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15 UNITED STATES DISTRICT COURT
16 SOUTHERN DISTRICT OF CALIFORNIA

17 SECURITIES AND EXCHANGE
18 COMMISSION,

19 Plaintiff,

20 v.

21 TOTAL WEALTH MANAGEMENT,
22 INC.; et al.,

23 Defendants.

Case No. 15-cv-226 BAS (DHB)

NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT

**SECOND INTERIM REPORT AND
PETITION FOR FURTHER
INSTRUCTIONS OF RECEIVER,
KRISTEN A. JANULEWICZ**

Date: March 7, 2016

Ctrl: 4B

Judge: Hon. Cynthia Bashant

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1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on March 7, 2016, in Courtroom 4B of
3 the above-entitled Court, 221 W. Broadway, San Diego, California 92101, and in
4 accordance with (a) this Court's February 12, 2015 "(1) Preliminary Injunction,
5 Appointment of a Permanent Receiver, and Related Orders; and (2) Order Vacating
6 Hearing on Preliminary Injunction" (the "Permanent Appointment Order"); (b) Civil
7 Local Rule 66.1(e); and (c) this Court's May 8, 2015 "Order Granting Motion for
8 Order in Aid of Receivership" (the "Aid Order"), Kristen A. Janulewicz (the
9 "Receiver"), the Court-appointed permanent receiver for Total Wealth Management,
10 Inc. ("Total Wealth") and its subsidiaries and affiliates, including but not limited to
11 Altus Capital Management, LLC ("Altus Capital") (collectively, the "Receivership
12 Entities" or "Entities") will and hereby does submit her Second Interim Report and
13 Petition for Further Instructions (the "Second Interim Report") to this Court:

14 **I. PRELIMINARY STATEMENT.**

15 As detailed in the Receiver's prior Reports to the Court, and as further
16 detailed below, the Receiver has made substantial progress in her efforts to identify
17 and recover available assets of the Entities ("Receivership Assets") as well as to
18 better understand the business and financial activities of the Entities. While the
19 Receiver's work is ongoing, the status of her efforts and the preliminary
20 conclusions¹ developed from her review and analysis of materials recovered to date
21 are appropriate for an interim update. Since the submission of her last Report, the
22 Receiver has:

- 23 • Recovered additional Receivership Assets, bringing the total cash on hand
24 for the benefit of the Entities to approximately \$3.5 million.

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27 ¹ Due to the volume and nature of the information recovered, the nature and complexity of the
28 matters and transactions to which they relate, and the Receiver's need to complete her work,
the Receiver's conclusions are presented herein are preliminary. The Receiver may modify
such conclusions after further investigation and analysis.

- 1 • Recovered additional documents in connection with her investigation of
2 the business and financial activities of the Receivership Entities, via third
3 party document subpoenas.
- 4 • Updated her preliminary conclusions regarding Total Wealth's receipt of
5 revenue sharing, management, and other fees from entities in which Total
6 Wealth invested funds received from investors. In some instances, these
7 fees were received from money-losing or insolvent funds in which the
8 Entities were invested. Such fees totaled approximately \$1.8 million.
- 9 • Determined that Defendant Jacob Cooper ("Cooper"), either individually
10 or via an entity under his control, separately received approximately
11 \$775,000 in revenue sharing, management, and other fees from entities in
12 which Total Wealth invested funds received from investors.
- 13 • Updated her preliminary conclusions regarding the use of funds raised
14 from investors to pay for legal defense the legal defenses of, at least,
15 Defendant Cooper and Total Wealth. Specifically, the Receiver has
16 confirmed that more than \$530,000 in funds raised from investors were
17 expended in connection with pre-receivership legal defense matters,
18 including \$150,000 to pay an anticipated settlement with the Commission
19 and another \$367,219.49 and \$14,950.63 to two pre-receivership law firms
20 who appear to have assisted in the legal defense of Defendant Cooper and
21 Total Wealth.
- 22 • Agreed to an appropriate disposition of \$260,000 in proceeds recovered
23 from the bankruptcy sale of Metropolitan Coffee and Concession
24 Company, LLC ("Metro Coffee") and related assets, enabling the Entities
25 to retain \$80,000 even in the face of a senior, secured claim by a non-
26 receivership creditor.
- 27 • Proactively monitored funds owed to the Receivership Entities from prior
28 liquidation requests and pursued collections. As of the date of this Interim

1 Report, the Receiver has collected redemptions and miscellaneous income
2 totaling approximately \$2.8 million. A summary of the Receiver's cash
3 collections, by Entity, is appended hereto as **Exhibit 1**.

- 4 • Continued her review and analysis of the Entities' investment of at least
5 \$18 million in investor funds in Aegis Holding Company, Inc. ("Aegis
6 Holding") and related entities, exclusive of amounts invested in Metro
7 Coffee, all of which appear to have been written off in the pre-receivership
8 period, constituting a substantial loss to investors. The Receiver is
9 continuing to investigate how the funds invested in Aegis Holding and
10 related entities were spent or dissipated.
- 11 • Completed her initial review and analysis of the business and financial
12 activities of Private Placement Capital Notes II ("PPCN") and petitioned
13 this Court for authority to prosecute claims against PPCN and its principal,
14 Anthony (Tony) Hartman ("Hartman"), arising from what the Receiver
15 believes to be fraudulent and deceptive conduct on PPCN's and Hartman's
16 behalf.
- 17 • Completed her initial review and analysis of the role pre-receivership
18 Entity professionals, including counsel, may have contributed to Total
19 Wealth's commission of securities fraud, as determined in the related
20 administrative proceeding styled In re Total Wealth Management, Inc., et
21 al., File No. 3-15842 (the "Administrative Proceeding"), and prepared an
22 anticipated professional liability complaint against certain pre-receivership
23 professionals based on her conclusions.

