IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. STANFORD INTERNATIONAL BANK, LTD, *et al.*, Defendants.	Civil Action No. 3:09-cv-00298-N

EXPEDITED REQUEST FOR ENTRY OF SCHEDULING ORDER[1] AND MOTION TO APPROVE PROPOSED SETTLEMENT WITH HSBC, TO APPROVE THE PROPOSED NOTICE OF SETTLEMENT WITH HSBC, TO ENTER THE BAR ORDER, AND FOR PLAINTIFFS' ATTORNEYS' FEES AND EXPENSES

COME NOW Ralph S. Janvey, in his capacity as Court-appointed Receiver for Stanford International Bank, Ltd., et al. (the "Receiver"), and the Official Stanford Investors Committee (the "Committee") (collectively, the "Movants") and move the Court to approve the settlement (the "HSBC Settlement") among and between, on the one hand, the Receiver; the Committee; and the individual plaintiffs in *Rotstain et al. v. Trustmark National Bank et al.*, No. 4:22-CV-00800 (S.D. Tex.) (Guthrie Abbott, Steven Queyrouze, Salim Estefenn Uribe, Sarah Elson-Rogers, Diana

[1] Movants request that the Court promptly enter the Scheduling Order, without waiting the twenty-one (21) days contemplated by Local Rule 7.1(e) for interested parties to respond to this Motion, because such Scheduling Order merely approves the notice and objection procedure and sets a final hearing, and does not constitute a final approval of the Settlement Agreement.

Suarez, and Ruth Alfille de Penhos, who are collectively referred to herein as the "Rotstain Investor Plaintiffs") (the Receiver, the Committee, and the Rotstain Investor Plaintiffs are referred to collectively herein as the "Plaintiffs"); and, on the other hand, HSBC Bank plc ("HSBC").

Movants further request, as more fully set out below, that the Court enter the Scheduling Order and approve the Notice regarding the HSBC Settlement on an expedited basis, and then after the Final Approval Hearing, enter the Bar Order attached to and incorporated by reference into the HSBC Settlement Agreement, attached as **Exhibit 1** to the Appendix in Support of this Motion.[2]

Movants jointly request this Court to find that the HSBC Settlement is fair, equitable, and in the interests of the Receivership Estate and all its Claimants, and to approve the HSBC Settlement. Movants further request that the Court approve payment of Plaintiffs' attorneys' fees in accordance with their contingency fee agreements. In support thereof, Plaintiffs respectfully state the following:

I. INTRODUCTION

1. As part of their lengthy and thorough investigation of the Stanford Ponzi scheme, and after many years of investigating and pursuing claims against third parties, including HSBC, Plaintiffs have reached a settlement with HSBC, one of the banks that provided banking services to the Stanford Entities for many years. Under the agreement, once approved and effective, HSBC has agreed to pay $40 million to the Receiver for distribution to customers of Stanford International Bank, Ltd. ("SIBL"), who, as of February 16, 2009, had funds on deposit at SIBL and/or were holding certificates of deposit issued by SIBL ("Stanford Investors") and who have submitted claims that have been allowed by the Receiver.

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[2] Capitalized terms not otherwise defined herein shall have the meaning set forth in the HSBC Settlement Agreement. To the extent of any conflict between this Motion and the terms of the HSBC Settlement Agreement, the HSBC Settlement Agreement shall control.

2. In return, HSBC is to obtain a global release of all Settled Claims[3] against HSBC and the HSBC Released Parties. The HSBC Settlement is contingent upon the Court entering a Bar Order in substantially the form attached to the HSBC Settlement Agreement in Civil Action No. 3:09-cv-00298-N (the "SEC Action"). This bar order is similar to the bar orders previously approved and entered by the Court in connection with the settlements with Greenberg Traurig, BDO, Kroll, Proskauer, Chadbourne, Hunton, and Willis, and would permanently bar, restrain, and enjoin the Plaintiffs, the Claimants, the Interested Parties, and all other Persons or entities anywhere in the world, whether acting in concert with the foregoing or claiming by, through, or under the foregoing, or otherwise, all and individually, from directly, indirectly, or through a third party, instituting, reinstituting, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, or otherwise prosecuting, against HSBC or any of the HSBC Released Parties, the *Rotstain* Litigation, the *Smith* Litigation, the Joint Liquidators' Claim, or any action, lawsuit, cause of action, claim, investigation, demand, levy, complaint, or proceeding of any nature in any Forum, including,

