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 8 Attorneys for Receiver
 KRISTEN A. JANULEWICZ

9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA

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 12 SECURITIES AND EXCHANGE
 COMMISSION,
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 Plaintiff,
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 v.
 15 TOTAL WEALTH MANAGEMENT,
 16 INC.; et al.,
 17 Defendants.

Case No. 15-cv-226 BAS (DHB)
 DECLARATION OF THE RECEIVER,
 KRISTEN A. JANULEWICZ, IN
 SUPPORT OF MOTION OF
 RECEIVER, KRISTEN A.
 JANULEWICZ, FOR AUTHORITY TO
 PURSUE CLAIMS AGAINST
 PRIVATE PLACEMENT CAPITAL
 NOTES II, LLC AND ANTHONY
 ("TONY") HARTMAN

[Notice of Motion and Motion;
 Memorandum of Points and Authorities;
 and [Proposed] Order submitted
 concurrently herewith]

Date: December 14, 2015
 Time: Not Applicable
 Ctrm: 4B
 Judge: Hon. Cynthia Bashant

NO ORAL ARGUMENT UNLESS
 REQUESTED BY THE COURT

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1 **DECLARATION OF RECEIVER, KRISTEN A. JANULEWICZ**

2 I, Kristen A. Janulewicz, declare as follows:

3 1. I am the Court-appointed receiver ("Receiver") for Total Wealth
4 Management, Inc. ("Total Wealth"), and its subsidiaries and affiliates, including, but
5 not limited to Altus Capital Management, LLC (collectively, the "Receivership
6 Entities" or "Entities") in the above-entitled action. I make this declaration in
7 support of my concurrently submitted Motion for Authority to Pursue Claims
8 Against Private Placement Capital Notes II, LLC and Anthony (Tony) Hartman. I
9 have personal knowledge of the facts set forth herein and, if called as a witness,
10 could and would testify to such facts under oath.

11 2. Pursuant to my duties as Receiver, I and my professionals have
12 commenced a review and analysis of over 1 million pages of documents and other
13 materials relating to the business and financial activities of the Receivership Entities
14 and obtained from a variety of sources, including the Entities themselves, banks and
15 other financial institutions, accountants, pre-receivership Entity counsel, and other
16 third parties. With specific regard to proposed Defendant Private Placement Capital
17 Notes II, LLC ("PPCN"), this analysis has included a review of: (a) financial
18 records, including bank records, PPCN financial statements, schedules, agreements,
19 memoranda, real property records, and other documents; (b) recorded telephone
20 calls between Total Wealth's principal, Jacob Cooper ("Cooper"), and proposed
21 Defendant Anthony (Tony) Hartman ("Hartman"); (c) recorded telephone calls
22 between Cooper and prospective PPCN investors; (d) text messages between Cooper
23 and Hartman; and (e) emails between the Receivership Entities, PPCN, and
24 Hartman.

25 3. Based on my review of the above-identified materials, I have
26 determined that certain of the Entities (here, the "Altus Funds") invested over \$24
27 million in PPCN. These investments were memorialized by promissory notes (the
28 "Notes"), which, in concert with PPCN's private placement memoranda ("PPM"),

1 promised returns on investment, to be paid as semi-annual interest on the Notes, at
2 the rate of 12.5% per annum. As of the date of my appointment, PPCN had paid
3 over \$4 million in purported interest to the Altus Funds in connection with their
4 collective investments, but these payments did not and do not reflect the total
5 interest accrued on these investments under the Notes.

6 4. My analysis of relevant materials confirms that PPCN also allowed for
7 all or part of its investors' accrued interest to be "reinvested"; that is, added to the
8 outstanding balance of the Notes, which would then increase the interest-generating
9 amount of the Notes. Accordingly, the most recent PPCN financial statements
10 provided to me reflect a valuation of the Altus Funds' collective investment in
11 excess of \$34 million.

12 5. I have determined, based on my review and analysis of relevant
13 materials that, while PPCN solicited investments from the Altus Funds by claiming
14 that its business practices supported the interest payments promised in the Notes,
15 PPCN, among other things, misrepresented: (1) the nature of its investment
16 practices; (2) the nature of the underlying assets it held; (3) the income generated
17 from its investments and assets; and (4) its ability to pay interest to investors,
18 including the Altus Funds. For example, my records indicate that PPCN has
19 consistently invested funds received from investors in negative cash flow
20 businesses, entities, and investments that failed to generate any net income. In an
21 interview with me in early 2015, Hartman conceded that PPCN had insufficient cash
22 on hand to meet a then-pending capital contribution requirement in connection with
23 an investment in a Utah mining enterprise. Also, the materials I have obtained and
24 reviewed have caused me to conclude that, from 2012 through 2014, PPCN paid
25 interest to older investors from funds obtained from later investors, not from actual
26 investment income.

