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9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA

11
 12 SECURITIES AND EXCHANGE
 COMMISSION,
 13
 Plaintiff,
 14
 v.
 15 TOTAL WEALTH MANAGEMENT,
 16 INC.; et al.,
 17
 Defendants.

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

NO ORAL ARGUMENT UNLESS
 REQUESTED BY THE COURT

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

Date: September 8, 2015
 Ctrm: 4B
 Judge: Hon. Cynthia Bashant

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 19
 20 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

21 **PLEASE TAKE NOTICE THAT** on September 8, 2015, in Courtroom 4B
 22 of the above-entitled Court, located at 221 West Broadway, San Diego, California
 23 92101, and in accordance with (a) this Court's February 12, 2015 "(1) Preliminary
 24 Injunction, Appointment of a Permanent Receiver, and Related Orders; and (2)
 25 Order Vacating Hearing on Preliminary Injunction" (the "Permanent Appointment
 26 Order"); (b) Civil Local Rule 66.1(e); and (c) this Court's May 8, 2015 "Order
 27 Granting Motion for Order in Aid of Receivership" (the "Aid Order"), Kristen A.
 28 Janulewicz (the "Receiver"), the Court-appointed permanent receiver for Total

1 Wealth Management, Inc. ("Total Wealth") and its subsidiaries and affiliates,
2 including but not limited to Altus Capital Management, LLC ("Altus") (collectively,
3 the "Receivership Entities" or "Entities") will and hereby does submit her First
4 Interim Report and Petition for Further Instructions (the "Interim Report") to this
5 Court:

6 **I. PRELIMINARY STATEMENT.**

7 As detailed in the Receiver's Initial Report and Recommendations and
8 Petition for Instructions of Receiver, Kristen A. Janulewicz, filed in March 2015
9 (the "Initial Report"), and as further detailed below, the Receiver has made
10 substantial progress in her efforts to identify and recover available assets of the
11 Entities ("Receivership Assets") as well as to better understand the business and
12 financial activities of the Receivership Entities. While the Receiver's work is
13 ongoing, the status of her efforts and the preliminary conclusions¹ developed from
14 her review and analysis of materials recovered to date are appropriate for an interim
15 update. Since the submission of her Initial Report, the Receiver has:

- 16 • Recovered approximately another \$1.3 million in Receivership Assets,
17 bringing the total cash on hand for the benefit of the entities to
18 approximately \$3.4 million.
- 19 • Recovered more than 600,000 pages of documents relating to
20 Receivership Assets and the business and financial activities of the
21 Receivership Entities.
- 22 • Determined that Total Wealth received revenue sharing, management,
23 and other fees from entities in which it directly or indirectly invested
24 investor proceeds. In some instances, these fees were received from
25

26 ¹ Due to the volume and nature of the information recovered, the nature and
27 complexity of the matters and transactions to which they relate, and the
28 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 money-losing or insolvent funds in which the Entities were invested.
2 Such fees totaled more than \$1.3 million.

- 3 • Determined that management fees were charged to investors on false or
4 overstated balances. Total Wealth also appears to have intentionally
5 varied its fee structure, and even reduced fees to zero at times, in an
6 effort to appease unsatisfied investor clients.
- 7 • Recovered \$260,000 in connection with the bankruptcy sale of
8 Metropolitan Coffee and Concession Company, LLC ("Metro Coffee")
9 and related assets. The Receiver holds these funds in trust pending an
10 adjudication of the Receiver's rights against a third party entity
11 claiming an equal or superior secured interest.
- 12 • Proactively monitored funds owed to the Receivership Entities from
13 prior liquidations requests and pursued collections. As of the date of
14 this Interim Report, the Receiver has collected redemptions totaling
15 \$1,330,539, in addition to the cash seized at the inception of the
16 receivership, along with other miscellaneous income. A summary of
17 cash collections by entity as appended hereto as **Exhibit 1**.
- 18 • Confirmed that at least \$18 million in Receivership Assets were
19 invested in Aegis Holding Company, Inc. ("Aegis Holding") and
20 related entities, exclusive of amounts invested in Metro Coffee. These
21 funds appear to have been directed to investments in two restaurants in
22 New York, New York – "Sprig" and "Preserve 24" – each of which was
23 subsequently closed after landlord lock-outs. Based on the materials
24 presently available to the Receiver, Sprig and Preserve 24 appear to
25 have failed as a result of mismanagement by Aegis Holding, including
26 the payment of exorbitant management fees to Aegis Holding. The
27 Receiver is presently investigating how the funds invested in Aegis
28 Holding and other Aegis entities were spent.