24 The Receiver's charge includes, among other things: (1) assuming control of
25 the Entities and their Assets; (2) conducting such investigation and discovery as
26 necessary to identify and locate outstanding Receivership Assets; (3) preserving and
27 preventing the dissipation of Receivership Assets; and (4) providing an accounting
28 to the Court and plaintiff Securities and Exchange Commission (the "Commission")

1 regarding the business and financial activities of the Receivership Entities. As
2 reflected in this and prior Reports, the Receiver and her approved counsel of record,
3 Allen Matkins Leck Gamble Mallory & Natsis LLP ("Allen Matkins"), have
4 diligently pursued these goals since the inception of the receivership, and the
5 Receiver's efforts, analysis, supplemental preliminary conclusions, and
6 recommendations are presented below.

7 Please note that the omission from this Report of matters addressed in
8 previous Reports submitted by the Receiver does not reflect a determination that
9 such matters are no longer pertinent or that any previously presented conclusions
10 have been modified or withdrawn.

11 12 **II. GENERAL BACKGROUND AND PROCEDURAL HISTORY.**

13 The Court and any interested parties are invited to review the following
14 materials² for a general summary of the relevant facts underlying the above-
15 captioned receivership case and the activities of the Receiver and her professionals:

- 16 • Commission's Complaint (the "SEC Complaint") against Defendants Total
17 Wealth and Jacob Keith Cooper (Docket No. 1.);
- 18 • Commission's Ex Parte Application for Temporary Restraining Order and
19 Other Relief (Docket No. 2.);
- 20 • Stipulation and Temporary Restraining Order and Orders (1) Freezing
21 Assets; (2) Prohibiting the Destruction of Documents; (3) Granting
22 Expedited Discovery; (4) Requiring Accountings; (5) Appointing a
23 Temporary Receiver, and Order to Show Cause Re Preliminary Injunction
24 and Appointment of a Permanent Receiver (the "TRO") (Docket No. 5);
- 25 • Commission's Memorandum of Points and Authorities in Support of
26 Preliminary Injunction and Appointment of Permanent Receiver (Docket
27

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² Materials are available on the Receiver's website, totalwealthreceiver.com.

1 No. 6);

- 2 • Permanent Appointment Order (Docket No. 8);
- 3 • Joint Motion for Order to Release Specified Account, relating to Metro
- 4 Coffee (Docket No. (9));
- 5 • Initial Report and Recommendations and Petition for Instructions of
- 6 Receiver, Kristen A. Janulewicz ("Initial Report") (Docket No. 17);
- 7 • Joint Motion for Order to Release Wells Fargo Account, relating to Silver
- 8 Hawk Owners Association, Inc. (Docket No. 25);
- 9 • First Interim Report and Petition for Further Instructions of Receiver,
- 10 Kristen A. Janulewicz ("First Interim Report") (Docket No. 43);
- 11 • First Interim Applications for Payment of Fees and Reimbursement of
- 12 Expenses of Receiver, Kristen A. Janulewicz, and Allen Matkins Leck
- 13 Gamble Mallory & Natsis LLP ("Fee Application") (Docket No. 51);
- 14 • Motion of Receiver, Kristen A. Janulewicz, for Authority to Pursue Claim
- 15 Against Private Placement Capital Notes II, LLC and Anthony (Tony)
- 16 Hartman ("PPCN Motion") (Docket No. 57); and
- 17 • Joint Motion of Plaintiff, Securities and Exchange Commission, Receiver,
- 18 Kristen A. Janulewicz, Non-Party Strategic Funding, Inc., and Defendant,
- 19 Jacob Cooper, to Release Funds Held in Trust ("Joint Motion") (Docket
- 20 No. 61).

21 **III. SUMMARY OF RECEIVER'S ACTIVITIES AND EFFORTS SINCE**
 22 **SUBMISSION OF INITIAL REPORT.**

23 **A. Marshaling And Preserving Receivership Assets.**

24 1. Cash Recoveries.

25 At the time of the Receiver's submission of her Initial Report, she had
 26 recovered approximately \$2,151,603 million in cash, including cash in Entity bank
 27 accounts. At the time of submission of her First Interim Report, the Receiver had
 28 recovered an additional \$1,351,745 in cash, including from other Entity bank

1 accounts, as well as \$150,000 in funds from an aborted Administrative Proceeding
2 settlement, liquidations from LJL Secured High Yield Income Fund I in the amount
3 of approximately \$260,691.77, and money received from Amerifunds Secured
4 Income Fund I LLC and Amerifunds Secured Income Fund II LLC totaling
5 approximately \$547,453. In summary, at the time the First Interim Report was
6 submitted, the Receiver was holding cash in the amount of approximately
7 \$3,465,491 for the benefit of the Receivership Entities, not including the \$260,000
8 received from the Metro Coffee sale, as discussed below.

