

DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO.: 21-61176-CIV-SINGHAL

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PROPERTY INCOME INVESTORS, LLC,  
EQUINOX HOLDINGS, INC.,  
PROPERTY INCOME INVESTORS 26, LLC,  
PROPERTY INCOME INVESTORS 304, LLC,  
PROPERTY INCOME INVESTORS 201, LLC,  
PROPERTY INCOME INVESTORS 3504, LLC,  
PROPERTY INCOME INVESTORS 1361, LLC,  
PROPERTY INCOME INVESTORS 4020, LLC,  
PROPERTY INCOME INVESTORS 9007, LLC,  
PROPERTY INCOME INVESTORS 417, LLC,  
PROPERTY INCOME INVESTORS 4450, LLC,  
PROPERTY INCOME INVESTORS 3050, LLC,  
LARRY B. BRODMAN and ANTHONY  
NICOLSI (f/k/a ANTHONY PELUSO),

Defendants.

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**RECEIVER'S UNOPPOSED MOTION TO APPROVE  
FIRST INTERIM DISTRIBUTION**

Miranda L. Soto, Esq., solely in her capacity as Receiver (the “Receiver”) in the above-styled Receivership and pursuant to this Court’s Order granting the Receiver’s Motion to (i) Approve Determination of Claims; (ii) Pool Receivership Assets and Liabilities; (iii) Establish Objection Procedure; and (iv) Approve Plan of Distribution (the “Claims Determination Order”) (Doc. 117) files this Unopposed Motion seeking an Order approving a First Interim Distribution of **\$2,860,00.00** as set forth in this Motion and in **Exhibit A** and the order provided as **Exhibit B**. The Receiver states as follows in support:

## **I. First Interim Distribution**

The proposed First Interim Distribution of **\$2,860,00.00** represents a recovery of **41.5%** of the Allowed Amounts of Investor Claims and a distribution amount of **60%** of the available Receivership funds in the Receiver's bank account to date. As set forth in the Claims Determination Motion, which was subsequently approved by this Court via Order entered on October 25, 2023, the Receiver determined that 106 investors were appropriate Claimants for distribution of the funds collected in this Receivership. As discussed in further detail in Section V. below, the Receiver also seeks relief from the Court in this Motion to add three additional Claimants who provided Proof of Claims forms timely, albeit by facsimile (a non-material variance from the Proof of Claims instructions). Based on the information presented below, the Receiver seeks to include these three Claimants, which would result in 109 valid Claimants in this Receivership.<sup>1</sup>

## **II. The Court's Order Granting the Claims Determination Motion, the Objection Period, and the Receiver's Outreach to Claimants**

Throughout the claims process, the Receiver has been in regular communication with interested parties. In addition to posting Court filings on her website, the Receiver has also sent communications to all Claimants and entities that submitted a Proof of Claim Form. Specifically, on October 11, 2023, the Receiver and her team mailed a letter giving notice of the Claims Determination Motion to all Claimants to the mailing addresses

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<sup>1</sup> The claim numbers provided in **Exhibit A** include #1-106 and #117-119. Due to the notice provided to the three additional Claimants under the Objection Procedure, the additional Claimants have three non-sequential numbers (i.e., 117, 118, and 119.)

provided on their respective submitted Proof of Claim Forms. The letter advised each Claimant of their respective claim number and indicated that the Receiver's recommended determination of each claim was set forth in the Exhibits attached to the Claims Determination Motion and addressed in the body of the Motion. The letter further informed the Claimants that the Claims Determination Motion was available on the Receiver's website or, upon request, from the Receiver's office. Claimants were then able to cross-reference their respective claim number with the Exhibits attached to the Claims Determination Motion to learn the Receiver's determination of the corresponding claim. The Receiver assigns a "claim number" to ensure a degree of anonymity to Claimants who will receive the funds in this Receivership.

On October 25, 2023, the Court entered an Order granting the Claims Determination Motion in its entirety, including the proposed objection procedure for any Claimant that disagreed with the Receiver's determination of their claim (the "Claims Determination Order") (Doc. 117). The objection procedure proposed by the Receiver in the Claims Determination Motion and adopted by the Court provided that the Receiver would furnish each Claimant with written notice of the entry of the Claims Determination Order. Any Claimant that was dissatisfied with the Receiver's determination of their claim, or the anticipated plan of distribution, was required to serve the Receiver with a written objection within forty-five (45) days from the date of the written notice sent by the Receiver (i.e. December 26, 2023).