- 1 • Continued her investigation of the business and financial activities of
2 Private Placement Capital Notes II ("PPCN"), which appears to be the
3 largest purported, remaining Receivership Asset. As of December 31,
4 2014, the aggregate balance on the PPCN notes held by the Entities was
5 at least \$34,185,286. While PPCN has produced documents in
6 response to a Receiver subpoena, the materials produced have not been
7 sufficient for the Receiver to determine what assets PPCN owns and
8 whether PPCN can satisfy any of the outstanding notes held by the
9 Receivership Entities. The principals of, and individuals affiliated
10 with, PPCN have declined to produce documents to the Receiver absent
11 her assent to a protective order that would compromise her reporting
12 obligations to this Court. Accordingly, the Receiver has had to obtain a
13 number of documents relating to the business and financial activities of
14 PPCN from independent entities, including banks administering PPCN
15 bank accounts, in an effort to better understand PPCN's business and
16 financial activities and its underlying assets. As of the date of this
17 Interim Report, the Receiver has been unable to confirm the nature and
18 extent of PPCN's holdings or its ability to satisfy any of the notes held
19 by the Entities.

20 The Receiver is vested with exclusive authority and control over the
21 Receivership Entities and all Receivership Assets, and has been authorized,
22 empowered and directed to, among other things: (1) take control of the entities and
23 their Assets; (2) conduct such investigation and discovery as necessary to identify
24 and locate outstanding Receivership Assets; (3) preserve and prevent the dissipation
25 of Receivership Assets; and (4) provide an accounting to the Court and plaintiff
26 Securities and Exchange Commission (the "Commission") regarding the business
27 and financial activities of the Receivership Entities. The Receiver and her approved
28 counsel of record, Allen Matkins Leck Gamble Mallory & Natsis LLP ("Allen

1 Matkins"), have diligently pursued these goals both since the inception of the
2 receivership, and the Receiver's efforts, analysis, supplemental preliminary
3 conclusions, and recommendations are presented below.

4 Please note that the fact that this Interim Report does not address any
5 particular fact or issue addressed in the Receiver's previously submitted Initial
6 Report does not reflect a determination by the Receiver that such facts or issues are
7 no longer pertinent or that any previously presented conclusions have been modified
8 or rescinded.

9 **II. GENERAL BACKGROUND AND PROCEDURAL HISTORY.**

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

- 13 • Commission's Complaint (the "SEC Complaint") against Defendants
14 Total Wealth and Jacob Keith Cooper (Docket No. 1.);
- 15 • Commission's Ex Parte Application for Temporary Restraining Order
16 and Other Relief (Docket No. 2.);
- 17 • Stipulation and Temporary Restraining Order and Orders (1) Freezing
18 Assets; (2) Prohibiting the Destruction of Documents; (3) Granting
19 Expedited Discovery; (4) Requiring Accountings; (5) Appointing a
20 Temporary Receiver, and Order to Show Cause Re Preliminary
21 Injunction and Appointment of a Permanent Receiver (the "TRO")
22 (Docket No. 5);
- 23 • Commission's Memorandum of Points and Authorities in Support of
24 Preliminary Injunction and Appointment of Permanent Receiver
25 (Docket No. 6);
- 26 • Permanent Appointment Order (Docket No. 8);

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28

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

- 1 • Joint Motion for Order to Release Specified Account, relating to
- 2 Metropolitan Coffee and Concession Company, LLC (Docket No. (9));
- 3 • Receiver's Initial Report (Docket No. 17); and
- 4 • Joint Motion for Order to Release Wells Fargo Account, relating to
- 5 Silver Hawk Owners Association, Inc. (Docket No. 25).

6 **III. SUMMARY OF RECEIVER'S ACTIVITIES AND EFFORTS SINCE**
7 **SUBMISSION OF INITIAL REPORT.**

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

9 1. Cash Recoveries.

10 At the time of the Receiver's submission of her Initial Report, she had
11 recovered approximately \$2,151,603 million in cash, including cash in Entity bank
12 accounts. Since then, the Receiver has recovered an additional \$1,351,745 in cash,
13 including from other Entity bank accounts, and also including \$150,000 that the
14 Commission turned over (as anticipated in the Initial Report), liquidations from LJL
15 Secured High Yield Income Fund I ("LJL High Yield") in the amount of
16 approximately \$260,691.77, and money received from Amerifunds Secured Income
17 Fund I LLC and Amerifunds Secured Income Fund II LLC (collectively,
18 "Amerifunds") totaling approximately \$547,453. The Receiver is currently holding
19 cash in the amount of approximately \$3,465,491 for the benefit of the Receivership
20 Entities, not including the \$260,000 received from the Metro Coffee sale, as
21 discussed below.

22 2. Metro Coffee Sales Proceeds.

23 As addressed in the Initial Report, millions of dollars in investor funds were
24 invested in Metro Coffee by the Receivership Entities. Metro Coffee operated Peet's
25 Coffee stores in Bay Area Rapid Transit District ("BART") stations in San
26 Francisco, California. As noted in the Initial Report, the Receiver was appointed in
27 the midst of Metro Coffee's Chapter 11 bankruptcy case, which remains pending in
28

1 the United States Bankruptcy Court for the Northern District of California³ and
2 during its efforts to dispose of estate property.

