

ROBB EVANS & ASSOCIATES, LLC

Receiver of

Forex Liquidity LLC

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U.S. Commodity Futures Trading Commission v. Forex Liquidity LLC
CASE No. SACV-07-01437 CJC (RNBx)

Order:

- (1) Denying Robert Gray's Request for Intervention;**
- (2) Denying Robert Gray's Motion for Extension of Time;**
- (3) Denying Robert Gray's Motion to Stay;**
- (4) Denying Robert Gray's Motion to Quash; and**
- (5) Granting Receiver's Motion for Orders Approving the Sale of Accounts, Compromise of Claims, Sale of Office Equipment, Initial Distribution and Proposed Claims Filings Procedures and Limited Notice Procedures**

Filed July 14, 2008

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

**U.S. COMMODITY FUTURES
TRADING COMMISSION,**

Plaintiff,

vs.

FOREX LIQUIDITY LLC

Defendant.

Case No.: SACV 07-01437-CJC(RNBx)

**ORDER (1) DENYING ROBERT
GRAY’S REQUEST FOR
INTERVENTION; (2) DENYING
ROBERT GRAY’S MOTION FOR
EXTENSION OF TIME; (3) DENYING
ROBERT GRAY’S MOTION TO
STAY; (4) DENYING ROBERT
GRAY’S MOTION TO QUASH; and (5)
GRANTING RECEIVER’S MOTION
FOR ORDERS APPROVING SALE OF
ACCOUNTS, COMPROMISE OF
CLAIMS, SALE OF OFFICE
EQUIPMENT, INITIAL
DISTRIBUTION AND PROPOSED
CLAIMS FILINGS PROCEDURES
AND LIMITED NOTICE
PROCEDURES**

BACKGROUND

The Commodity Futures Trading Commission (“CFTC”) filed this suit on December 13, 2007, alleging that from at least November 30, 2007 to December 7, 2007,

1 Forex Liquidity, LLC's ("Forex") net capitalization had been below the adjusted net
2 capital required by Section 4f(b), 7 U.S.C. § 6f(b), of the Commodity Exchange Act, and
3 CFTC Regulation 1.17(a), 17 C.F.R. § 1.17(a). CFTC's complaint also alleged that
4 Forex failed to maintain required books and records pursuant to Section 4f(a)(1) of the
5 Commodity Exchange Act and CFTC Regulation 1.18, 17 C.F.R. § 1.18 (2007). On
6 December 14, 2007, this Court issued an *ex parte* statutory restraining order and order to
7 show cause regarding preliminary injunction. The restraining order provided that Forex
8 shall be restrained from dissipating, withdrawing, transferring, or otherwise disposing of
9 funds, assets, or other property. The restraining order also placed Forex in receivership
10 and appointed Robb Evans & Associates (the "Receiver") as temporary receiver for the
11 assets of Forex and its subsidiaries and affiliates.

12
13 On January 25, 2008, the Court issued a consent order of preliminary injunction,
14 pursuant to which the Receiver was confirmed as the receiver for Forex's assets and
15 Forex was prohibited from soliciting or accepting any new deposits of customer funds
16 until further order of this Court. The consent order also provides that the provisions of
17 the restraining order should remain in effect and that all non-parties were stayed from
18 initiating proceedings interfering with the receivership estate pending the disposition of
19 this case. Robert Gray, the principal shareholder of Forex, consented to all of the terms
20 and conditions of the preliminary injunction, although he did not waive any defenses or
21 concede the truth of the allegations of the complaint.