On November 8, 2023, the Receiver mailed out written notices to all Claimants notifying them of the Court's Claims Determination Order and advising them of their

approved Claim amount and assigned claim number. After approval of the Claims Determination Motion, the Claimants were required to state any objection to the Receiver by December 26, 2023. **The Receiver received no objections during or after the objection period.**

### **III. No Objections Received by the Receiver**

No Claimant stated any objection to the Receiver during or after the objection period. During the objection period, the Receiver endeavored to communicate with all Claimants who had questions or issues with the process. The Receiver and her team were able to work out any issues raised by Claimants and no Claimant formally challenged the amount recommended by the Receiver. Due to the lack of objections, the Receiver does not need the Court to address discrepancies or concerns with the proposed amounts. Because no objections were received, the Receiver is ready to move forward with distributing 60% of the available funds to Claimants.

### **IV. Proposed Distribution of 41.5% of the Allowed Amounts of Investor Claims**

In the Claims Determination Order, the Court approved the Receiver's plan of distribution set forth in the Claims Determination Motion. This plan of distribution provided that a first interim distribution (and any subsequent distributions based on available funds) will be made on a *pro rata* basis subject to applicable exceptions, priorities, and other parameters discussed in the Claims Determination Motion. Based on the current balance of the Receivership bank accounts, the Receiver seeks leave to make a first interim distribution of **\$2,860,00.00** to Claimants with approved claims as specified in **Exhibit A**. This distribution will result in an approximate **41.5% recovery** of these

Investor Claimants' Allowed Amounts. Although the Receiver anticipates making additional future distributions as warranted by the amount of funds on hand and the status of the case, it is unlikely that Investor Claims will ever be paid in full.

The distribution plan approved by the Court provides that Claimants receive a fixed percentage of their Allowed Amount from the aggregate amount distributed to Claimants in any particular distribution based upon the following formula, which achieves a *pro rata* distribution: each Claim's Allowed Amount divided by the total Allowed Amount of all allowed claims multiplied by the aggregate distribution amount. The amount each Investor Claim would receive based on this formula as part of a first interim distribution is specified in **Exhibit A**.

As of the filing of this Motion, the total balance of all Receivership accounts is approximately \$4.8 million. The Receiver believes that by making a first distribution totaling **\$2,860,00.00**, she will be able to provide a significant amount of money to Claimants now while still maintaining adequate funds to cover the expenses of (1) administering the Receivership, (2) potential anticipated litigation, and (3) paying the Receiver's professionals for services already provided and yet to be paid. Any funds remaining after paying these expenses will be subsequently distributed to Claimants following the same formula. The Receiver anticipates making a determination whether third party litigation will be necessary by July of 2024. Outside of costs incurred with winding down the Receivership, tax considerations, the dissolution of the entities, and potential costs regarding third-party claims, the Receiver anticipates being in a position to make all further distributions withing this calendar year.

## V. Authorization to Proceed with Revision Adding Three Claims

The Receiver and her professionals spent considerable time and effort in making a determination of Claims supported by the investigation and record evidence. After conducting further research following the filing of the Claims Determination Motion, the Receiver identified three completed Proof of Claim Forms that were received from Claimants via facsimile on or about July 21, 2022. Because the instructions set forth in the Proof of Claim Forms required investors to send an executed hard copy of the forms to the Receiver within three (3) days after transmission of any form sent by facsimile or email, these three claims were not initially allowed to be a part of the Receivership process. Upon further review and after careful consideration, the Receiver has exercised her broad discretion to determine that these three claims should be treated as allowed claims, given that these investors substantially complied with the Proof of Claim Form procedure and the variance from the instructions was not a material defect in the Proof of Claim. In this Motion and in **Exhibit A**, the additional three claims have been assigned Nos. 117, 118, and 119. The total amount of the three additional claims are as follows:

<b>#117:</b>	<b>\$19,169.51</b>
<b>#118:</b>	<b>\$56,050.40</b>
<b>#119:</b>	<b><u>\$17,317.00</u></b>
<b>Total:</b>	<b>\$92,536.91</b>

In her discretion, the Receiver believes that these three additional Claims rightly should be included as part of this Receivership and seeks approval of these Claims by this Court in this Motion. The Claims are a part of **Exhibit A** and the proposed order in **Exhibit B**.