3 In an effort to protect against losses that would result from the conversion of
4 Metro Coffee's bankruptcy case to a Chapter 7 case, the Receiver worked with the
5 Bankruptcy Court's designated Responsible Person for Metro Coffee to negotiate the
6 sale of Metro Coffee's assets (along with the necessary BART permits, held by
7 Aegis Holding). The Receiver is holding \$260,000 in proceeds from the sale in
8 trust pending an adjudication by this Court as to the interested parties' claims to such
9 proceeds.⁴

10 The Metro Coffee sale was concluded and the Receiver has been transferred
11 \$260,000. Strategic Funding, Inc. ("Strategic"), a putative creditor of Metro Coffee
12 and Aegis Holding, has alleged a security interest in these funds equal to or superior
13 to those of the Receiver. The Receiver and Strategic are presently reviewing
14 materials relating to each party's claimed interest, and will either mutually resolve
15 this issue, or argue their respective positions before this Court under separate cover
16 at a later date.

17 3. Pending Federal and State Court Litigation.

18 The Receiver has also endeavored to protect the estate of the Receivership
19 Entities from diminution, including via notice to parties believed to be in possession
20 of Receivership Assets (of whatever form), as well as filing formal Notices of
21 Pending Receivership in all known federal and state actions where the Receivership
22 Entities are Defendants, of which, at the time of filing of the Initial Report, the
23 Receiver noted four.⁵ The Receiver has filed formal Notices of Pending
24

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

26 ⁴ These funds represent all surplus proceeds generated from the sale.

27 ⁵ 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
28 Cal. Case No. 14 cv-1899-GPC-JLB; (3) Calderon v. Total Wealth Management,
Inc., San Diego County Superior Court Case No. 37-2014-00015682-CU-SL-

1 Receivership in two additional state court actions not mentioned in the Initial
 2 Report.⁶ In the Staniforth and Mitchell matters, Judge Gonzalo P. Curiel responded
 3 to the Receiver's Notices of Pending Receivership by issuing Orders to Show Cause
 4 ("OSCs") whether the Permanent Appointment Order should stay those entire
 5 actions, respectively. The Receiver, by and through Allen Matkins, filed responses
 6 to the OSCs, and, on May 12, 2015, Judge Curiel stayed those actions, in whole or
 7 in part. In each of these matters, the Receiver has been ordered to provide an update
 8 on the status of the receivership on or before August 14, 2015.

9 **B. Investigation And Discovery.**

10 1. Document Recovery and Review.

11 (a) *Summary of Receiver's Document Recovery Efforts.*

12 As noted in the Initial Report, the Receivership Entities left no books, records,
 13 or computers behind at their offices. Accordingly, the Receiver has had to secure
 14 documents relating to the nature, location, and amount of Receivership Assets and
 15 the business and financial activities of the Receivership Entities from third party
 16 sources, including via direct turn-over demands, document subpoenas, and informal
 17 requests. The Receiver has issued nearly 50 formal notices of the her appointment,
 18 along with turn-over requests for Receivership Assets. In addition, the Receiver has
 19 served nearly 50 document subpoenas to third parties, including parties believed to
 20 be in possession of Receivership Assets and parties in possession of materials
 21 directly relating to the business and financial activities of the Receivership Entities.

22 The Receiver's document recovery efforts since the submission of the Initial
 23 Report have been remarkably successful. Over 158,000 files have been recovered,
 24 including, *inter alia*, more than 74,000 PDF files, 6,000 Microsoft Excel documents,
 25

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

27 ⁶ 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)
 28 Drehler v. Total Wealth Management, Inc., San Diego County Superior Court
 Case No. 37-2014-00042224-CU-FR-CTL.

1 5,000 Microsoft Word documents, 20,000 text documents, and 3,000 image or audio
2 files. The manner in which many of the documents were produced makes
3 estimating a page count difficult, but the Receiver conservatively estimates she has
4 recovered over 600,000 pages of documents or document-equivalents, and likely as
5 many as 1 million pages of documents.

6 The Receiver is well into her review and analysis of the materials recovered
7 to date. However, and while her analysis is not complete, it is clear that certain
8 information is still missing. Accordingly, the Receiver will continue to issue
9 additional demand letters and subpoenas as deemed necessary to collect material
10 information that may lead to sources of recovery for the receivership estate.

11 *(b) Digital and Computer Records of the Receivership*
12 *Entities.*

13 As noted in the Initial Report, the Entities kept most records in digital form,
14 uploaded to cloud storage. The Receiver secured access to the Entities' Box.com
15 ("Box") records on the Box website, and ensured that access to parties other than the
16 Receiver and her professionals was blocked. Since the submission of the Initial
17 Report, the Receiver has also obtained a forensic copy of the Box materials, which
18 reflects the materials as they were kept in the ordinary course of business by the
19 Receivership Entities. In addition to Box, the Receiver learned that the Entities used
20 another cloud service provider, Smarsh, for their electronic correspondence. The
21 Receiver has also recovered all of the voluminous email correspondence of the
22 Entities from Smarsh, which she is now maintaining locally.