22
23 The Receiver now seeks orders approving the sale of various accounts, approving a
24 compromise of claims, authorizing the sale of office equipment owned by Forex,
25 approving the Receiver's proposed initial distribution and proposed claims filings
26 procedures and approving limited notice procedures. Robert Gray seeks to intervene in
27 this action as a defendant, asserting that he has substantial legal and equitable rights in his
28 capacity as principal of Forex and that the existing Defendant, Forex, will not adequately

1 protect his rights. Related to his motion to intervene, Mr. Gray seeks to stay this action
2 pending resolution of his motion to intervene, for an extension of time to respond to the
3 Receiver's motion seeking orders, and to quash the Receiver's subpoena of Forex's
4 employee Brian McMahon pending a ruling on Mr. Gray's motion to intervene. The
5 Receiver opposes all of Mr. Gray's motions. The Court finds that Mr. Gray has failed to
6 show that he is entitled to intervention as a right under Rule 25(a) of the Federal Rules of
7 Civil Procedure because his motion was not timely, he has not shown that he has an
8 interest relating to the property that is the subject of this action, he has not shown an
9 impairment of his ability to protect his interests, and he has not demonstrated that the
10 Receiver cannot adequately represent any interest he has in this matter. Accordingly, Mr.
11 Gray's motion to intervene is DENIED. Because his motion to intervene is denied, his
12 related motions for a stay, an extension of time, and to quash the subpoena of Forex's
13 employees are also DENIED. With respect to the Receiver's motion, the Court finds that
14 the sales, compromises of claims, and procedures proposed by the Receiver are
15 reasonable and will promote the orderly and efficient administration of the Forex estate
16 for the benefit of its creditors and customers. Accordingly, the Receiver's motion is
17 GRANTED.

18 19 **ANALYSIS**

20 **A. GRAY'S MOTION FOR INTERVENTION**

21 Mr. Gray argues that he has met the requirements for intervention as a matter of
22 right under Federal Rule of Civil Procedure 24(a)(2), which provides in relevant part:

23
24 On timely motion, the court must permit anyone to intervene who . . . claims an
25 interest relating to the property or transaction that is the subject of the action, and
26 is so situated that disposing of the action may as a practical matter impair or
27 impede the movant's ability to protect its interest, unless existing parties
28 adequately represent that interest.

1 The Ninth Circuit applies a four-part test to evaluate claims for intervention as of right
2 under Rule 24(a)(2). “First, the applicant’s motion must be timely; second, the applicant
3 must assert an interest relating to the property or transaction which is the subject of the
4 action; third, the applicant must be so situated that without the intervention the
5 disposition of the action may, as a practical matter, impair or impede his ability to protect
6 that interest; and fourth, the applicant’s interest must be inadequately represented by the
7 other parties.” *California ex rel. Van De Kamp v. Tahoe Regional Planning Agency*, 792
8 F.2d 779, 781 (9th Cir. 1986) (citing *United States v. Stringfellow*, 783 F.2d 821, 826 (9th
9 Cir. 1986). The failure to satisfy even one of the requirements is sufficient to warrant
10 denial of the motion to intervene as a matter of right. *Id.* at 781; *Chiles v. Thornburg*,
11 865 F.2d 1197 (11th Cir. 1989).

12
13 Here, Mr. Gray has not satisfied any one of the four prongs required for the Court
14 to grant his motion for intervention. With respect to timeliness, the Court must consider
15 three factors: (1) the stage of the proceedings; (2) the reason for any delay in moving to
16 intervene; and (3) whether the parties would be prejudiced. *E.E.O.C. v. ABM Indust.*
17 *Inc.*, F.R.D., 2008 WL 640519 (E.D. Cal. 2008). Mr. Gray waited six months after this
18 action began to file his motion to intervene, long after he consented through counsel to
19 the terms of the preliminary injunction, which conferred upon the Receiver the power to
20 administer Forex’s assets. Mr. Gray argues that he waited because the records that he
21 received from the Receiver were transferred to digital media without an optical
22 recognition capability, making retrieval difficult, and only within the last two weeks has
23 he been able to retrieve enough records to respond. Mot. Intervention, p. 6 n.1. This
24 argument is unconvincing. Mr. Gray has known of his possible interest in this case at
25 least since he consented to the preliminary injunction order, on December 28, 2007. He
26 has not stated any reason why he would need to fully review Forex’s documents before
27 he could properly assert his interest in this case. Mr. Gray also argues that his motion is
28 timely because this case is in the early stages, but that argument is also unpersuasive.

