Motion includes relief that is contingent on performance by the Banks under the Bank Settlement  
10 Agreements, specifically payment of the Settlement Payments.

11 T. The Receiver provided notice of the Bank Settlements and of the hearing on this  
12 Motion and on the Claims Motion by first-class mail to all Investors, Babeckos, counsel to the  
13 parties in the Adjunct Litigation, the Anderson Litigation, and the Beattie Litigation, and other  
14 parties on the master mailing list in accordance with RCW 7.60.190(6) (the “Bank Settlement  
15 Notice”). The Bank Settlement Notice gave Investors a deadline of August 4, 2023, to object to  
16 the Motion.

17 U. On August 18, 2023, this Court held a hearing on this Motion and on the Claims  
18 Motion.

19 V. Under RCW 7.60.190(1) and 7.60.190(7), the Investors, as creditors and parties in  
20 interest who received notice of this receivership proceeding in accordance with RCW 7.60.210,  
21 or as creditors or other persons who submitted written claims in this receivership proceeding or  
22 otherwise appeared and participated in this receivership proceeding, “are bound by the acts of the  
23 receiver with regard to management and disposition of estate property whether or not they are  
24 formally joined as parties” and are also “bound by any order of the court with respect to the  
25 [receivership proceeding.]” whether or not they have appeared or objected to the action or  
26 proposed action or have been joined formally as parties to any particular action.

1           W.     The Court has broad authority and jurisdiction under RCW 7.60.055(1) to, among  
2 other things, determine all controversies relating to the distribution of the Pools' property and to  
3 issue any orders that will protect the Pools from loss or damage. *See Gloyd v. Rutherford*, 62  
4 Wn.2d 59, 62 (1963) (“A court of equity has power, on appointing a receiver, to make such  
5 orders with respect to assets of the insolvent within the jurisdiction as will protect them against  
6 loss or damage.”); *S.E.C. v. Kaleta*, 530 F. App'x 360, 362 (5th Cir. 2013) (holding that a court  
7 overseeing an equity receivership has “broad powers and wide discretion to determine the  
8 appropriate relief in an equity receivership”). The Court’s equitable powers are limited only to  
9 the extent “provided for by [Chapter 7.60 RCW.]” RCW 7.60.055(1). Nothing in that chapter  
10 limits the Court’s authority to issue claims bar orders or to provide for the deemed assignment of  
11 certain claims to the Receiver. Additionally, the Court has exclusive in rem jurisdiction over the  
12 Pools’ property. *See Great Am. Ins. Co. v. 1914 Comm. Leasing, LLC*, 22 Wn. App. 2d 1020 at  
13 \*5 (2022) (explaining that RCW 7.60.055(1) provides that “[t]he receivership has subject matter  
14 jurisdiction over all controversies relating to the collection, preservation, application and  
15 distribution of estate property”); *State v. Superior Court of Clallam Cty.*, 87 Wn. 498, 503 (1915)  
16 (explaining that initiation of receivership proceedings gives the receivership court “the exclusive  
17 right to control the property” of the receivership entity). *See also Pacific Marine Ins. Co. v. State*  
18 *ex rel. Dept. of Revenue*, 181 Wn. App. 730, 739 (2014) (explaining that a Washington  
19 receivership court can issue orders that are controlling over any separate action that “could  
20 conceivably have any effect on the estate being administered”).

21           X.     “Public policy in Washington favors the settlement of cases in whole or in part,  
22 and defendants who wish to settle should be able to do so without fear of being re-exposed to  
23 litigation and liability after settlement.” *Puget Sound Energy v. Certain Underwriters at Lloyd’s,*  
24 *London*, 134 Wn. App. 228, 248–49 (2006).