9 Since the submission of her First Interim Report, the Receiver has collected
10 an additional \$59,670, of which the majority was received from the Rainmaker
11 Capital Precious Commodities Fund, one of the investments into which investor
12 moneys were invested. Accordingly, and as of the date of this Report, the Receiver
13 holds cash in the amount of approximately \$3,506,255 for the benefit of the
14 Receivership Entities, not including an additional \$80,000 she expects to retain in
15 connection with the Metro Coffee sale, which are discussed below.

16 2. Metro Coffee Sales Proceeds.

17 As addressed in the prior Reports, millions in investor funds were invested in
18 Aegis Holding, Metro Coffee, and related entities by the Receivership Entities.
19 Metro Coffee operated Peet's Coffee stores in Bay Area Rapid Transit District
20 ("BART") stations in San Francisco, California. As noted in the Initial Report, the
21 Receiver was appointed in the midst of Metro Coffee's Chapter 11 bankruptcy case
22 and during its efforts to dispose of estate property. This case remains pending in the
23 United States Bankruptcy Court for the Northern District of California (the
24 "Bankruptcy Court"), although it has now been converted to a chapter 7 case.³

25 In an effort to protect against losses associated with Aegis Holding and Metro
26 Coffee over and above the substantial write-off taken in the pre-receivership period,
27

28 ³ In re Metropolitan Coffee and Concession Company, LLC, USBC, N.D. Cal. Case No. 14-44242.

1 the Receiver worked with the Bankruptcy Court's designated Responsible Person for
 2 Metro Coffee to facilitate the sale of Metro Coffee's assets (along with the necessary
 3 BART permits, held by Aegis Holding). The Metro Coffee sale was concluded and,
 4 as of the date of this Report, the Receiver is holding \$260,000 in proceeds from the
 5 sale in trust.⁴

6 As reflected in the Joint Motion, Strategic Funding, Inc. ("Strategic"), a
 7 putative creditor of Metro Coffee and Aegis Holding, has alleged a security interest
 8 in these funds equal to or superior to those of the Receiver. The Receiver has
 9 alleged a super-priority equitable interest in the funds, but has confirmed that
 10 Strategic's non-contingent, secured interest is valid and may indeed be superior.
 11 Accordingly, and in an effort to ensure that the funds are appropriately shared as
 12 between Strategic and the Receiver, the Receiver has agreed, as addressed in the
 13 Joint Motion, to retain \$80,000 for the benefit of the Entities, and Strategic will
 14 receive \$180,000.⁵ As of the filing of this Report, the Court has not entered an order
 15 on the Joint Motion.

16 3. Pending Federal and State Court Litigation.

17 The Receiver has also endeavored to protect the estate of the Receivership
 18 Entities from diminution, including via notice to parties believed to be in possession
 19 of Receivership Assets (of whatever form), as well as filing formal Notices of
 20 Pending Receivership in all known federal and state actions where the Receivership
 21 Entities are Defendants, of which, at the time of filing of the Initial Report, the
 22 Receiver noted four (4) such actions.⁶ Prior to the First Interim Report, the Receiver
 23

24 ⁴ These funds represent all surplus proceeds generated from the sale. In the First Interim
 25 Report, the Receiver included these funds in her Exhibit 1, Summary of Cash, and by
 26 extension on her Exhibit 2. In this report, the Receiver has revised cash downward in both
 27 exhibits to reflect the fact that these cash proceeds have been held in trust.

28 ⁵ The Commission and Defendant Cooper also agreed to such an allocation of the sales
 proceeds, as reflected in the Joint Motion.

⁶ In her Initial Report, the Receiver referenced the following proceedings: (1) Mitchell v. Total
 Wealth Management, Inc., USDC, SD Cal., Case No. 14 cv-1552-GPC-JLB; (2) Staniforth v.
 Total Wealth Management, Inc., USDC, SD Cal. Case No. 14 cv-1899-GPC-JLB; (3)
Calderon v. Total Wealth Management, Inc., San Diego County Superior Court Case No. 37-

1 additionally filed formal Notices of Pending Receivership in two (2) additional state
2 court actions not identified in her Initial Report.⁷

3 In the Staniforth and Mitchell matters, Judge Gonzalo P. Curiel responded to
4 the Receiver's Notices of Pending Receivership by issuing Orders to Show Cause
5 ("OSCs") whether the Permanent Appointment Order should stay those entire
6 actions, respectively. The Receiver, by and through Allen Matkins, filed responses
7 to the OSCs, and, on May 12, 2015, Judge Curiel stayed the Staniforth action
8 entirely, and stayed the Mitchell action, in part. In each of these matters, the
9 Receiver was ordered to provide an update on the status of the receivership on or
10 before August 14, 2015. The Receiver did so. In the Mitchell matter, the parties on
11 September 2, 2015 filed a stipulated motion to stay the entire action, which was
12 granted on September 21, 2015. As part of that order granting the stipulation in the
13 Mitchell matter, the Receiver was ordered by Judge Curiel to provide an additional
14 status report on or before December 1, 2015. The Receiver did this as well. As of
15 the date of this report, no further order has been entered in the Mitchell matter
16 requiring further status reports from the Receiver.