1 This case has proceeded expeditiously, and the Receiver has already marshaled assets and
2 worked to resolve all claims against the estate for the benefit of Forex's creditors and
3 customers. To permit intervention on the eve of the Court's approval of these
4 compromises and sales would likely disrupt the orderly and efficient administration of the
5 estate. It may also result in prejudice to Forex's numerous creditors and customers,
6 particularly because all of those customers' accounts remain frozen. Thus, Mr. Gray's
7 motion is not timely.

8
9 Mr. Gray also has failed to show that he possesses an interest relating to the
10 property or transaction which is the subject of the action. Mr. Gray argues that because
11 he is the principal shareholder of Forex, then his property is subject to the Court's asset
12 freeze, and consequently he has a "direct, substantial and legally protectable interest in
13 the Receivership entity." Mot. Intervention, p. 7. Mr. Gray's assertion is contrary to
14 relevant California and Ninth Circuit case law, which holds that shareholders like Mr.
15 Gray do not hold a direct ownership interest in an LLC's assets, and any claims relating
16 the LLC's assets can only be asserted by the corporate entity itself or by way of a
17 derivative action. See *Paclink Communications Int'l, Inc. v. The Superior Court of Los*
18 *Angeles County*, 90 Cal. App. 4th 958, 964 (Cal. Ct. App. 2001); *Lapidus v. Hecht*, 232
19 F.3d 679, 683 (9th Cir. 2000). In *Paclink*, the plaintiffs were members of an LLC who
20 collectively owned 38% of the membership interest in the LLC. 90 Cal. App. 4th at 961.
21 The plaintiffs brought suit against several business entities for the fraudulent transfer of
22 the LLC's assets, alleging that the transfer of assets provided no consideration to the LLC
23 and that the plaintiffs were defrauded of their ownership interests in the assets. *Id.* at
24 961-62. The court held that the claim of fraudulent transfer of assets was "an injury to
25 the company itself," and that "[b]ecause members of the LLC hold no direct ownership in
26 the company's assets (Corp. Code, § 17300), the members cannot be directly injured
27 when the company is improperly deprived of those assets." *Id.* at 964. The court then
28 noted that while normally a corporation must itself bring an action to recover losses from

1 wrongdoing by officers or directors, if the corporation fails to bring such an action, an
2 individual stockholder may file a derivative suit on behalf of the corporation. *Id.* at 965.
3 However, because the plaintiffs were suing personally rather than on behalf of the
4 corporation, the trial court’s demurrer was sustained without leave to amend. *Id.* at 965-
5 66.

6
7 The Ninth Circuit reached the same conclusion in *Lapidus*, where it affirmed the
8 dismissal of the portion of a class action lawsuit filed by shareholders of a corporation
9 that alleged injury to the corporation, but the only injury to the shareholders was the
10 diminution of the value of their shares. 232 F.3d at 683. The plaintiffs argued they were
11 injured by the improper issuance of senior securities, but the court found that such an
12 injury did not provide them standing to maintain a direct action because it was “an injury
13 to the trust generally,” with only “indirect” harm to the shareholders. *Id.* at 683.

14
15 Here, Mr. Gray is similarly situated to the shareholders in *Paclink* and *Lapidus*;
16 just as the shareholders in *Paclink* challenged the transfer of assets based on alleged
17 fraud, Mr. Gray challenges the transfer of Forex assets to creditors based on the alleged
18 invalidity of the debts. The essence of Mr. Gray’s argument that he has a property
19 interest in this action is that the Receiver’s transfer of Forex’s assets will unnecessarily
20 diminish the total company assets, thereby diminishing his membership interest in the
21 LLC. Such a claim “constitutes an injury to the company itself,” and any injury to Mr.
22 Gray is purely “incidental to the injury” suffered by Forex. *See Paclink*, 90 Cal. App. 4th
23 at 964. Mr. Gray has no standing to bring such a claim on his own behalf.