25           Y.     Because Washington law is generally silent on the issues surrounding the entry of  
26 claims bar orders, Washington courts look to other decisions, including under federal law, to

1 confirm its authority to issue bar orders as part of a negotiated settlement in multiparty, complex  
2 litigation. *Id.* at 250. In those contexts, courts consistently hold that a receivership court has  
3 authority to enter orders barring claims against a settling party that are derivative of or dependent  
4 on the equity receiver’s claims against that settling party, particularly in complex Ponzi scheme  
5 cases. *See, e.g., Zacarias v. Stanford Int’l Bank*, 945 F.3d 883, 897–900 (5th Cir. 2019) (holding  
6 that a receivership court has authority to approve settlement and enter order barring investor  
7 claims against settling defendants relating to the Ponzi scheme, including actions in other courts,  
8 because any proceeds of the claims are potential assets of the receivership); *S.E.C. v. Stanford  
9 Int’l Bank, Ltd.*, 927 F.3d 830, 840 (5th Cir. 2019) (“Once assets have been placed in  
10 receivership, it is a recognized principle of law that the district court has broad powers and wide  
11 discretion to determine the appropriate relief in an equity receivership. . . . Courts have  
12 accordingly exercised their discretion to issue bar orders to prevent parties from initiating or  
13 continuing lawsuits that would dissipate receivership assets or otherwise interfere with the  
14 collection and distribution of the assets.”); *S.E.C. v. DeYoung*, 850 F.3d 1172, 1183 (10th Cir.  
15 2017) (approving claims bar order as part of settlement between court-appointed receiver and  
16 settling bank because the receiver’s broad equitable authority allowed it to resolve claims and  
17 obtain highest potential recovery for the estate and its investors); *S.E.C. v. Adams*, No. 3:18-cv-  
18 252, 2021 WL 8016843, at \*2 (S.D. Miss. Feb. 25, 2021) (confirming that receivership courts  
19 “utilize bar orders if they are both necessary to effectuate a settlement and fair, equitable, and  
20 reasonable, and in the best interest of the receivership estate”). In this regard, federal courts have  
21 found individual investors’ claims to be “derivative” of an estate’s claims where they are based  
22 on the same set of operative facts that harmed the estate. *See e.g., In re Bernard L. Madoff Inv.  
23 Securities LLC*, 740 F.3d 81, 91 (2d Cir. 2014) (finding individual investors’ securities law  
24 claims were barred where they were based on the same facts as trustee’s claims against settling  
25 party); *Zacarias*, 945 F.3d at 899-901 (finding individual investors’ misrepresentation claims  
26 were subject to bar order because they were based on the same facts as claims asserted by

1 receiver). In addition, Washington law recognizes that “[a]nyone foolish enough to settle without  
2 barring contribution is courting disaster” and therefore trial courts have the equitable power to  
3 issue orders barring claims against a settling defendant “[b]ecause it is consistent with the public  
4 policy in Washington of encouraging settlement.” *Puget Sound Energy*, 134 Wn. App. at 250.  
5 Finally, other receivership courts have entered orders providing for the deemed assignment of  
6 investors’ claims against third parties to a receiver to achieve global resolution of disputes. *See*  
7 *S.E.C. v. Sunwest Management et al.*, Case No. 09-6056-HO (D. Ore. May 24, 2011) (holding  
8 investors had assigned claims to receiver and could no longer pursue them).

9         Z.         The Receiver provided sufficient notice of the Motion and of the relief granted  
10 under this Order, through the Bank Settlement Notice, and that such notice was reasonably  
11 calculated, under the circumstances, to apprise all interested parties of the Bank Settlements, the  
12 releases contained in the Bank Settlement Agreements, the deemed assignment of the Investors’  
13 claims, if any, against the Bank Defendants and their respective affiliates, representatives, and  
14 insurers to the Receiver, and the claims bars provided for in this Order. The Bank Settlement  
15 Notice met all applicable requirements of law, including, without limitation, RCW  
16 7.60.190(6)(c), the Washington Civil Rules, and the Washington and United States Constitutions  
17 (including Due Process), and provided all affected persons with a full and fair opportunity to be  
18 heard on these matters.