17 While Judge Curiel did not order the Receiver to file a December 1, 2015
18 status report in the Staniforth matter, as he did in the Mitchell matter, the Receiver
19 did so, determining that it was best to treat the two cases, handled by the same
20 judge, similarly. As of the date of this Report, no further order has been entered in
21 the Staniforth matter requiring further status reports from the Receiver.

22 Additionally, since the filing of the First Interim Report, the Receiver has been
23 advised that the Troya matter was dismissed. The Morin matter remains stayed,
24 and, at the request of that court, counsel for the Receiver appeared telephonically at
25

26 2014-00015682-CU-SL-CTL; and (4) Troya v. Total Wealth Management, Inc., San Diego
27 County Superior Court Case No. 37-2014-00012816-CU-PN-CTL.

28 ⁷ These actions are: (1) Morin v. Total Wealth Management, Inc., San Diego County Superior
Court Case No. 37-2014-00025391-CU-BC-CTL; and (2) Drehsler v. Total Wealth
Management, Inc., San Diego County Superior Court Case No. 37-2014-00042224-CU-FR-
CTL.

1 a case management conference on December 4, 2015, at which time the case
2 management conference was continued to June 3, 2016. On July 22, 2015, the
3 Calderon matter was removed to Federal court, where it is currently pending before
4 Judge Robert T. Benitez.⁸ The Receiver will continue to monitor these and any
5 other relevant pending state or federal court litigation.

6 **B. Investigation And Discovery.**

7 As noted in the Initial Report and in the First Interim Report, the Receivership
8 Entities left no books, records, or computers behind at their offices. Accordingly,
9 the Receiver had to obtain documents relating to the nature, location, and amount of
10 Receivership Assets and the business and financial activities of the Receivership
11 Entities from third party sources, including via an access request, direct turn-over
12 demands, document subpoenas, and informal requests. In summary, the Receiver
13 has issued dozens of formal notices of her appointment, along with turn-over
14 requests for Receivership Assets. In addition, the Receiver has served dozens of
15 document subpoenas on third parties, including parties believed to be in possession
16 of Receivership Assets and parties in possession of materials directly relating to the
17 business and financial activities of the Receivership Entities.

18 In addition to the recovery efforts detailed in prior Reports, including digital
19 document recovery efforts, the Receiver has continued to recover new documents
20 and records. Since the submission of her First Interim Report, the Receiver has
21 served subpoenas on Gateway Capital Partners, LLC, Metro Coffee's Bankruptcy
22 Court-designated Responsible Person, and Joel Sjostrom (an Aegis Holding
23 principal). The Receiver has further received additional document productions from
24 Jacko Law Group, PC, and First Citizens Bank, in response to subpoenas served
25 prior to the filing of the First Interim Report. The Receiver is continuing her review
26 and analysis of the materials recovered to date. The Receiver will continue to issue
27

28 ⁸ Calderon v. Total Wealth Management, Inc., et al., USDC, SD Cal., Case No. 3:15-cv-01632-BEN-NLS.

1 additional demand letters and subpoenas as deemed necessary to collect material
2 information that may lead to sources of recovery for the receivership estate. .

3 **C. Updated Preliminary Accounting And Inventory Efforts.**

4 As a result of her review of materials recovered since the submission of her
5 First Interim Report, the Receiver has been better able to quantify the relationship
6 between various Receivership Entities, undertake an updated inventory, and prepare
7 an updated accounting of Receivership Assets. A copy of the Receiver's updated
8 accounting, reflecting the reported book value of known Receivership Assets (not
9 including recovered cash) is attached hereto as **Exhibit 2**.

10
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12 **IV. OTHER SIGNIFICANT RECEIVERSHIP ACTIVITIES.**

13 **A. Receivership Entity Tax Filings.**

14 Since the submission of her First Interim Report, the Receiver has filed the
15 2014 tax returns for the Altus Funds⁹ (on September 15, 2015) and provided Form
16 K-1s to investors/limited partners, on or about September 17, 2015. The Receiver
17 has continued to respond to investor inquiries, requests, and questions, including in
18 connection with the tax materials she has submitted and delivered. At present, the
19 Receiver is in the process of preparing to file the 2015 tax returns for the Altus
20 Funds. The Receiver estimates that these returns will be complete by the end of
21 March 2016.

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27 ⁹ The "Altus Funds," which are Receivership Entities as a consequence of their common control
28 by and affiliation with Total Wealth and Altus Capital Management, LLC, include Altus
Focused Growth Portfolio Series, LP; Altus Income Portfolio Series, LP; Altus Conservative
Portfolio Series, LP; Altus Moderate Growth Portfolio Series, LP; Altus Moderate Portfolio
Series, LP; Altus Growth Portfolio Series, LP; and Altus Capital Opportunity Fund, LP.