24
25 Because Mr. Gray does not have any interest in the property owned by Forex, he
26 cannot demonstrate that he is so situated that without the intervention the disposition of
27 the action may impair or impede his ability to protect that interest. Under California
28 Corporations Code Section 17353, Mr. Gray, as a member of Forex, would be considered

1 the lowest ranked creditor for the receivership estate. Thus, he may assert his claims
2 after all of the other creditors' claims have been satisfied. The Receiver has created a fair
3 process for the resolution of creditors' claims, and there is no reason why that process
4 should not be adequate to protect Mr. Gray's interest as a creditor.

5
6 Finally, Mr. Gray cannot show that his interest as lowly-ranked creditor cannot be
7 adequately represented by the Receiver. As Mr. Gray acknowledges, the Receiver is an
8 agent of this Court. The Court finds that the Receiver has worked diligently to assess
9 Forex's financial condition and to protect the public's financial interest. There is no
10 evidence of negligence on the part of the Receiver, much less anything approaching bad
11 faith. For all of these reasons, Mr. Gray has failed to meet the standard for intervention
12 as a matter of right.

13
14 **B. GRAY'S MOTIONS TO STAY PROCEEDINGS, QUASH THE**
15 **SUBPOENA OF FOREX'S EMPLOYEES, AND FOR AN EXTENTION**
16 **OF TIME TO RESPOND**

17 In light of the Court's finding that Mr. Gray shall not be permitted to intervene in
18 this action, his motion to stay the proceedings pending the outcome of the Court's ruling
19 on intervention and his motion for an extension of time to respond to the Receiver's
20 motion are both moot. In light of the Court's ruling on the motion for intervention, there
21 is no reason why the Receiver should not be permitted to subpoena Mr. McMahon in
22 order to discover assets not yet brought to light, and therefore Mr. Gray's motion to
23 quash is also denied. Accordingly, the hearing set for July 28, 2008 on Mr. Gray's
24 motion to quash is hereby vacated and off calendar.

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**C. RECEIVER’S MOTION FOR ORDERS APPROVING SALE OF
ACCOUNTS AND ASSETS, COMPROMISE OF CLAIMS, PROPOSED
INITIAL DISTRIBUTION AND CLAIMS FILINGS PROCECURES,
AND LIMITED NOTICE PROCEDURES**

5 A district court has extremely broad power to supervise an equity receivership and
6 to determine the appropriate action to be taken in the administration of the receivership.
7 *S.E.C. v. Hardy*, 803 F.2d 1034, 1037-38 (9th Cir. 1986). “[A] primary purpose of equity
8 receiverships is to promote orderly and efficient administration of the estate by the
9 district court for the benefit of creditors.” *Id.* at 1038 (citations omitted). “Accordingly,
10 [the Ninth Circuit] generally uphold[s] reasonable procedures instituted by the district
11 court that serve this purpose.” *Id.* (citations omitted).

12
13 Prior to the commencement of the receivership, Forex had nearly 4000 accounts
14 with customers located around the world, of which approximately 2900 were located in
15 the People’s Republic of China. (Kane Decl., ¶ 4.) In addition, Forex had two
16 institutional customers who held the accounts on behalf of their own individual
17 customers. (*Id.*) In accordance with the statutory restraining order and consent order of
18 preliminary injunction, all of these accounts have been frozen since the commencement
19 of the receivership estate, and the Receiver is holding these customers’ funds. (*Id.*) The
20 Receiver believes it can now return these funds to Forex’s customers, but it would be an
21 extremely expensive undertaking for the Receiver to continue to monitor and administer
22 these accounts going forward. (*Id.*) Therefore, the Receiver has entered into proposed
23 sale agreements with Global Forex Trading (“GFT”) and IKON Global Markets
24 (“IKON”), pursuant to which the individual customer accounts will be sold and assigned
25 to GFT and IKON. The Receiver now seeks approval of both of these sale agreements
26 (the “GFT Agreement” and the “IKON Agreement”).
27
28