23 *(c) Professional Records of the Receivership Entities.*

24 In addition to the accounting entities noted in the Initial Report, the Receiver
25 served subpoenas on, and received records from, Taiwo Ogbomo and Ogbomo,
26 CPA. The Receiver further served a subpoena on, and recovered records from, DZH
27 Phillips LLP, another accounting firm that provided services to the Receivership
28 Entities. In addition to the law firms referenced in the Initial Report, the Receiver

1 has served demand letters and/or subpoenas on (and received documents from) the
2 following firms, all of which provided services to Receivership Entities in the pre-
3 receivership period: Husch Blackwell; Jacko Law Group, PC; Javid Rubens LLP;
4 and the Law Offices of John H. Lively & Associates.

5 Roughly contemporaneously with the submission of the Receiver's Initial
6 Report, the Receiver had requested the turn-over of documents and client files from
7 Paul Manasian, a San Francisco attorney who represented the Receivership Entity,
8 Altus Capital Management, in connection with loans made to Aegis Holding, the
9 parent company of Metro Coffee. While Mr. Manasian delayed in producing
10 materials to the Receiver for over three months⁷, he commenced producing
11 documents on or around July 8, 2015. As of the date of this Interim Report, the
12 Receiver is evaluating the extent to which Mr. Manasian's production may be
13 considered adequate for her investigation and analysis.

14 *(d) Banking and Other Receivership Entity Financial Data.*

15 Additional documents relating to the business and financial activities of the
16 Receivership Entities, recovered since the submission of the Initial Report include,
17 but are not limited to, banking and other financial records obtained from third party
18 sources. These include JP Morgan Chase Bank, National Association; Boston
19 Private Bank & Trust Company (formerly Borel Bank & Trust Company); Wells
20 Fargo Bank, National Association; Navy Federal Credit Union; and First-Citizens
21 Bank & Trust Company.

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

23 As a result of her review of materials recovered since the submission of her
24 Initial Report, the Receiver has been better able to quantify the relationship between
25 various Receivership Entities, undertake an updated inventory, and prepare an
26

27 _____
28 ⁷ During this period, Allen Matkins sent Mr. Manasian a number of informal and
formal reminders that his production of documents was required, including at
least one formal meet and confer letter.

1 updated accounting of Receivership Assets. A copy of the Receiver's updated
2 accounting is attached hereto as **Exhibit 2**.

3 **IV. OTHER SIGNIFICANT RECEIVERSHIP ACTIVITIES.**

4 **A. Testimony In Commission's Administrative Proceeding.**

5 In 2014, the Commission instituted an administrative proceeding (the
6 "Administrative Proceeding") against, *inter alia*, Jacob Cooper. In or around late
7 March 2015, the Receiver was called upon to testify at the hearing in the
8 Administrative Proceeding. The Receiver understands that the parties to the
9 Administrative Proceeding have completed all post-trial briefing and that a decision
10 is expected shortly.

11 **B. Administrative Proceeding Settlement With The Commission.**

12 On or around March 18, 2015, the Commission and the Receiver (on behalf of
13 Total Wealth) reached an agreement in principle in connection with the claims
14 asserted against Total Wealth in the Administrative Proceeding. The Receiver and
15 the Commission filed a joint stipulation in the Administrative Proceeding to stay any
16 and all proceedings against Total Wealth, pending the formalization of their
17 anticipated settlement. The Receiver will provide a further update once the
18 settlement has been formalized.

19 **C. Response To Subpoenas.**

20 The Receiver has received document subpoenas and made productions in
21 accordance with the subpoena instructions.

22 **D. Early Neutral Evaluation Conference.**

23 The Court held an Early Neutral Evaluation Conference ("ENE") in this
24 matter on June 3, 2015. The ENE was attended, in person, by the Receiver, and her
25 counsel of record, counsel for the Commission, and counsel for Defendant Cooper,
26 who appeared telephonically. Pursuant to the Court's instructions, discussions
27 between the parties at the ENE are confidential. The Receiver understands that she
28 and/or her counsel may be called to attend a follow-up session to the extent the ENE

1 results in productive settlement discussions.

2 **E. Receivership Entity Tax Filings.**

3 The Receiver is in the process of preparing the 2014 tax returns for all of the
4 Altus Funds,⁸ which are expected to be completed by September 15, 2015. The
5 Receiver will provide K-1s for the relevant period to Entity investors on or before
6 September 15, 2015 as well.

7 **V. SUPPLEMENTAL PRELIMINARY CONCLUSIONS AND**
8 **OBSERVATIONS.**

9 While the Receiver's document recovery, review, and analysis efforts are
10 ongoing, the Receiver has conducted sufficient review and analysis of the materials
11 recovered to date to present additional preliminary conclusions and observations
12 regarding the business and financial activities of the Receivership Entities, and to
13 affirm or clarify certain preliminary conclusions presented in her Initial Report.

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

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

18 Beyond what was stated in the Initial Report, the Receiver has uncovered two
19 additional instances where Total Wealth received revenue sharing fees from an
20 underlying fund or entity in which the Entity funds were invested. These are:

- 21 • \$245,058 paid by Aegis Atlantic LLC ("Aegis Atlantic") from 2011
22 through early 2013; and
- 23 • \$33,480 paid by Pacific West Capital Group from March 2010 through
24 September 2012.