19         AA.         In deciding whether to approve the Bank Settlements, the Court considered the  
20 following factors relevant to approval of settlements in equity receivership cases: “(a) the  
21 probability of success in the litigation; (b) the difficulties, if any to be encountered in the matter  
22 of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and  
23 delay necessarily attending it; [and] (d) the paramount interest of the creditors and a proper  
24 deference to their reasonable views in the premises.” *Charter Private Bank v. Sacotte*, 181 Wn.  
25 App. 1032, 2014 WL 2796554, at \*3 (June 16, 2014) (unpublished opinion) (quoting *In re A & C*  
26 *Props.*, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. 1986)).



1 BB. Based on the court record herein, including the evidence presented at the hearing  
2 and contained in the declarations filed in support of the Motion, the Court finds that (a) the Bank  
3 Settlements were reached following an extensive investigation of the facts and law and resulted  
4 from vigorous, good faith, arms'-length, mediated negotiations involving experienced and  
5 competent counsel; (b) the claims asserted by the Receiver against the Bank Defendants contain  
6 complex and novel issues of law and fact that would require, at minimum, a three-week jury trial  
7 and likely substantial pre- and post-trial briefing to litigate to conclusion, with significant  
8 uncertainty regarding whether such claims would be successful; (c) a significant risk exists that  
9 future litigation costs would dissipate the assets of the Pools; (d) significant risk exists that  
10 further litigation against the Bank Defendants by the Receiver and by certain Investors would  
11 deplete the funds available to the Bank Defendants to satisfy any judgments against them; (e) the  
12 Investors will receive a significant partial satisfaction of their claims from the Settlement  
13 Payments; (f) the claims of the Receiver against the Bank Defendants in the Adjunct Litigation  
14 and the claims of plaintiff-Investors against the Bank Defendants in the Anderson Litigation and  
15 in the Beattie Litigation derive from the same nucleus of operative facts; (g) neither Pacific  
16 Premier nor Riverview would have agreed to the terms of the Bank Settlements in the absence  
17 of the assurance of "global peace" with respect to all claims that have been, or could be, asserted  
18 against them or their respective affiliates, representative, and insurers arising from their  
19 respective transactions or dealings with any of the Pools, AEL, or AEMM; (h) the deemed claim  
20 assignments and the claims bars provided in this Order are necessary and appropriate to  
21 effectuate the Bank Settlements; and (i) the entry of this Order is an essential component to  
22 achieve the Bank Settlements.

23 CC. After careful consideration of the record and applicable law, the Court concludes  
24 that (a) the Bank Settlements are the best option for maximizing the net amount recoverable from  
25 the Bank Defendants for the Estate and the Investors as a whole; (b) the terms of the Bank  
26 Settlement Agreements are, in all respects, fair, reasonable, and equitable, and in the best

1 interests of the Investors and other creditors of the Pools as a whole and should be approved; (c)  
2 the claims of the plaintiff-Investors against the Bank Defendants in the Anderson Litigation and  
3 in the Beattie Litigation are derivative of or dependent on the Receiver's claims against the Bank  
4 Defendants in the Adjunct Litigation; (d) the deemed assignment of the Investors' claims against  
5 the Bank Defendants to the Receiver is appropriate in the circumstances; and (e) the entry of the  
6 claims bars provided in this Order are appropriate and necessary in the circumstances of this  
7 case.

8 It is hereby ORDERED, ADJUDGED, AND DECREED as follows:

9 1. The Bank Settlement Agreements (as they may be amended from time to time in  
10 non-material respects) are in all respects approved, and the Receiver is authorized to grant the  
11 releases and otherwise perform its obligations under the Bank Settlement Agreements, in each  
12 case, without the need for further court approval.