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[3] "Settled Claim" means any action, cause of action, suit, liability, claim, right of action, right of levy or attachment, or demand whatsoever, whether or not currently asserted, known, suspected, existing, or discoverable, and whether based on federal law, state law, foreign law, common law, or otherwise, and whether based on contract, tort, statute, law, equity or otherwise, that a Releasor ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, for, upon, arising from, relating to, or by reason of any matter, cause, or thing whatsoever, that, in full or in part, concerns, relates to, arises out of, or is in any manner connected with (i) the Stanford Entities; (ii) any CD, depository account, or investment of any type associated with any of the Stanford Entities; (iii) HSBC's or any HSBC Released Party's relationships with any of the Stanford Entities and/or any of their personnel; (iv) HSBC's or any HSBC Released Party's provision of services to or for the benefit of or on behalf of any of the Stanford Entities; or (v) any matter that was asserted in, could have been asserted in, or relates to the subject matter of the Complaints, the SEC Action, the *Rotstain* Litigation, the *Smith* Litigation, the Joint Liquidators' Claim, or any proceeding concerning any of the Stanford Entities pending or commenced in any Forum. For the avoidance of doubt, "Settled Claims" specifically includes without limitation all claims for direct and consequential damages to SIBL, any other Stanford Entity, or any Stanford Investor arising from or relating to the opening or operation of, or any transactions occurring in SIBL accounts 58293136, 58180160, 59198105, or 67760538, including without limitation the ECB payment. "Settled Claims" specifically include, without limitation, all claims each Releasor does not know or suspect to exist in his, her, or its favor at the time of release, which, if known by that Person, might have affected their decisions with respect to this Settlement Agreement and the Settlement ("Unknown Claims"). *See* Paragraph 17 of the HSBC Settlement Agreement for a complete definition of Settled Claim.

without limitation, any court of first instance or any appellate court, whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever, that in any way relates to, is based upon, arises from, or is connected with the Stanford Entities; this case; the subject matter of this case; the *Rotstain* Litigation; the *Smith* Litigation; the Joint Liquidators' Claim; or any Settled Claim. The foregoing specifically includes any claim, however denominated and whether brought in the *Rotstain* Litigation, the *Smith* Litigation, the Joint Liquidators' Claim or any other Forum, seeking contribution, indemnity, damages, or other remedy where the alleged injury to such Person, entity, or Interested Party, or the claim asserted by such Person, entity, or Interested Party, is based upon such Person's, entity's, or Interested Party's liability to any Plaintiff, Claimant, or Interested Party arising out of, relating to, or based in whole or in part upon money owed, demanded, requested, offered, paid, agreed to be paid, or required to be paid to any Plaintiff, Claimant, Interested Party, or other Person or entity, whether pursuant to a demand, judgment, claim, agreement, settlement or otherwise. In addition to the Bar Order, the HSBC Settlement Agreement contemplates: (i) that the Committee and the Rotstain Investor Plaintiffs shall file an agreed motion to dismiss with prejudice, and without costs or attorneys' fees, the Rotstain Litigation in its entirety as to HSBC; and (ii) the entry of a judgment of dismissal with prejudice of all of the Smith Investor Plaintiffs' claims in the Smith Litigation against HSBC pursuant to the Bar Order.

3. Movants request that the Court approve the HSBC Settlement and enter the Bar Order in the SEC Action.

4. Movants further request that the Court approve payment of attorneys' fees to counsel for the Plaintiffs ("Plaintiffs' Counsel"), whose efforts were necessary to achieve the HSBC Settlement, in an amount consistent with their contractual twenty-five percent (25%)

contingency fee agreements.