25
26 ⁸ The Altus Funds, which are Receivership Entities as a consequence of their
27 common control by and affiliation with Total Wealth and Altus Capital
28 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 The Receiver's conclusions in the Initial Report regarding revenue sharing
2 fees paid by Aegis Retail Group ("Aegis Retail", an Aegis Holding affiliate) apply
3 equally as to Aegis Atlantic.

4 The Receiver has acquired new information which affects her calculation as
5 to revenue sharing payments of one of the entities discussed in the Initial Report.
6 Specifically, the Receiver believes that \$135,429 (rather than \$124,242), was paid to
7 Total Wealth by Aegis Retail⁹ from 2011 through 2012.

8 As a consequence of this new information, the Receiver has updated her
9 calculation regarding the receipt of revenue sharing fees and presently calculates
10 that Total Wealth received a total of approximately \$1.3 million in revenue sharing
11 fees from approximately February 2009 through September 2014.

12 **B. Management Fees Charged To Investors On Overstated Balances.**

13 In her Initial Report, the Receiver stated that investors appeared to have been
14 charged management fees on overstate balances. New information recovered since
15 then confirms this conclusion and suggests that Total Wealth did not charge
16 investors uniform management fees. Specifically, while Total Wealth appears to
17 have varied the fees charged on certain investor accounts, including reducing fees to
18 zero, in order to appease dissatisfied investors. The Receiver is still investigating
19 this issue.

20 **C. Investments The Aegis Entities And Metro Coffee.**

21 As mentioned in the Receiver's Initial Report; over \$18 million in investments
22 in the Aegis Entities (including accrued interest) was written off in 2014, apparently
23 as a result of the entities' complete failure. The Receivership Entities had holdings
24 in Aegis Atlantic and Aegis Retail, which were in turn managed by Aegis Holding.
25 These two subordinate entities owned one restaurant each:

- 26 • Sprig was owned by Aegis Retail. Based on a 2011 audited financial

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28 ⁹ Aegis Holding, Aegis Atlantic, and Aegis Retail are hereafter called "Aegis Entities."

1 statement, inexplicably not issued until May 2014, it appears Sprig was
2 open from approximately December 2010 until mid-July 2013, and was
3 eventually locked out by its landlord.

- 4 • Preserve 24 was owned by Aegis Atlantic. Based on audited financial
5 statements for 2011, again not issued until May 2014, Preserve 24
6 apparently spent \$3.3 million on construction by December 2011, a year
7 and half before its opening. Preserve 24 was opened shortly before Sprig
8 closed, in June 2013, and remained open through June 2014. As with
9 Sprig, Preserve 24 ultimately failed and was locked out by its landlord.

10 Neither restaurant appears to have been able to salvage any equipment or
11 fixtures to sell at auction, or otherwise preserve any value. The materials presently
12 available to the Receiver do not provide a complete accounting for the entire \$18
13 million lost in connection with the Aegis Entities, and the failures of Sprig and
14 Preserve 24 cannot reasonably account for these losses.

15 In addition to direct investment, the Receivership Entities also made direct
16 loans to Aegis Holding, in the amount of at least \$400,000, apparently in an effort to
17 prop up its ailing Metro Coffee business, which appears to have been insolvent since
18 its inception. These loans were secured by, among other things, the BART Permits
19 under which Metro Coffee operated its Peet's Coffee kiosks. Unfortunately, a
20 detailed review of Metro Coffee and its assets has led the Receiver to the conclusion
21 that, other than the \$260,000 in sales proceeds currently held in trust, there will be
22 no further receivership recoveries specifically associated with Metro Coffee.

23 The Receiver has learned from parties associated with Metro Coffee (a
24 subsidiary of Aegis Holding) that the principals of the Aegis Entities may have
25 redirected investor funds for their own purposes, as well as improperly retained
26 corporate benefits properly inuring to the benefit of the Aegis Entities and their
27 investors. The Receiver therefore intends to devote reasonable additional time and
28 resources to the investigation of the Aegis Entities and their assets, including the

1 disposition of such assets, in order to determine what, if any, claims for restitution
2 or disgorgement might be available to the Receivership Entities.

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

4 Delta Capital Partners Holdings LLC ("Delta") is a litigation finance
5 partnership or fund founded by a partner or former partner of the law firm presently
6 serving as counsel for John Lively, an attorney who provided the Receivership
7 Entities with pre-receivership, securities services. Among the documents recovered
8 to date are recordings of investor calls relating to Delta and/or Toro, involving one
9 or more professionals who had a relationship with the Entities.

10 The Receivership Entities appear to have invested in entities called Toro
11 Investments I, Toro Investments 2, and Toro Investments IV (as defined above, the
12 "Toro Entities"). While it is unclear at present what business was conducted by the
13 Toro Entities, they appear to have turned over various disputes relating to certain
14 projects or investments to Delta, which issued promissory notes in 2012 and 2013,
15 and which mature in seven (7) years. Indeed, it may ultimately prove to be the case
16 that Delta is merely a successor entity to the Toro Entities.