1 **B. Motion For Permission To Pursue Claims Against PPCN And**
2 **Hartman.**

3 The First Interim Report provided an extensive explanation of the Receiver's
4 efforts to recover records from PPCN, and from related entities and individuals,
5 along with details regarding the Receiver's investigation of PPCN. As reflected in
6 the proposed complaint that the Receiver has requested that this Court authorize, the
7 Receiver has determined that the Altus Funds invested¹⁰ at least \$24,000,000 in
8 PPCN under false pretenses, which investments were memorialized by the issuance
9 of so-called promissory notes by PPCN. The Receiver has further determined that
10 this investment constitutes at least 70% of all funds invested in PPCN. The
11 Receiver additionally has concluded that at least \$11,200,000 in interest accrued to
12 the Altus Funds in accordance with the promissory notes has not been paid, and
13 instead was added to balance of the Altus Funds' investments. In addition, the
14 Receiver has submitted a request to redeem approximately \$16 million in eligible
15 promissory notes, which request has been ignored by PPCN.

16 As a consequence of the above, the Receiver filed the PPCN Motion on
17 November 9, 2015, requesting authorization from this Court to file her proposed
18 complaint and prosecute claims against PPCN and Hartman. As of the date of this
19 Report, the Court has not entered an order on the PPCN Motion, and the Receiver
20 respectfully reaffirms her request that the motion be granted as soon as practicable.
21 In the alternative, absent an order from the Court, and should the Receiver
22 determine that further deferral in filing will endanger a prospective recovery, she
23 will file her proposed complaint and promptly advise the Court.

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27 ¹⁰ Certain PPCN investments were originally made by some Total Wealth clients in their
28 individual capacities. These investments were later retitled for the benefit of the Altus Funds,
which appear to be the sole receivership beneficiaries of the PPCN promissory notes at this
time.

1 **C. Prosecution Of Professional Liability Claims Against Pre-**
2 **Receivership Professionals.**

3 In addition to her investigation regarding the Altus Funds' investment and
4 PPCN and the circumstances and representations surrounding those investments, the
5 Receiver has continued her investigation of other potential sources of recovery for
6 the Receivership Entities. Setting aside potential claims arising from the substantial
7 Aegis Entity (defined below) losses, the Receiver has preliminarily concluded that a
8 number of pre-receivership professionals, including counsel, contributed to Total
9 Wealth's violations of federal securities laws, particularly with respect to its failure
10 to disclose the existence of revenue sharing agreements and their attendant conflicts
11 of interest. The Receiver reserves the right to prosecute claims against such
12 professionals in accordance with Article XI.A of the Permanent Appointment Order.
13 While the Receiver's preference would be to secure a specific order from the Court
14 authorizing such a prosecution, should the Receiver determine that time is of the
15 essence with respect to the prosecution of such claims, she will file an appropriate
16 complaint and promptly advise the Court.

17
18 **V. SUPPLEMENTAL PRELIMINARY CONCLUSIONS AND**
19 **OBSERVATIONS.**

20 While the Receiver's document recovery, review, and analysis efforts remain
21 ongoing, the Receiver has conducted sufficient review and analysis of the materials
22 recovered to date to present additional preliminary conclusions and observations
23 regarding the business and financial activities of the Receivership Entities, and to
24 affirm or clarify certain preliminary conclusions presented in her Initial Report.

25 **A. Receipt Of Revenue Sharing Fees.**

26 In addition to receiving advisory fees from the Altus Funds, Total Wealth
27 received revenue sharing fees from a number of the underlying funds in which the
28 Altus Funds were invested.

1 The Receiver has continued to research the issue of revenue sharing since the
2 submission of her First Interim Report. The Receiver presently believes that the
3 extent of revenue sharing was greater than previously disclosed, largely due to the
4 fact that the Receiver has recently determined that certain revenue sharing payments
5 were erroneously booked by Total Wealth as advisory fees. As of the date of this
6 Report, the Receiver has determined that Total Wealth received the following
7 revenue sharing fees:

- 8 • \$459,662.59 paid collectively by Aegis Atlantic LLC ("Aegis
9 Atlantic"), Aegis Retail Group ("Aegis Retail"), and Metro Coffee,¹¹
10 from 2011 through February 2013;
- 11 • \$163,733.88 paid by LJI Funding LLC ("LJI Funding"), an
12 investment common to many of the Altus Funds, from 2010 through
13 February 2014;
- 14 • \$532,279.66 paid by PPCN from 2012 through September 2014;
- 15 • \$568,406.81 paid by Rainmaker Capital, Inc., from 2009 through
16 August 2014; and
- 17 • \$33,480 paid by Pacific West Capital Group from 2010 through
18 September 2012.

19 As a consequence of this new information, the Receiver has updated her
20 calculation regarding the receipt of revenue sharing fees and presently calculates
21 that Total Wealth received approximately \$1.8 million in revenue sharing fees, in
22 the aggregate, from approximately February 2009 through September 2014.

23 In addition, the Receiver believes that Defendant Cooper, either individually
24 or via a company he controlled called Pinnacle Wealth Group ("PWG"), received
25 approximately \$775,000 in revenue sharing fees from 2009 to early 2011. This
26 amount includes \$415,000 paid by Denver Financial Group and/or PPCN, nominal
27

28 ¹¹ Aegis Holding, Aegis Atlantic, and Aegis Retail are collectively referred to herein as the
"Aegis Entities."