1 Pursuant to the GFT Agreement, the Receiver will sell and assign various accounts
2 and customer funds to GFT, and in return, the receivership estate will be relieved of any
3 future administrative expenses in administering those accounts. (Kane Decl., ¶ 4, Ex. 1)
4 Additionally, the receivership estate will receive a commission based upon future trading
5 in the accounts, with a minimum guaranteed repayment to the receivership estate of
6 \$100,000.00. (*Id.*) A final benefit of the GFT Agreement is that the individual customers
7 identified in the agreement will once again be permitted to begin trading in their
8 accounts, or to close their accounts and have their funds returned to them. (*Id.*)
9

10 Pursuant to the IKON Agreement, the Receiver will assign to IKON various Asian
11 customer accounts and accounts relating to introducing brokers, and will transfer to
12 IKON the funds which it is holding relating to the Asian customer accounts. (Kane
13 Decl., ¶ 4, Ex. 2.) In exchange, the Receiver will be relieved of any future administrative
14 burdens in administering these accounts (including approximately 2900 accounts in
15 China) and will receive \$200,000.00 from IKON. (*Id.*)
16

17 The GFT and IKON Agreements will result in the transfer to IKON and GFT of all
18 customer funds of the Chinese customers in the amount of \$4,392,720.21, and other
19 customers in the sum of \$8,966,432.62. GFT and IKON will then notify customers of
20 their ability to trade or close out their accounts.
21

22 The Court finds that both the GFT and the IKON Agreements are reasonable and
23 fair transactions that are in the best interest of the receivership estate. Both sales will
24 relieve the estate of the financial burden of administering numerous customer accounts,
25 particularly the IKON Agreement, which frees the estate of the cost of administering
26 2900 accounts in China. Both the GFT Agreement and the IKON Agreement provide for
27 a substantial minimum guaranteed commission payment, garnering at least \$300,000.00
28 from the two sales, collectively. The Receiver has discussed the terms of both

1 Agreements with the CFTC and the National Futures Association, who have each
2 confirmed the reasonableness of the commissions, given the uncertainty as to whether the
3 account holders will close their accounts once the transfer has been made (thereby
4 eliminating any future commissions that may be earned), or continue to trade on the
5 accounts after the sale. (Kane Decl., ¶ 4.)

6
7 In connection with approval of the GFT Agreement and the IKON Agreement, the
8 Receiver also seeks modification of the sale procedures set forth in 28 U.S.C. §§ 2001
9 and 2004. Section 2001, subsection (b) pertains to the sale of real property at a private
10 sale by a federal receiver, and provides, in relevant part:

11
12 [B]efore confirmation of any private sale, the court shall appoint three disinterested
13 persons to appraise such property or different groups of three appraisers each to
14 appraise properties of different classes or situated in different localities. No private
15 sale shall be confirmed at a price less than two-thirds of the appraised value.
16 Before confirmation of any private sale, the terms thereof shall be published in
17 such newspaper or newspapers of general circulation as the court directs at least
18 ten days before confirmation. The private sale should not be confirmed if a bona
19 fide offer is made, under conditions prescribed by the court, which guarantees at
20 least a ten percent increase over the price offered in the private sale.

21
22 However, Section 2004 allows a court to permit deviation from the requirements of
23 Section 2001, subsection (b). Section 2004 states in pertinent part:

24
25 Any personal property sold under order or decree of any court of the United States
26 shall be sold in accordance with section 2001 of this title, unless the court orders
27 otherwise.