17 **E. Investments in PPCN.**

18 PPCN remains of great interest to the Receiver, particularly given that it
19 appears to be the largest source of potentially recoverable Receivership Assets. The
20 Receiver has obtained PPCN investor statements reflecting an aggregate balance on
21 the notes held by the Altus Funds, as of December 31, 2014, of \$34,185,268.
22 Assuming this amount is accurate, the PPCN investment would comprise the largest
23 single investment made by the Entities.

24 At this point in time, while the documents recovered by the Receiver to date
25 contain statements regarding the purported value of the PPCN investments, the
26 Receiver has been unable to identify or confirm any substantial assets owned by
27 PPCN. The documents recovered to date reflect numerous statements regarding the
28 purported value of the Altus Funds' investments in PPCN. However, the Receiver

1 has recovered nothing, and PPCN has produced nothing, to suggest that PPCN owns
2 anything of any significant value, let alone of valuable enough to make a substantial
3 or complete repayment to the Receivership Entities.

4 1. PPCN Investment Recovery Efforts.

5 Despite the fact that, as addressed in greater detail below, the Receiver has
6 not recovered any documents establishing PPCN's ability to repay the Altus Funds'
7 investments in PPCN, she has, based on those materials that she has collected,
8 concluded that, as of April 28, 2015, more than \$16 million in PPCN notes held by
9 the Entities had been held for more than the 5-year maturity period identified in the
10 notes and were eligible for redemption (after the 6-month period provided for in the
11 notes). Accordingly, the Receiver has submitted a formal redemption request to
12 PPCN in connection with these notes.

13 The Receiver has further determined that an additional \$1,723,422.97 in
14 PPCN notes have or will soon reach the mandatory 5-year mandatory holding
15 period, and she will be submitting a redemption request shortly so that those, too,
16 can be redeemed as quickly as possible. However, as noted above, none of the
17 materials the Receiver has recovered to date in connection with PPCN provide
18 sufficient insight into its business and financial activities, or underlying assets. As
19 such, the Receiver cannot presently determine whether or how PPCN will be able to
20 satisfy her redemption requests.

21 By way of example, the Receiver has determined that Good Earth Minerals
22 ("GEM"), an entity in which PPCN claims to own an interest, received its
23 conditional use permit from the Bureau of Land Management in August 2012, good
24 for a year, and that it was granted an extension for another year, through August
25 2013. However, as of the date of this Interim Report, the Receiver has not seen any
26 materials that confirm or even suggest that GEM has commenced any mining
27 operations whatsoever. As such, it is unclear how PPCN expects to recoup the at
28 least \$2,175,000 it appears to have invested in GEM. Likewise, the Receiver has

1 obtained materials reflecting an apparent loan and loan amendment by and between
2 Agregy Renewables LLC ("Agregy") (borrower), and PPCN (lender), with a total
3 amount due to PPCN of \$2,252,376.49, as of November 30, 2013. PPCN appears to
4 have granted Agregy and/or its parent, Econonics Systems International LLC,
5 multiple extensions in connection with this loan, but no few, if any, funds appear to
6 have been repaid.

7 The GEM and Agregy examples illustrate the questions confronting the
8 Receiver regarding PPCN's ability to repay the Receivership Entities. As of the date
9 of this Interim Report, the Receiver's analysis of the business and financial activities
10 (and assets) of PPCN remains incomplete, and she expects to submit her conclusions
11 to the Court in a later Interim Report. In the interim, the Receiver will continue her
12 efforts to obtain relevant documents and recover all available PPCN investment
13 funds.

14 2. Document Recovery Efforts.

15 The Receiver's counsel has served document subpoenas on counsel for PPCN
16 and its principal, Tony Hartman, requesting the production of documents relating to
17 PPCN's operations and financial information. After some delay, PPCN produced
18 approximately 4,200 pages of documents, all of which it marked as "confidential,"
19 despite the fact that the Receiver has consistently rebuffed efforts by PPCN to
20 secure her commitment to a stipulated protective order that would compromise her
21 ability to report her conclusions publicly. As the Court is well aware, merely
22 identifying a production as "confidential" does not render it so. See, e.g., Jepson,
23 Inc. v. Makita Elec. Works, 30 F.3d 854, 858 (7th Cir. 1994) ("Absent a protective
24 order, parties to a law suit may disseminate materials obtained during discovery as
25 they see fit.").

26 With one exception, the documents produced by PPCN were either materials
27 the Receiver already possessed, or they do not contribute to a complete
28 understanding of PPCN and its financial activities, including investments and assets.

1 The Receiver has served document subpoenas on Sardoni Accounting Group
2 P.C. ("Sardoni"), the accounting firm believed to have performed various
3 accounting and bookkeeping services for PPCN. Sardoni initially indicated that it
4 would willingly produce responsive materials to the Receiver. After receiving an
5 extension to produce, however, Sardoni engaged PPCN's counsel and has, to date,
6 failed to produce any materials to the Receiver. Sardoni has predicated its failure to
7 produce documents on its claim that it should not be obliged to produce absent a
8 stipulated protective order which, in the Receiver's reasonable business judgment,
9 would substantially undermine her reporting obligations to the Court and the
10 Commission.