1 compensation from Moneta Capital Management LLC, payments of \$307,664.58
2 from an entity called Novus Investment and its dba, Dynamic Sales, owned by Don
3 Davis, and \$52,500 from Jomac, LLC, the principals of which were Michael
4 McNamara and John Staiano, who were involved, along with Robert Stinson, Jr., in
5 the "Life's Good" Ponzi scheme addressed in previous Reports.

6 **B. Use Of Funds Raised From Investors For Legal Defense.**

7 As first addressed in the Receiver's Initial Report, the records obtained by the
8 Receiver confirm that certain funds raised from investors were used to pay for the
9 legal defenses of Defendant Cooper and the Receivership Entities.¹² Specifically,
10 \$150,000 was paid to the Commission in connection with an anticipated settlement
11 of the Administrative Proceeding, which settlement was later rejected when the
12 Commission learned the payment had been drawn from investor funds. These funds
13 have since been returned to the Receiver. In addition, at least \$367,219.49 was paid
14 in 2014 by the Altus Capital Opportunity Fund ("ACOF") to the Sparer Law Group,
15 pre-receivership counsel for Defendant Cooper, Total Wealth, and ACOF. ACOF
16 also made payments totaling \$14,950.64 to the Jacko Law Group, P.C., which
17 appears to have provided services relating to the defense of Defendant Cooper and
18 Total Wealth in the Administrative Proceeding. These payments were made by
19 ACOF, and later allocated across (that is, proportionally charged against) the
20 remaining Altus Funds. In the aggregate, and as of the date of this Report, more
21 than \$530,000 in funds raised from investors appears to have been expended in
22 connection with the legal defense of Defendant Cooper and, at least, Total Wealth
23 and ACOF.

24 **C. Investments In The Aegis Entities.**

25 As mentioned in the Receiver's prior reports, over \$18 million in investments
26 in the Aegis Entities (including accrued interest) was written off in 2014, apparently
27

28 ¹² This does not include payments to attorneys not associated with litigation defense, such as
payments

1 as a result of the complete failure of the investments. As of the date of this Report,
2 the information reviewed by the Receiver strongly suggests that some of this failure
3 may be attributable to the misappropriation or misuse of investment funds, including
4 in connection with at least two restaurants, "Sprig" and "Preserve 24", as previously
5 addressed in the First Interim Report.

6 The materials presently available to the Receiver do not provide a complete
7 accounting for the entire \$18 million lost in connection with the Aegis Entities, and
8 the failures of Sprig and Preserve 24 cannot reasonably account for these losses.
9 For the reasons stated in the First Interim Report, including the potential diversion
10 of funds and assets away from the Aegis Entities, the Receiver is continuing to
11 devote reasonable time and resources to the investigation of the Aegis Entities and
12 their assets, including the disposition of such assets, in order to determine what, if
13 any, claims for restitution or disgorgement might be available to the Receivership
14 Entities.

15 **D. Delta Capital Partners Holdings And Toro Investments.**

16 Delta Capital Partners Holdings LLC ("Delta") is a litigation finance
17 partnership or fund founded by a partner or former partner of the law firm
18 representing one of Total Wealth's pre-receivership attorneys, John Lively, who
19 provided Total Wealth with securities advice. The First Interim Report described
20 certain relevant documents recovered to date, the apparent investments in entities
21 called Toro Investments I, Toro Investments 2, and Toro Investments IV ("Toro"),
22 and the issuance of promissory notes by Delta. The Receiver is continuing, and will
23 continue, to investigate these relationships and transactions.

24 **E. Investments Were Subject To Substantial Losses.**

25 In her Initial Report, the Receiver expressed the view that investments were
26 subject to substantial losses. The work completed prior to the submission of the
27 First Interim Report confirmed this conclusion. As noted therein, the Receiver has
28 determined that the Life's Good, Inc. investment, mentioned in the Initial Report,

1 reflects a loss of approximately \$2.4 million. Metro Coffee investments have lost
2 approximately \$3.2 million (including accrued interest), not including the \$260,000
3 recently recovered of which the Receiver expects to recover \$80,000.

4 Approximately \$18 million (including accrued interest) has been lost in connection
5 with the Aegis Entities.

6 In addition, the Receiver's has learned since the First Interim Report that
7 there was an additional \$80,000 investment made in Ball Gum International, which
8 the Receiver suspects, based on research to-date, has been lost. Accordingly, as of
9 the date of this Report, it appears that investment losses total at least \$23,520,000
10 (including accrued interest), not including potential, but presently unconfirmed
11 losses in PPCN totaling in the tens of millions of dollars, assume a worst case
12 scenario.

13 **VI. RECOMMENDATIONS AND PETITION FOR FURTHER**
14 **INSTRUCTIONS.**

15 While the Receiver's document recovery, review, and analysis efforts remain
16 incomplete, the materials she has recovered and reviewed to date strongly militate in
17 favor of the continuation of the receivership with, at least, the following goals:

18 **A. Continue General Investigation, Discovery, And Receivership Asset**
19 **Identification And Recovery Efforts.**

20 The records recovered to date do not provide a complete accounting of all
21 funds received and expended by the Entities, including investor funds. As such, the
22 Receiver believes that additional investigation and discovery efforts may yield a
23 material benefit to the estate of the Receivership Entities, both in terms of providing
24 a more complete understanding of their business and financial activities and
25 potentially identifying additional recoverable Receivership Assets. The Receiver
26 therefore recommends that the Court allow her to continue her investigation,
27 discovery, and Receivership Asset identification and recovery efforts, including as
28 expressly provided for in the Permanent Appointment Order.