## VI. Legal Argument for Distribution

This Court has wide latitude in exercising inherent equitable power in approving a plan of distribution of receivership funds. *SEC v. Forex Asset Mgmt.*, 242 F.3d 325, 331 (5<sup>th</sup> Cir. 2001) (affirming district court’s approval of plan of distribution because court used its discretion in “a logical way to divide the money”); *CFTC v. Levy*, 541 F.3d 1102, 1110 (11<sup>th</sup> Cir. 2008) (“Appellate Courts will ‘not disturb the district court's choice of an equitable remedy except for abuse of discretion.’”); *Quilling v. Trade Partners, Inc.*, 2007 WL 107669, \*1 (W.D. Mich. 2007) (“In ruling on a plan of distribution, the standard is simply that the district court must use its discretion in a logical way to divide the money” (internal quotations omitted)). In approving a plan of distribution in a receivership, “the district court, acting as a court of equity, is afforded the discretion to determine the most equitable remedy.” *Forex*, 242 F.3d at 332. This Court may adopt any plan of distribution that is logical, fair, and reasonable. *Wang*, 944 F.2d at 83-84; *Basic Energy*, 273 F.3d at 671; *Trade Partners*, 2007 WL 107669 at \*1. “Therefore, ‘[a]ny action by a trial court in supervising an equity receivership is committed to his sound discretion and will not be disturbed unless there is a clear showing of abuse.’” *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 373 (5<sup>th</sup> Cir. 1982) (quoting *SEC v. Ark. Loan & Thrift Corp.*, 427 F.2d 1171, 1172 (8<sup>th</sup> Cir. 1970)).

Consistent with the features of the Defendants’ fraudulent scheme, “courts have favored pro rata distribution of assets where, as here, the funds of defrauded victims were commingled and where victims were similarly situated with respect to their relationship to the defrauders.” *Credit Bancorp*, 290 F.3d at 88. A logical, fair, and reasonable

distribution plan may provide for reimbursement to certain claimants while excluding others. *See Wang*, 944 F.2d at 84; *Basic Energy*, 273 F.3d at 660-61. The Receiver's Proposed Plan of Distribution is (i) in the best interest of the Receivership and the Claimants as a whole; (ii) is fair, reasonable, and equitable; and (iii) satisfies due process. As previously noted in our Claims Determination Motion, the Receiver should be allowed to move forward with her pro rata amounts as illustrated in **Exhibit A**.

WHEREFORE, Miranda L. Soto, Esq, as Receiver, respectfully requests the Court enter an order substantially in the same form as **Exhibit B**: (1) authorizing a first interim distribution in the total amount of **\$2,860,00.00** as set forth above and in **Exhibit A**; (2) authorizing the Receiver to add the three additional Investor Claims that were previously excluded from the claims process; and (3) for any further relief deemed just and proper.

**LOCAL RULE 7.1(a)(3) CERTIFICATION**

Pursuant to Local Rule 7.1(a)(3), the undersigned certifies that counsel for the Receiver reached out to counsel for the Commission and counsel for Defendants Anthony Nicolosi and Larry Brodman prior to filing this Motion. The Commission has no objection to the relief sought. Defendant Nicolosi takes no position regarding the Motion. Defendant Brodman has no objections to the relief sought.

Respectfully submitted,

**BUCHANAN, INGERSOLL, ROONEY PC**



/s/Raquel A. Rodriguez

Raquel A. Rodriguez, Esq.

Florida Bar No. 511439

Lauren V. Humphries, Esq.

Florida Bar No. 117517

[lauren.humphries@bipc.com](mailto:lauren.humphries@bipc.com)

One Biscayne Tower

2 S. Biscayne Blvd, Suite 1500

Miami, FL 33131-1822

T: 305-347-4080

F: 305-347-4089

[raquel.rodriguez@bipc.com](mailto:raquel.rodriguez@bipc.com)

*Attorneys for Receiver Miranda L. Soto*

### **CERTIFICATE OF SERVICE**

I hereby certify that on February 13, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a Notice of Electronic Filing to the following counsel of record:

Alice Sum, Esq.

Securities and Exchange Commission

801 Brickell Avenue, Suite 1950

Miami, Florida 33131

*Counsel for Plaintiff, Securities and Exchange Commission*

Mark C. Perry, Esq.