11 The Receiver also served document subpoenas upon a number of entities
12 believed to be affiliated with PPCN, including Melrose Resort Group LLC
13 ("Melrose") and The Pelorus Group, LLC ("Pelorus"). Melrose produced
14 documents in response to the Receiver's subpoena, properly served under the
15 miscellaneous case number assigned to this matter by United States District Court
16 for the District of Utah, where Melrose and Pelorus are based. Notably, the Utah
17 District Court's local rules impose a standard protective order upon all productions
18 made in the District. As such, the Melrose production is presently marked as
19 "Attorneys' Eyes Only" and have not been reviewed by the Receiver. The Receiver
20 anticipates submitting a motion to modify the protective order in order to obtain
21 unfettered access to these materials.

22 The Receiver has further sought to obtain documents from GEM in
23 connection with PPCN's claimed interest. In response to the Receiver's document
24 subpoena, and without any specifics, GEM's counsel took the position that the
25 requested documents were "proprietary" and would not be produced to the Receiver.

26 Perhaps most importantly and despite the delays and apparently deliberate
27 obstruction the Receiver has encountered in connection with her efforts to better
28 understand the issues relating to PPCN, she has been successful in recovering a

1 significant portion of PPCN's banking records, via direct subpoenas to its banks, and
2 she is presently undertaking a detailed analysis of these materials in order to better
3 understand PPCN's sources and uses of cash, its cash flow status, and, perhaps most
4 importantly, its underlying assets.

5 **F. Investments Were Subject To Substantial Losses.**

6 In her Initial Report, the Receiver expressed the view that investments were
7 subject to substantial losses. The work completed since the submission of the Initial
8 Report confirms this conclusion. By way of update to her prior comments on the
9 matter, the Receiver has determined that the Life's Good, Inc. (Ponzi scheme)
10 investment, mentioned in the Initial Report, has lost approximately \$2.4 million.
11 Metro Coffee investments have lost approximately \$3.2 million, not including the
12 \$260,000 recently recovered but potentially subject to competing security claims,
13 and approximately \$18 million has been lost across Aegis Holding, Aegis Atlantic,
14 and Aegis Retail.

15 **VI. RECOMMENDATIONS AND PETITION FOR FURTHER**
16 **INSTRUCTIONS.**

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

20 **A. Continue General Investigation, Discovery, And Receivership Asset**
21 **Identification And Recovery Efforts.**

22 The records recovered to date do not provide a complete accounting of all
23 funds received and expended by the Entities, including investor funds. As such, the
24 Receiver believes that additional investigation and discovery efforts may yield a
25 material benefit to the estate of the Receivership Entities, both in terms of providing
26 a more complete understanding of their business and financial activities and
27 potentially identifying additional recoverable Receivership Assets. For example, the
28 Receiver has just begun her analysis of the Entity investments in Delta/Toro. The

1 Receiver therefore recommends that the Court allow her to continue her
2 investigation, discovery, and Receivership Asset identification and recovery efforts,
3 including as expressly provided for in the Permanent Appointment Order.

4 **B. Continue Investigation of PPCN.**

5 As a corollary to her asset investigation and recovery efforts, the Receiver
6 believes it is vital that she continue her investigation of PPCN and efforts to recover
7 all available investor funds invested in PPCN.

8 **C. Aegis Holding Investigation.**

9 The Receiver has obtained significant financial records for Aegis Holding and
10 the other Aegis Entities by virtue of bank subpoenas. The amount of money
11 invested (and lost) in the Aegis Entities (second only to PPCN) militates in favor of
12 completing an investigation to determine whether any assets may be recovered by
13 the Receiver via the prosecution of claims for restitution or disgorgement.

14 **D. Complete Limited Forensic Accounting.**

15 As reflected in the Initial Report, the Receiver has commenced a preliminary
16 forensic accounting in order to develop a complete understanding of the business
17 and financial activities of the Receivership Entities and to identify recoverable
18 Receivership Assets. Of course, the Receiver is sensitive to the costs that a high-
19 resolution forensic accounting can impose upon an estate, and does not intend to
20 continue and complete her accounting without regard to costs. However, she has
21 determined, in her reasonable business judgment, that a limited forensic accounting,
22 once complete, will better enable the Receiver to account for the amount and use of
23 investor funds as well as to identify subjects of potential disgorgement or other
24 actions. Accordingly, the Receiver respectfully recommends that she be authorized
25 to complete her preliminary forensic accounting.

26 **E. Prepare And Submit Necessary Tax Documents.**

27 The Receivership Entities have certain tax obligations, including the
28 preparation and submission of appropriate federal and state tax returns, as well as

1 the preparation and distribution of quarterly (K-1) statements to investors. The
2 Receiver is presently in the process of preparing these returns and statements, and
3 expects them to be completed by September 15, 2015. To the extent the Receiver
4 determines that previous tax filings by the Receivership Entities were inaccurate and
5 might provide a basis for requesting refunds from any relevant taxing authorities,
6 she will also pursue such refunds.