1 **B. Aegis Holding Investigation.**

2 The Receiver has obtained substantial financial records associated with the
3 Aegis Entities. The amount of money invested (and lost) in the Aegis Entities
4 (second only to potential PPCN losses, including accrued interest) militates in favor
5 of completing an investigation to determine whether any Assets may be recovered
6 by the Receiver via the prosecution of restitution or disgorgement claims.

7 **C. Complete Limited Forensic Accounting.**

8 As reflected in the Initial Report and the First Interim Report, the Receiver
9 has commenced and continued a preliminary forensic accounting in order to develop
10 a complete understanding of the business and financial activities of the Receivership
11 Entities and to identify recoverable Receivership Assets. This accounting, once
12 complete, should better enable the Receiver to account for the amount and use of
13 investor funds as well as to identify subjects of potential disgorgement or other
14 actions. Accordingly, the Receiver respectfully recommends that she be authorized
15 to complete her preliminary forensic accounting.

16 **D. Secure Guidance From The Court In Connection With Prior**
17 **Filings And Requests For Relief.**

18 The Receiver's Initial Report was filed on March 12, 2015 (Docket No. 17),
19 accompanied by a proposed order on her request for further instructions as reflected
20 therein. The Receiver filed her First Interim Report on August 7, 2015 (Docket No.
21 43), and likewise lodged a proposed order relating to her recommendations and
22 petition for further instructions. On September 22, 2015 the Receiver filed the Fee
23 Application (Docket No. 51), along with a lodged proposed order. The Commission
24 filed a statement in support of the Fee Application on October 13, 2015 (Docket No.
25 54). On November 19, 2015 the Receiver filed the PPCN Motion (Docket No. 57),
26 seeking permission to pursue claims against PPCN and Hartman. Finally, the
27 Receiver filed the Joint Motion (Docket No. 61) on December 17, 2015.

28

1 As of the date of this Report, the Court has not entered orders on any of the
2 above, pending filings and requests for relief. The Receiver respectfully requests
3 that the Court provide the guidance or instructions requested in connection with the
4 Initial Report and Interim Report, authorize the prosecution of her proposed
5 complaint against PPCN and Hartman, and grant the Joint Motion as soon as
6 possible. Orders in the Receiver's favor on these matters will substantially assist the
7 Receiver in the administration of her duties under the Permanent Appointment
8 Order, and could result in the recovery of substantial additional Receivership Assets.

9 The Receiver likewise respectfully requests that the Court issue an order on
10 the Fee Application as soon as possible. The Receiver and her professionals,
11 including Allen Matkins, have been working on this matter without compensation
12 for nearly one (1) year, since its inception, in February 2015. The Receiver believes
13 that the payment of the Fee Application and the submission of forthcoming fee
14 applications in accordance with this Court's prior orders is now appropriate.

15 **E. Submit Further Reports To The Court.**

16 Assuming the Court authorizes the Receiver to undertake the actions
17 recommended herein, as well as to continue those actions provided for in the
18 Permanent Appointment Order, the Receiver proposes to submit further interim
19 reports to this Court addressing her progress, findings, conclusions, and further
20 recommendations, in approximately 90 to 120 days.

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1 Accordingly, the Receiver respectfully requests that the Court enter an order:
2 1. Accepting the Receiver's Second Interim Report;
3 2. Authorizing the Receiver to continue to administer the Receivership
4 Entities in accordance with the terms of the Permanent Appointment Order;
5 3. Authorizing the Receiver to undertake the recommendations presented
6 herein; and
7 4. Providing such other and further relief as the Court deems necessary
8 and appropriate.

9
10 Dated: February 1, 2016

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
JOSHUA A. DEL CASTILLO
KENYON HARBISON

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12
13 By: /s/ Joshua A. del Castillo
14 JOSHUA A. DEL CASTILLO
15 Attorneys for Receiver
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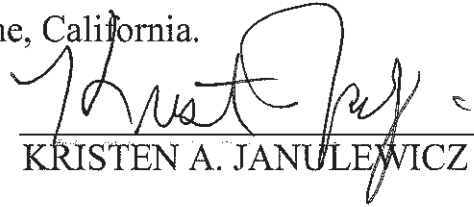
VERIFICATION

I have read the foregoing SECOND INTERIM REPORT AND PETITION FOR FURTHER INSTRUCTIONS OF RECEIVER, KRISTEN A. JANULEWICZ, and know its contents.

I am the Receiver appointed in this action. The matters stated in the foregoing document are true, to the best of my knowledge.

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

Executed on February 1, 2016 in Irvine, California.