II. BACKGROUND

A. Authority of the Receiver and the Committee

5. On February 16, 2009, the Securities & Exchange Commission ("SEC") filed the SEC Action, and the Court appointed Ralph S. Janvey as Receiver "to immediately take and have complete and exclusive control, possession, and custody of the Receivership Estate and to any assets traceable to assets owned by the Receivership Estate." *See* Order Appointing Receiver ¶ 4 (SEC Action, ECF No. 10).

6. The Second Amended Order Appointing Receiver, entered on July 19, 2010, is the current order setting forth the Receiver's rights and duties (the "Second Order"). (SEC Action, ECF No. 1130). The Receiver's primary duty is to marshal and preserve the assets of the Receivership Estate, and minimize expenses, "in furtherance of maximum and timely disbursement thereof to claimants." Second Order ¶ 5.

7. The Receiver is not only authorized but required to pursue outstanding liabilities and claims for the Estate. *Id.* ¶¶ 3, 5(b)-(c). The Court vested the Receiver with "the full power of an equity receiver under common law as well as such powers as are enumerated" by the Court. *Id.* ¶ 2. The Receiver can assert claims against third parties and "recover judgment with respect to persons or entities who received assets or records traceable to the Receivership Estate." *SEC v. Stanford Int'l Bank, Ltd.*, 776 F. Supp. 2d 323, 326 (N.D. Tex. 2011). The Court has directed the Receiver to institute, prosecute, defend, and compromise actions that the Receiver deems necessary and advisable to carry out his mandate. Second Order ¶ 5(i).

8. On April 20, 2009, the Court also appointed John J. Little as Examiner, to advocate on behalf of "investors in any financial products, accounts, vehicles or ventures sponsored,

promoted or sold by any Defendant in this action." (SEC Action, ECF No. 322).

9. On August 10, 2010, this Court entered its order (the "Committee Order") creating the Committee and appointing the Committee to "represent[] in [the SEC Action] and related matters" the Stanford Investors. (SEC Action, ECF No. 1149). The Committee Order confers upon the Committee the right to investigate and pursue claims on behalf of the Stanford Investors and for the Receivership Estate (by assignment from the Receiver). *Id.* ¶ 8(d).

10. John J. Little signed the Settlement Agreement as chair of the Committee. Mr. Little also signed the Settlement Agreement in his capacity as Examiner solely to evidence his support and approval of the Settlement and to confirm his obligation to post the Notice on his website, but Mr. Little as Examiner is not otherwise individually a party to the Settlement Agreement or any of the above-referenced litigation. *See* Declaration of Examiner John J. Little, attached as Exhibit 6 to the Appendix to this Motion.

B. The Investigation of Claims Against HSBC

11. Plaintiffs' Counsel have spent more than thirteen years and thousands of hours investigating and pursuing claims against HSBC on behalf of the Stanford Receivership Estate and Stanford Investors. As part of their investigation of the claims against HSBC, Plaintiffs' Counsel have reviewed voluminous documents, emails, and deposition and trial testimony obtained in multiple collateral lawsuits and the criminal prosecution of Allen Stanford, James Davis, Laura Pendergest-Holt, and other former Stanford insiders. The materials reviewed by Plaintiffs' Counsel included, among other materials, thousands of pages of SEC and other investigative materials, thousands of pages of deposition, hearing, and trial testimony, thousands of emails of Stanford and HSBC employees, thousands of pages of account statements and transaction documents, and thousands of pages of other documents, including additional documents produced

by HSBC and electronic and physical documents that the Receiver secured from Stanford's various offices and from HSBC itself.