7

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1 **F. Submit Further Reports to the Court.**

2 Assuming the Court authorizes the Receiver to undertake the actions
3 recommended herein, as well as to continue those actions provided for in the
4 Permanent Appointment Order, the Receiver proposes to submit further interim
5 reports to this Court addressing her progress, findings, conclusions, and further
6 recommendations, in approximately 90 to 120 days.

7 Accordingly, the Receiver respectfully requests that the Court enter an order:

- 8 1. Accepting the Receiver's Report;
- 9 2. Authorizing the Receiver to continue to administer the Receivership
- 10 Entities in accordance with the terms of the Permanent Appointment Order;
- 11 3. Authorizing the Receiver to undertake the recommendations presented
- 12 herein; and
- 13 4. Providing such other and further relief as the Court deems necessary
- 14 and appropriate.

15
16 Dated: August 7, 2015

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
JOSHUA A. DEL CASTILLO
TIM C. HSU

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19 By: /s/ Joshua A. del Castillo
20 JOSHUA A. DEL CASTILLO
21 Attorneys for Receiver
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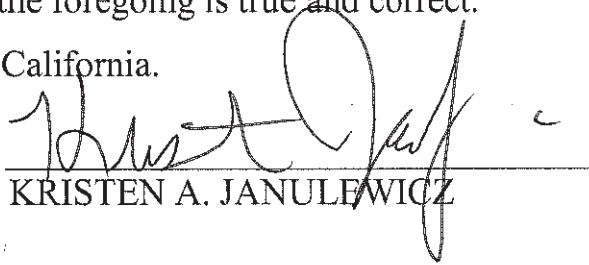
VERIFICATION

I have read the foregoing FIRST 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 August 7, 2015 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 assets by entity	1
2	Preliminary Accounting - Updated Listing of Known Assets of Altus Funds as of August 4, 2015	3

EXHIBIT 1

<u>Summary of Cash</u>									
	<u>Balance at 8/4/15</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 LIL High Yield Fund</u>	<u>Received from Micro Pipe Fund I</u>		
Altus Capital Opportunity Fund, LP									
Altus Capital Opportunity Fund, LP	277,051	222,366	8,709	46,018					
Altus Capital Opportunity Fund, LP									
Altus Growth Portfolio Series	26,080		5,659	20,442					
Altus Income Portfolio Series	413,550	370,397	10,518	32,666					
Altus Moderate Growth Portfolio	11,585		2,074	6,432					
Altus Moderate Portfolio Series	15,048		3,387	11,687					
Altus Conservative Portfolio Series	13,809		3,027	10,807					
Altus Focused Growth Portfolio Series	11,438		1,548	3,984					
Altus Capital Management LLC									
Total Wealth Management Receiver	2,956,930				594,806	547,453		747	
Total Cash held at 8/4/15	3,725,491	592,764	34,922	132,036	594,806	547,453		747	

EXHIBIT 2

<u>Receiver's Preliminary Estimate of Altus Funds's Assets as of 8/4/15:</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 (FBO interests)</u>	<u>Altus Income Portfolio Series, LP (FBO interests)</u>	<u>Altus Conservative Portfolio Series, LP (pooled)</u>	<u>Altus Moderate Growth Portfolio Series, LP (pooled)</u>	<u>Altus Moderate Portfolio Series, LP (pooled)</u>	<u>Altus Growth Portfolio Series, LP (pooled)</u>	<u>Altus Capital Opportunity Fund, LP (FBO interests)</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	148,117	227,059
Delta Capital Partners Holdings LLC									248,117
LJL Secured High Yield Income Fund									-
Rainmaker Precious Commodities-RMPC (remaining hold-back)	30,164		22,331	47,473	27,761	54,483	9,827		192,038
Toro Investments						150,000	21,884		171,884
Private Placement Capital Notes II LLC		7,477,133	1,395,071	522,768	724,411	1,039,780	23,026,105		34,185,268
Private Placement ACOF loan (unpaid balance)							203,000		203,000
									-
Total Estimate of Fund Assets Held as of 8/4/15	30,164	7,479,450	1,417,402	570,241	752,172	1,344,263	23,639,122		35,232,814
Add: Cash Hold by Receivership Estate as of 8/4/15									3,725,491
Total Estimate of Assets Held as of 8/4/15									38,958,305

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:

FIRST 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 **August 7, 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 **August 7, 2015**, I served the 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

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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.

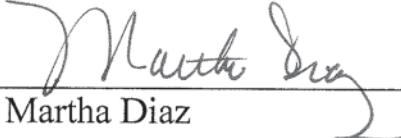
Mikel R. Bistrow, Esq.
Ballard Spahr LLP
655 W. Broadway, Suite 1600
San Diego, CA 92101

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 August 7, 2015 at Los Angeles, California.



Martha Diaz