28 The Receiver requests that this Court enter an order relieving it of the requirements of
complying with Section 2001, subsection (b), because those requirements are impractical
and unnecessary in this case. The Court agrees. The Ninth Circuit has interpreted
Section 2004 to mean that “it is at the district court’s discretion to obtain appraisals

1 before foreclosing on personal property.” *United States v. Stonehill*, 83 F.3d 1156, 1160
2 (9th Cir. 1996). Except in cases of abuse, appellate courts will not disturb the exercise of
3 the district court’s discretion in setting the terms and conditions for a judicial sale and
4 confirmation thereof. *See U.S. v. Branch Coal Corp.*, 390 F.2d 7 (3d Cir. 1968) *cert.*
5 *den.*, 391 U.S. 966. Additionally, a district court has authority to use summary
6 proceedings to determine appropriate relief in equity receiverships. *Hardy*, 803 F.2d at
7 1040. Such procedures “avoid formalities that would slow down the resolution of
8 disputes. This promotes judicial efficiency and reduces litigation costs to the
9 receivership.” *Id.* (citations omitted). Summary proceedings are appropriate so long as
10 the creditors and potential creditors receive adequate notice and a reasonable opportunity
11 to respond. *Id.*

12
13 The IKON and GFT Agreements are essentially transfers of accounts for the
14 purpose of administering those accounts, rather than conventional “sales of assets.”
15 Under the literal terms of Section 2001, the only “sale price” to be evaluated by an
16 appraisal would be the amount of the commissions paid to the Receiver by IKON and
17 GFT. As discussed, the commissions appear reasonable, based on the assessment of the
18 CFTC and the National Futures Association, as well as the uncertainty of continued
19 customer trading after the sale. Accordingly, the appointment of appraisers, publication
20 of the sale in newspapers, and other requirements of Section 2001(b) are not appropriate
21 in this instance, and they are not necessary to ensure the fairness of these transactions.
22 The Court therefore exercises its discretion under Section 2004 to permit the Receiver to
23 forgo the requirements of Section 2001(b).

24
25 The Receiver also seeks an order authorizing a sale of the office furniture and
26 equipment located at Forex’s office in Santa Ana, California. The office furniture and
27 equipment is no longer necessary for the proper management of the estate due to the
28 termination of Forex’s ongoing business operations. In support of its request, the

1 Receiver has obtained an appraisal from R.L. Spear Co., Inc., (“Spear”) a recognized
2 auctioneer of this type of equipment, verifying that at a public auction, the gross sale
3 proceeds of the furniture and equipment would be between \$80,000.00 and \$100,000.00.
4 (Kane Decl., ¶ 5, Ex. 3). Although the Receiver has not yet finalized a sale of the
5 furniture and equipment, it requests authorization at this time to complete such a sale
6 when an agreement is completed. Because Forex is no longer operating, the sale of its
7 office furniture and equipment is a reasonable method of disposing of this portion of the
8 estate, and based on the letter submitted by Spear, the sale price anticipated appears to be
9 a fair amount. Because Spear is a well-known auctioneer of this type of equipment, it
10 would be an inefficient use of the estate’s funds for the Receiver to expend money hiring
11 three appraisers in order to comply with Section 2001(b). The Court therefore exercises
12 its discretion under Section 2004 to modify the sale procedures set forth in Section
13 2001(b) with respect to the sale of office equipment and furniture.

14
15 The Receiver also seeks approval of a compromise of claims with Forex Asia,
16 which has asserted a variety of claims against the receivership estate in connection with
17 Forex’s alleged breach of a joint venture agreement between Forex and Forex Asia.
18 Forex Asia claims \$4,03,773.00 for unpaid compensation, damages resulting from the
19 breach, lost profits, and legal fees through May 2008. Forex Asia also asserts a separate
20 damages claim of at least \$45,000,000.00 against the estate, which Forex Asia alleges
21 would arise if it is forced to terminate its business operations because it is unable to
22 comply with the terms of the alleged joint venture agreement. Forex Asia contends that
23 its claims should be equal in priority to the claims of Forex’s customers, which, if true,
24 would substantially dilute the distributions to Forex’s customers. After careful
25 consideration, the Receiver negotiated a compromise with Forex Asia, pursuant to which
26 Forex Asia would have an allowed claim against the receivership estate of \$1,216,575.95.
27 (Kane Decl., ¶ 8, Ex. 4.) The compromise provides that Forex Asia’s claim would be
28

1 settled with a lump sum payment to Forex Asia of \$600,000.00, to be paid as part of the
2 Receiver's initial distribution. (*Id.*)