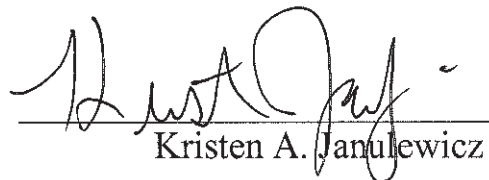
27 6. On the basis of my review of a number of the above-identified records,
28 including PPCN bank and financial records, I have also concluded that Hartman

1 caused PPCN to transfer hundreds of thousands of dollars in PPCN funds to
2 unrelated entities that he controlled, and/or to himself. None of the materials that I
3 have reviewed suggest that these transfers were disclosed to or authorized by PPCN
4 investors, including the Altus Funds.

5 7. The PPCN Notes mature after five (5) years, at which point they are
6 subject to a redemption request at the election of the note holder. Attached hereto as
7 **Exhibit A** is a true and correct copy of one of the Notes, all of which appear to be
8 substantially identical in form and content. After my appointment as Receiver, and
9 in accordance with the terms of the Notes, I caused my counsel of record to send
10 PPCN a redemption request in connection with a number of matured Notes held by
11 the Altus Funds, with an approximate aggregate balance due of \$16 million. PPCN
12 has submitted no response whatsoever to my redemption request, and no funds have
13 been returned to me by PPCN in connection with that request.

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15 I declare under penalty of perjury that the foregoing is true and correct.

16 Executed on November 4, 2015, at Irvine, California.

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20 Kristen A. Janulewicz
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Securities and Exchange Commission v. Total Wealth Management, Inc., et al.,
USDC, SD of California, Case No. 15-cv-226 BAS (DHB)

INDEX OF EXHIBITS

Exhibit Number.	Description	Page No.
A	Promissory Note	1

EXHIBIT A

PROMISSORY NOTE

THIS PROMISSORY NOTE HAS NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), IN RELIANCE UPON THE EXEMPTION FROM REGISTRATION PROVIDED IN REGULATION D, RULE 506 OF THE ACT. THIS PROMISSORY NOTE IS NOT NEGOTIABLE OR TRANSFERABLE IN ANY WAY WITHOUT THE WRITTEN CONSENT OF THE MAKER OF SUCH PROMISSORY NOTE, WHICH CONSENT MAY BE GRANTED OR WITHHELD IN MAKER'S SOLE DISCRETION. IT IS UNLAWFUL TO CONSUMMATE A SALE OR TRANSFER OR ENDORSEMENT OF THIS PROMISSORY NOTE WITHOUT FIRST OBTAINING SUCH CONSENT. BEFORE DECIDING WHETHER TO GRANT CONSENT TO SUCH A TRANSFER, MAKER MUST ALSO RECEIVE AN OPINION OF COUNSEL ACCEPTABLE TO THE MAKER OF THIS PROMISSORY NOTE AND ADDRESSED TO THE MAKER OF THIS PROMISSORY NOTE THAT THE PROPOSED TRANSFER OR SALE OF THIS PROMISSORY NOTE WOULD NOT AFFECT THE ORIGINAL SALE OF SECURITIES BY THE MAKER OF THIS PROMISSORY NOTE PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY SEC RULE 506 AND THAT THE TRANSFER WOULD BE IN COMPLIANCE WITH ALL APPLICABLE STATE OR FEDERAL SECURITIES LAWS.

US \$130,000.00

Greenwood Village, Colorado
Dated as of 12/31/2009,

I. Principal Obligation. For Value Received, the undersigned, PRIVATE PLACEMENT CAPITAL NOTES II, LLC, a Colorado limited liability company ("Maker"), promises to pay to

Holder:

Altus Capital Opportunity Fund, LP

by check or other currently available funds of the United States of America at such address and place as Holder may designate in writing, the principal amount of:

Amount:

ONE HUNDRED THIRTY THOUSAND DOLLARS AND NO CENTS (\$130,000.00)

together with interest and other amounts provided for below. This Promissory Note is referred to herein as this "Note." This Note is not transferable or negotiable to any third party for any reason without the prior written consent of Maker.

II. Interest Payments. Interest shall be payable under this Note semi-annually, on the first business day after January 15 and July 15 of each calendar year during the term hereof. The amount of interest payable hereunder shall be up to 12.5% per annum. Holder will be allowed, but will not be required to elect to reinvest all interest payable hereunder in which case such amounts will be added to the principal of this Note. If Holder so elects, such amounts shall be retained by Maker and treated by Maker and Holder as increases in the principal amount of this Note.

III. Limited Recourse. All payments due Holder by Maker hereunder, whether principal or interest, are payable out of and only out of amounts actually received by Maker from making real estate loans or other loans or investments during each calendar year; therefore, this Note is a limited recourse, and not a full recourse, obligation

of Maker. Interest shall not compound and the maximum amount of interest payable each calendar year shall be 12.5%. Principal and Interest are payable hereunder only out of the sources described above.