2400 East Commercial Blvd., Ste 201

Fort Lauderdale, Florida 33308

*Counsel for Defendant, Anthony Nicolosi, f/k/a Anthony Peluso*

I further certify that on February 8, 2024, a true and correct copy of the foregoing was sent via electronic mail to the following:

Barry S. Mittelberg, Esq.

Florida Bar No.: 396567

[Barry@mittelberglaw.com](mailto:Barry@mittelberglaw.com)

Lizzie M Ramos, Esq.

Florida Bar No. 1019278

[Lizzie@mittelberglaw.com](mailto:Lizzie@mittelberglaw.com)  
BARRY S. MITTELBERG, PA  
*Counsel for Movants Richard Bentley,  
Joseph Alexander and P&E Properties, LP*

Larry Brodman  
[Larrybro58@gmail.com](mailto:Larrybro58@gmail.com)

Signed,

*/s/ Raquel A. Rodriguez*

Raquel A. Rodriguez, Esq.

SEC vs. Kinetic Investment Group, LLC, et al  
CASE NO.: 8:20-cv-394

## EXHIBIT "A"

<b>Investor Number</b>	<b>Claim Amount Allowed</b>	<b>60% Distribution</b>
1	\$ 4,515.00	\$ 1,874.42
2	\$ 10,746.00	\$ 4,461.25
3	\$ 5,253.00	\$ 2,180.81
4	\$ 9,436.40	\$ 3,917.57
5	\$ 42,728.00	\$ 17,738.73
6	\$ 17,323.00	\$ 7,191.72
7	\$ 78,303.00	\$ 32,507.86
8	\$ 18,417.00	\$ 7,645.90
9	\$ 11,273.75	\$ 4,680.35
10	\$ 12,387.00	\$ 5,142.52
11	\$ 8,968.00	\$ 3,723.11
12	\$ 90,943.20	\$ 37,755.50
13	\$ 17,675.00	\$ 7,337.86
14	\$ 102,272.02	\$ 42,458.71
15	\$ 1,864.95	\$ 774.24
16	\$ 132,109.60	\$ 54,845.92
17	\$ 27,176.00	\$ 11,282.24
18	\$ 14,783.00	\$ 6,137.23
19	\$ 50,000.00	\$ 20,757.74
20	\$ 4,223.00	\$ 1,753.20
21	\$ 50,620.40	\$ 21,015.30
22	\$ 5,061.49	\$ 2,101.30
23	\$ 16,516.00	\$ 6,856.70
24	\$ 88,700.00	\$ 36,824.22
25	\$ 1,706.00	\$ 708.25
26	\$ 15,970.00	\$ 6,630.02
27	\$ 1,733.00	\$ 719.46
28	\$ 17,354.40	\$ 7,204.76
29	\$ 132,840.00	\$ 55,149.15
30	\$ 13,053.81	\$ 5,419.35
31	\$ 372,724.00	\$ 154,738.12
32	\$ 38,816.00	\$ 16,114.64
33	\$ 10,000.00	\$ 4,151.55
34	\$ 55,728.00	\$ 23,135.74
35	\$ 91,717.35	\$ 38,076.89
36	\$ 3,515.00	\$ 1,459.27
37	\$ 121,278.00	\$ 50,349.13
38	\$ 30,067.00	\$ 12,482.46
39	\$ 43,064.40	\$ 17,878.39
40	\$ 2,301.00	\$ 955.27
41	\$ 142,213.07	\$ 59,040.42
42	\$ 4,129.00	\$ 1,714.17
43	\$ 70,900.00	\$ 29,434.47
44	\$ 18,573.00	\$ 7,710.67