3
4 The compromise of claims with Forex Asia appears reasonable and in the best
5 interest of the receivership estate. The Receiver has carefully considered the claims made
6 by Forex Asia, having multiple meetings with representatives of Forex Asia, including
7 counsel for all parties. (Kane Decl., ¶ 7.) Brick Kane, the Deputy to the Receiver,
8 attended the deposition of the principal of Forex Asia, and the Receiver reviewed
9 hundreds of documents from Forex Asia in support of its claims. (*Id.*) The Receiver
10 carefully reviewed the documentation provide by Mr. Gray, who disputes Forex Asia's
11 claims, and discussed Mr. Gray's position with his counsel. (*Id.*) After all of this careful
12 review, the Receiver concluded that Forex Asia has as legitimate claim for unpaid
13 compensation in the amount of \$1.22 million, and was able to settle this claim for less
14 than half of the amount claimed, or \$600,000.00. The Receiver also took into account the
15 priority issues raised by Forex Asia, which would be very expensive for the estate to
16 litigate, due to the required analysis of complex statutory schemes, including legislative
17 histories of bankruptcy and commodities legislation. (*Id.* at ¶ 10.) The Receiver
18 reasonably concluded that it was not clear that the Receiver would prevail against Forex
19 Asia on its claims of priority, and that litigating such claims would be very costly. (*Id.*)
20 In sum, the Receiver successfully resolved a claim which could have ranged from \$4
21 million to \$45 million for a single lump sum payment of \$600,000.00. This is a fair and
22 reasonable resolution of Forex Asia's claims.

23
24 The Receiver also seeks approval of an interim distribution and a proposed claims
25 filing allowance plan. When a district court evaluates a plan to distribute receivership
26 assets, reasonably expeditious and efficient procedures generally will be upheld so long
27 as they are fair and equitable. *See Liberte Capital Group v. Capwill*, 229 F. Supp. 2d
28 779, 802 (N.D. Ohio 2002). As discussed, the Court approves the Receiver's proposed

1 sale of accounts to GFT and IKON, which will result in the transfer to GFT and IKON of
2 customer funds in the amount of \$13,359,152.82. GFT and IKON will each notify
3 customers of their ability to trade or close out their accounts. The remaining customer
4 liabilities are institutional in nature, and the Receiver proposes to pay these liabilities in
5 full, immediately, including the claims of Sonic Capital/Pinnacle Capital Inv., Inc.,
6 Interbank, FX and Hamilton Williams, LLC. Pursuant to the settlement agreement with
7 Forex Asia, the Court approves the disbursement of \$600,000.00 to Forex Asia as part of
8 the interim distribution.

9
10 The remaining creditors of the receivership estate are separated into two
11 categories, with the first category including commissions and rebates to various
12 introducing brokers, which total approximately \$2,788,091.23. (Kane Decl., ¶ 13.) The
13 second category of liabilities is for non-customer, pre-receivership vendors, which total
14 approximately \$1,984,449.29. (*Id.*) The Receiver has submitted a spreadsheet setting
15 forth the estimated liabilities of the estate, dividing the various liabilities among customer
16 liabilities, commission and rebates, and pre-receivership invoices and claims. (*See* Kane
17 Decl., Ex. 5.) Because the Receiver finds no justifiable basis to distinguish between
18 commissions and rebates owed to various introducing brokers, on the one hand, and non-
19 customer, pre-receivership vendors, on the other, the Receiver proposes to treat them
20 equally. Because the estate does not contain sufficient funds to pay the two categories of
21 remaining creditors, the Receiver proposes an interim distribution in the sum of 30% of
22 their approved claims. The Receiver also proposes to withhold approximately \$1 million
23 to fund additional Receiver expenses and for future legal actions which will likely be
24 necessary to recover funds that Mr. Gray transferred overseas.