IV. Term. This Note has a term of five years from the date first set forth above. After the term, always subject to the provisions of Section III above, all amounts due hereunder, including interest, will be due and payable within six months after the date that Maker receives a written payoff request from Holder, provided that Maker shall only be obligated to use diligent efforts to payoff principal owed hereunder following such a payoff request and that Maker shall be required to make any payment to Holder hereunder to the extent, and only to the extent, that Maker actually receives any such payment amount from making real estate loans or other loans or investments.

V. Extension of Term. After the expiration of the term, the principal amount of this Note will be allowed to continue to earn interest under this Note until such time that the Holder delivers a written payoff request and actual repayment is made.

VI. Prepayment Provision. There is no penalty for prepayments made on amounts due under this Note, regardless of when any such prepayment occurs. Prepayments may be made at any time.

VII. Default and Acceleration. All amounts owed hereunder shall, at the option of the Holder, become immediately due and payable upon the happening of any one or more of the following events ("Events of Default"). Except as expressly provided in this Note, no notice of Holder shall be necessary for the occurrence of any of the following to constitute an Event of Default:

(a) Subject to Sections III, IV, and V above, Maker's failure to pay or perform any obligation, liability or indebtedness to the Holder under this Note as and when due (whether at maturity or by acceleration) if such failure is not cured by Maker within ten (10) days of receipt of written notice thereof from Holder.

(b) Maker shall commence a voluntary case of bankruptcy or other similar proceeding seeking liquidation, reorganization or other relief with respect to itself or its respective debts under any bankruptcy, insolvency or other similar debtor relief law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of them, or any of them, or any substantial part of their property, or shall consent to any such relief or to the appointment or taking possession by any such official in any involuntary case or other proceeding commenced against any of them.

(c) An involuntary case of bankruptcy or other similar proceeding shall be commenced against Maker seeking liquidation, reorganization or other relief with respect to Maker or their its debts under any bankruptcy, insolvency or other similar debtor relief law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of them, or any of them, or any substantial part of their property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) days.

(d) Holder's priority under this Section VII. is equal to that of every other Holder that purchased a similar note under the offering commenced on Dec 23, 2008.

VIII. Miscellaneous.

(a) The failure of the Holder to act or to exercise any right or remedy shall not in any way affect or impair the obligations of Maker to the Holder, or constitute a waiver by the Holder of, or otherwise affect any of, the Holder's rights under this Note, under any endorsement or guaranty of this Note or under any document or instrument evidencing any security for payment of this Note.

(b) The invalidity or unenforceability of any one or more provisions of this Note shall in no way affect the other provisions.

PROOF OF SERVICE

Securities and Exchange Commission v. Total Wealth Management, Inc., et al.
USDC, Southern District of California – Case No. 15-cv-226 BAS (DHB)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 515 S. Figueroa Street, 9th Floor, Los Angeles, California 90071-3398.

A true and correct copy of the foregoing document(s) described below will be served in the manner indicated below:

DECLARATION OF THE RECEIVER, KRISTEN A. JANULEWICZ, IN SUPPORT OF MOTION OF RECEIVER FOR AUTHORITY TO PURSUE CLAIMS AGAINST PRIVATE PLACEMENT CAPITAL NOTES II, LLC AND ANTHONY ("TONY") HARTMAN

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")** – the above-described document will be served by the Court via NEF. On **November 9, 2015**, I reviewed the CM/ECF Mailing Info For A Case for this case and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- **Vincent J. Brown**
vince@vjblaw.com, vjblaw@gmail.com
- **John Bulgozdy**
bulgozdyj@sec.gov, larofiling@sec.gov, berryj@sec.gov, irwinma@sec.gov
- **Christina Lenore Geraci**
christina@geracilawfirm.com, cynthia.perry@geracilawfirm.com
- **Geraci Law Firm**
christina@geracilawfirm.com
- **Gary Y. Leung, Jr**
leungg@sec.gov, larofiling@sec.gov, berryj@sec.gov
- **David J. Van Havermaat**
vanhavermaatd@sec.gov, larofiling@sec.gov, irwinma@sec.gov
- **Joshua Andrew del Castillo**
jdelcastillo@allenmatkins.com

2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):** On **November 9, 2015**, I served the

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following person(s) and/or entity(ies) in this case by placing a true and correct copy thereof in a sealed envelope(s) addressed as indicated below. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion for party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 (one) day after date of deposit for mailing in affidavit.

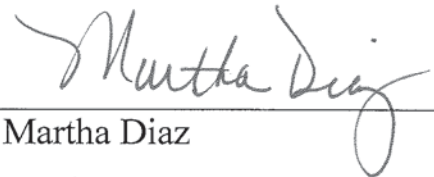
Mikel R. Bistrow, Esq.
Ballard Spahr LLP
655 W. Broadway, Suite 1600
San Diego, CA 92101

Via U.S. First Class Mail

Richard M. Kipperman
PO Box 3010
La Mesa, CA 91944-3010

Via U.S. First Class Mail

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on **November 9, 2015** at Los Angeles, California.



Martha Diaz