13 2. All Investors are hereby deemed to have irrevocably assigned to the Receiver all  
14 of such Investors' claims against Pacific Premier, Riverview, any of their respective affiliated  
15 entities or any of their predecessors, successors, or assigns (specifically including Grandpoint  
16 Capital, Inc.), or any of their respective past and present officers, directors, employees,  
17 representatives, attorneys, and other agents, or any of their respective insurers and underwriters  
18 (collectively, the "Bank Protected Parties") based on or arising out of Pacific Premier's or  
19 Riverview's transactions or dealings with any of the Pools, AEI, or AEMM, including any  
20 claims that have been asserted or could be asserted in the Anderson Litigation or in the Beattie  
21 Litigation.

22 3. All Investors are hereby permanently barred and enjoined from directly or  
23 indirectly asserting, initiating, maintaining, continuing, intervening in, encouraging, or otherwise  
24 prosecuting any demand, claim, action, cause of action, or proceeding of any kind in any forum  
25 against any of the Bank Protected Parties based on or arising out of Pacific Premier's or  
26 Riverview's transactions or dealings with any of the Pools, AEI, or AEMM, including claims

1 that have been asserted or could be asserted in the Anderson Litigation or in the Beattie  
2 Litigation.

3 4. AEI, AEMM, Ross Miles, Beverly Miles, Maureen Wile, Robert Wile, Pacific  
4 Premier, and Riverview are hereby permanently barred and enjoined from directly or indirectly  
5 asserting, initiating, maintaining, continuing, intervening in, encouraging, or otherwise  
6 prosecuting any demand, claim, action, cause of action, or proceeding of any kind in any forum  
7 against any of the Bank Protected Parties for contribution, indemnity, reimbursement, or the like  
8 based on or arising out of settlement or other resolution of any claims that have been asserted or  
9 could be asserted in the Adjunct Litigation, the Anderson Litigation, or the Beattie Litigation.

10 5. The releases and the covenants not to sue set forth in the Bank Settlement  
11 Agreements, and the releases, bars, injunctions, and restraints set forth in this Order, do not limit  
12 in any way the evidence that the Receiver may offer against the remaining defendants in the  
13 Adjunct Litigation or otherwise in this receivership proceeding or any other action.

14 6. Nothing in this Order or in the Bank Settlement Agreements and no aspect of the  
15 Bank Settlements or negotiation or mediation thereof is or shall be construed to be an admission  
16 or concession of any violation of any statute or law, of any fault, liability, or wrongdoing, or of  
17 any infirmity in the claims or defenses of the Parties with regard to any of claims, allegations, or  
18 defenses asserted in the Adjunct Litigation action or any other proceeding.

19 7. With respect to any judgment that might be entered on any cause of action or  
20 claim in the Adjunct Litigation or any other proceeding in which there is or may be a  
21 determination of fault on the part of the Bank Defendants, including but not limited to a  
22 determination of fault based on joint and several liability, the non-settling defendants (*i.e.*, AEI,  
23 AEMM, Ross Miles, Beverly Miles, Maureen Wile, and Robert Wile) shall receive a pro rata  
24 judgment reduction credit. In recognition of the Settlement Payments, any resulting judgment  
25 reduction credit shall be applied so as to preclude recovery by any party for any amount of pro  
26 rata fault attributable to either of the Bank Defendants. In other words, the final judgment against

1 the non-settling defendants shall be reduced by the greater of (a) an amount that corresponds to  
2 the percentage of fault or responsibility attributed to the Bank Defendants or for the alleged loss  
3 to the Pools, and (b) the amount of the Settlement Payments. Any such judgment credit is  
4 intended to ensure that the non-settling defendants never pay more than they would if all the  
5 parties had gone to trial.

6 8. Without in any way affecting the finality of this Order, except as provided in the  
7 Bank Settlement Agreements, the Court retains continuing and exclusive jurisdiction with  
8 respect to all matters relating to the Bank Settlements, including all disputes that may arise  
9 concerning the interpretation or enforcement of the Bank Settlement Agreements or this Order.

10 9. This Order is both final and appealable, and immediate entry by the clerk is  
11 expressly directed.

12 DATED this 18<sup>th</sup> day of August, 2023.

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The Honorable David E. Gregerson

17 Presented by:

18 MILLER NASH LLP

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