<b>Investor Number</b>	<b>Claim Amount Allowed</b>	<b>60% Distribution</b>
45	\$ 17,724.00	\$ 7,358.20
46	\$ 412,715.07	\$ 171,340.60
47	\$ 22,420.00	\$ 9,307.77
48	\$ 4,466.00	\$ 1,854.08
49	\$ 17,585.20	\$ 7,300.58
50	\$ 2,500.00	\$ 1,037.89
51	\$ 23,312.02	\$ 9,678.09
52	\$ 84,800.00	\$ 35,205.12
53	\$ 88,585.66	\$ 36,776.75
54	\$ 1,670.00	\$ 693.31
55	\$ 73,432.48	\$ 30,485.84
56	\$ 11,609.00	\$ 4,819.53
57	\$ 2,134.00	\$ 885.94
58	\$ 50,000.00	\$ 20,757.74
59	\$ 22,930.40	\$ 9,519.66
60	\$ 4,100.00	\$ 1,702.13
61	\$ 22,987.30	\$ 9,543.29
62	\$ 107,097.05	\$ 44,461.84
63	\$ 5,000.00	\$ 2,075.77
64	\$ 38,000.00	\$ 15,775.88
65	\$ 26,500.00	\$ 11,001.60
66	\$ 3,111.06	\$ 1,291.57
67	\$ 12,387.00	\$ 5,142.52
68	\$ 35,350.00	\$ 14,675.72
69	\$ 127,575.02	\$ 52,963.37
70	\$ 10,000.00	\$ 4,151.55
71	\$ 13,053.81	\$ 5,419.35
72	\$ 41,177.00	\$ 17,094.83
73	\$ 7,468.00	\$ 3,100.38
74	\$ 26,560.00	\$ 11,026.51
75	\$ 1,879.00	\$ 780.08
76	\$ 28,067.00	\$ 11,652.15
77	\$ 3,754.00	\$ 1,558.49
78	\$ 2,331.16	\$ 967.79
79	\$ 2,480.00	\$ 1,029.58
80	\$ 32,624.00	\$ 13,544.01
81	\$ 239,156.00	\$ 99,286.74
82	\$ 294,194.00	\$ 122,136.02
83	\$ 56,068.62	\$ 23,277.15
84	\$ 116,812.02	\$ 48,495.06
85	\$ 193,252.00	\$ 80,229.48
86	\$ 4,662.40	\$ 1,935.62
87	\$ 24,116.40	\$ 10,012.04
88	\$ 8,603.00	\$ 3,571.58

<b>Investor Number</b>	<b>Claim Amount Allowed</b>	<b>60% Distribution</b>
89	\$ 21,624.81	\$ 8,977.64
90	\$ 8,644.00	\$ 3,588.60
91	\$ 13,446.40	\$ 5,582.34
92	\$ 4,341.00	\$ 1,802.19
93	\$ 239,766.00	\$ 99,539.98
94	\$ 90,524.61	\$ 37,581.72
95	\$ 1,217,000.00	\$ 505,243.27
96	\$ 413,000.00	\$ 171,458.89
97	\$ 6,500.00	\$ 2,698.51
98	\$ 25,318.00	\$ 10,510.89
99	\$ 13,722.00	\$ 5,696.75
100	\$ 47,402.74	\$ 19,679.47
101	\$ 91,359.00	\$ 37,928.12
102	\$ 9,085.00	\$ 3,771.68
103	\$ 4,175.00	\$ 1,733.27
104	\$ 213,338.00	\$ 88,568.27
105	\$ 13,987.21	\$ 5,806.86
106	\$ 30,000.00	\$ 12,454.64
117	\$ 19,169.51	\$ 7,958.31
118	\$ 56,050.40	\$ 23,269.59
119	\$ 17,317.00	\$ 7,189.23
<b>TOTAL</b>	<b><u>\$ 6,888,998.19</u></b>	<b><u>\$ 2,860,000.00</u></b>

SEC vs. Kinetic Investment Group, LLC, et al  
CASE NO.: 8:20-cv-394

## EXHIBIT "B"

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 0:21-cv-61176-AHS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PROPERTY INCOME INVESTORS LLC, et al.

Defendants.

**ORDER ON FIRST INTERIM DISTRIBUTION**

This cause comes before the Court for consideration of the Unopposed Motion to Approve First Interim Distribution (the “Motion”) (Doc. \_\_\_\_). The Securities and Exchange Commission does not oppose the granting of the relief sought.

Having considered the Motion, and being otherwise fully advised, it is **ORDERED AND ADJUDGED** that the Receiver’s Motion is **GRANTED**. The Court finds that the interim distribution plan as set forth in the Motion and in its Exhibit is fair and reasonable and is consistent with the distribution plan previously approved by this Court. Accordingly,

1. The Receiver is authorized to conduct a first interim distribution in the total amount of **\$2,860,00.00** as set forth in the Motion and in Exhibit A attached to the Motion; and

2. This Court provides authority for the addition of claimants Nos. 117, 118, and 119 to be a part of the claims process as stated in the Motion.

**DONE AND ORDERED** at Tampa, Florida, on January \_\_\_\_, 2024.

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**UNITED STATES DISTRICT JUDGE**



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Counsel of Record