25
26 The Court finds this proposed interim distribution to be a reasonable, fair, and
27 efficient way to administer the estate for the benefit of creditors. Under the proposed
28 interim distribution, all customers will receive 100% of the funds owned to them, and the

1 other creditors will receive an interim pro-rata distribution of 30% of their approved
2 claims. Because the estate does not have sufficient funds to pay its creditors in full, an
3 interim distribution of 30% of claims is a fair compromise at this juncture. Additionally,
4 it makes economic sense for the Receiver to withhold \$1 million to fund additional
5 expenses during the pendency of the receivership, such as the cost of recovering funds
6 that were transferred overseas. Once the Receiver recovers any such additional funds, it
7 will be able to make additional distributions in the future. The Court expects that the
8 Receiver will notify the Court of any future distributions and seek its approval.

9
10 In terms of a proposed claim procedure, the Receiver requests that the Court
11 approve the following procedure: (1) The Receiver has provided written notice to non-
12 customer, pre-receivership vendors and introducing brokers of the Receiver's calculation
13 of the amount owed to each respective claimant; (2) The claimants will have thirty days
14 from the date of service of the written notice of the Receiver's calculation of the claim to
15 object to the proposed amount. Any objection must be in writing and be received within
16 the thirty-day period to be considered. If the claimant fails to object, then the amount set
17 forth in the notice will be approved and final; (3) If the Receiver receives a timely
18 objection to any proposed claim amount, the Receiver will attempt to resolve the claim
19 through negotiations. If negotiations fail, the Receiver will resolve the objection by filing
20 a motion with this Court to determine the amount of the disputed claim. (Kane Decl., ¶
21 16.) The Court finds that the proposed claim procedure is a fair and efficient way of
22 resolving claims against the estate because it provides claimants with notice and an
23 opportunity to be heard. Claimants who wish to dispute the claim amount proposed by
24 the Receiver will have an opportunity to argue their claims with this Court, if necessary.
25 The Court expects that the Receiver will notify it of any claim disputes that are not
26 resolved through negotiation in a timely manner.

1 Finally, the Receiver requests approval of and authorization for a limited procedure
2 for providing notice of this motion. Pursuant to Local Rule 66-7, the Receiver is required
3 to give notice by mail to all parties to the action and all creditors of Forex of the time and
4 place for a hearing on reports of the Receiver, a hearing on any application for fees and
5 expenses of the Receiver, notice of petitions for payments of dividends to creditors, and
6 notice of petitions for confirmation of property sales. The Receiver seeks permission to
7 divert from this procedure and provide notice in an alternative manner, noting that Local
8 Rules would provide notice to approximately 4000 customers, 2900 of which are located
9 in the People's Republic of China (which may require translation of the motion and
10 accompanying documentation into Chinese). The Receiver argues that the expense to the
11 estate of serving over 4000 customers would be exorbitant and would unnecessarily
12 deplete the estate's resources. Instead, the Receiver has served the motion and all
13 supporting documentation upon the CFTC, counsel for Mr. Gray, and the institutional
14 customers of Forex. The Receiver served notice of the motion upon those vendors
15 holding pre-receivership claims and all introducing brokers whose claims are not
16 resolved pursuant to the IKON Agreement. (Kane Decl., ¶ 18.) The notice of the motion
17 advises the parties served that the motion will be provided upon written request to the
18 Receiver. (*Id.*) The Receiver also posted the motion on its website for this case.

19
20 The Court finds that deviation from the Local Rules regarding notice is appropriate
21 in this case in order to reduce administrative costs. The notice measures carried out by
22 the Receiver are adequate to provide all parties to this action and known creditors with
23 information regarding the matters itemized in Local Rule 66-7. Such limited notice
24 procedures for Receivers have been approved in this District. *See Federal Trade*
25 *Commission v. Crittenden*, 823 F. Supp. 699, 704 (C.D. Cal. 1993).

1 **CONCLUSION**

2 For all of the foregoing reasons, the Receiver's motion is GRANTED and Mr.
3 Gray's motions are DENIED.

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5 DATED: July 14, 2008



7 CORMAC J. CARNEY
8 UNITED STATES DISTRICT JUDGE

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