KRISTEN A. JANULEWICZ

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.
1	Summary of cash collections by entity	1
2	Preliminary Accounting - Updated Listing of Known Assets of Altus Funds as of January 20, 2016	3

EXHIBIT 1

Summary of Cash Held										
	<u>Balance at 1/20/16</u>	<u>Received from Amerifunds</u>	<u>Received from 4th Dimension</u>	<u>Received from Brightstar</u>	<u>Received from Amerifunds</u>	<u>Received from LJI High Yield Fund</u>	<u>Received from Micro Pipe Fund I</u>	<u>Received from Rainmaker Precious Commodities</u>	<u>Received from Alpha Titans LLC</u>	<u>Additional Funds Turned Over</u>
Altus Capital Opportunity Fund, LP										
Altus Capital Opportunity Fund, LP	277,051	222,366	8,709	46,018						
Altus Capital Opportunity Fund, LP	26,080		5,659	20,442						
Altus Growth Portfolio Series	413,550	370,397	10,518	32,666						
Altus Income Portfolio Series	11,585		2,074	6,432						3,078
Altus Moderate Growth Portfolio	15,048		3,387	11,687						
Altus Moderate Portfolio Series	13,809		3,027	10,807						
Altus Conservative Portfolio Series	11,438		1,548	3,984						5,906
Altus Focused Growth Portfolio Series										
Altus Capital Management LLC										
Total Wealth Management Receiver	2,737,694				594,806	547,453	747	47,716	5,542	
Total Cash held at 1/20/16	3,506,255	592,764	34,922	132,036	594,806	547,453	747	47,716	5,542	8,983

EXHIBIT 2

<u>Receiver's Estimate of Reported Book Value of Altus Funds Assets as of 1/20/16:</u>										
		<u>AFGPS</u>	<u>AIPS</u>	<u>ACPS</u>	<u>AMGPS</u>	<u>AMPS</u>	<u>AGPS</u>	<u>ACOF</u>		
		<u>Altus Focused Growth Portfolio Series, LP</u>	<u>Altus Income Portfolio Series, LP</u>	<u>Altus Conservative Portfolio Series, LP</u>	<u>Altus Moderate Growth Portfolio Series, LP</u>	<u>Altus Moderate Portfolio Series, LP</u>	<u>Altus Growth Portfolio Series, LP</u>	<u>Altus Capital Opportunity Fund, LP</u>		<u>Total Assets</u>
Fourth Dimension (remaining hold-back)		-	-	-	-	-	-	-	-	-
Amerifunds Secure Income II			2,317					3,132		5,449
Bright Star Investment Fund (remaining hold-back)		-	-	-	-	-	-	-	-	-
Novus PC M5461 -Cash Balance Receivable at PFG							100,000	227,059		227,059
Deila Capital Partners Holdings LLC								148,117		248,117
LJL Secured High Yield Income Fund								-		-
Rainmaker Precious Commodities-RMPC (remaining hold-back)		26,932		22,331	42,386	2,974	48,645	1,053		144,322
Toro Investments				1,395,071	522,768	724,411	150,000	21,884		171,884
Private Placement Capital Notes II LLC			7,477,133				1,039,780	23,026,105		34,185,268
Private Placement ACOF loan (unpaid balance)			80,000					203,000		203,000
Ball Gum International (BGI)								-		80,000
Total Estimate of Reported Book Value of Fund Assets Held		26,932	7,559,450	1,417,402	565,154	727,385	1,338,425	23,630,348		35,265,098

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:

SECOND INTERIM REPORT AND PETITION FOR FURTHER INSTRUCTIONS OF RECEIVER, KRISTEN A. JANULEWICZ

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 **February 1, 2016**, 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,maria.castro@geracilawfirm.com,jenny.park@geracilawfirm.com
- **Geraci Law Firm**
christina@geracilawfirm.com
- **Gary Y. Leung, Jr**
leungg@sec.gov,larofiling@sec.gov,himesm@sec.gov,berryj@sec.gov
- **Jessica Georgia Peterson**
jpeterson@djplaw.com,khughes@djplaw.com
- **David J. Van Havermaat**
vanhavermaatd@sec.gov,larofiling@sec.gov,irwinma@sec.gov
- **Joshua Andrew del Castillo**
jdelcastillo@allenmatkins.com

1 2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for**
2 **each person or entity served)**: On **February 1, 2016**, I served the following
3 person(s) and/or entity(ies) in this case by placing a true and correct copy
4 thereof in a sealed envelope(s) addressed as indicated below. I am readily
5 familiar with this firm's practice of collection and processing correspondence
6 for mailing. Under that practice it is deposited with the U.S. postal service on
7 that same day in the ordinary course of business. I am aware that on motion
8 for party served, service is presumed invalid if postal cancellation date or
9 postage meter date is more than 1 (one) day after date of deposit for mailing in
10 affidavit.

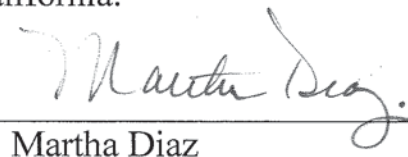
11 Mikel R. Bistrow, Esq.
12 Ballard Spahr LLP
13 655 W. Broadway, Suite 1600
14 San Diego, CA 92101

Via U.S. First Class Mail

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

Via U.S. First Class Mail

18 I declare that I am employed in the office of a member of the Bar of this Court
19 at whose direction the service was made. I declare under penalty of perjury under the
20 laws of the United States of America that the foregoing is true and correct. Executed
21 on **February 1, 2016** at Los Angeles, California.

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Martha Diaz