12. Plaintiff's Counsel also engaged in protracted motion practice and more than five years of discovery, including producing and reviewing over a million pages of documents and taking and defending depositions of 76 fact witnesses and 21 expert witnesses (including depositions relevant to other bank defendants and not specific to HSBC). Several of these depositions lasted multiple days. Plaintiffs' Counsel also responded to: (1) HSBC's comprehensive motion for summary judgment, supported by a 504-page appendix; (2) multiple motions to dismiss filed or joined by HSBC; (3) a petition for writ of mandamus jointly filed by HSBC and other defendants.[4]

13. Investigation and prosecution of the Receivership Estate and Stanford Investor claims against HSBC also required thousands of hours investigating and understanding the background and history of the complex web of Stanford companies, the financial transactions, interrelationships and dealings between and among the various Stanford entities, and the complex facts relating to the fraud scheme and how it was perpetrated through the various Stanford entities. Without a comprehensive investigation and understanding of this background, it would not have been possible to litigate claims against HSBC. But for the diligent efforts of the Receiver, the Committee, and Plaintiffs' Counsel since the commencement of this receivership proceeding, the $40 million HSBC Settlement would never have been achieved for the Receivership Estate and the Stanford Investors.

14. In summary, Plaintiffs and their counsel have conducted a thorough analysis of,

[4] The Fifth Circuit ordered a response to this petition, as well as another defendant's separate petition for writ of mandamus and motion to stay trial proceedings, and set an accelerated briefing schedule. Under the Fifth Circuit's briefing schedule, Plaintiffs were required to file each response within 30 days of the trial date.

and heavily litigated on multiple fronts, a series of claims against HSBC considering:

a. claims available under both state and federal law;

b. the viability of those claims considering the facts underlying HSBC's role as a depository bank for SIBL; and

c. the success of similar claims in other fraud scheme cases, both in the Fifth Circuit and elsewhere.

C. The Rotstain Litigation and Related Litigation

15. As this Court is aware, the Rotstain Litigation has been litigated for more than 13 years.

16. On August 23, 2009, counsel for the Rotstain Investor Plaintiffs filed their Original Petition in the district court of Harris County, Texas as a putative class action, naming HSBC as one of several defendants. (Rotstain ECF No. 1–4).[5] The Petition asserted claims against HSBC for fraudulent transfer, aiding and abetting a fraudulent scheme, and civil conspiracy.

17. On November 13, 2009, the Rotstain Litigation was removed to the U.S. District Court for the Southern District of Texas (the "Transferor Court") (Rotstain ECF No. 1) where it was then transferred to and consolidated with the Stanford Multidistrict Litigation proceeding in the U.S. District Court for the Northern District of Texas (Rotstain ECF No. 6).

18. On January 4, 2011, the Receiver assigned to the Committee any and all causes of action the Receivership Estate may have had against HSBC and other defendants (Rotstain ECF No. 865, Ex. 10).

19. On December 6, 2012, the Court granted the Committee's December 5, 2011 motion for leave to intervene in the Rotstain Litigation. (*See* Rotstain ECF No. 96 (Committee

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[5] Four of the original plaintiffs—Peggy Roif Rotstain, Juan Olano, Catherine Burnell, and Jamie Alexis Arroyo Bornstein—were later replaced by substitute plaintiffs Sarah Elson-Rogers, Salim Estefenn Uribe, Ruth Alfille de Penhos, and Diana Suarez on May 1, 2015 (Rotstain ECF No. 237).

Motion); 129 (Order granting leave to intervene).) The Committee filed an Intervenor Complaint against HSBC and other defendants on February 15, 2013 (Rotstain ECF No. 133).

20. On June 5, 2014, the Court denied HSBC's motion to dismiss the Committee's case for lack of personal jurisdiction (Rotstain ECF NO. 194), and on April 21, 2015, the Court denied various other motions to dismiss the Committee's case for, *inter alia*, failure to state a claim (Rotstain ECF No. 234).

21. On November 2, 2015, the Rotstain Investor Plaintiffs filed their Second Amended Class Action Complaint against HSBC and other defendants seeking actual damages, costs, and attorneys' fees (Rotstain ECF No. 350), which remains the Rotstain Investor Plaintiffs' operative complaint against HSBC in the Rotstain Litigation.

22. On November 7, 2017, this Court denied the Rotstain Investor Plaintiffs' motion for class certification (Rotstain ECF No. 428), and the U.S. Court of Appeals for the Fifth Circuit later declined interlocutory review of the class-certification denial in a matter captioned *Rotstain, et al. v. Trustmark National Bank, et al.,* No. 17-90038 (5th Cir.) (Order; Apr. 20, 2018).

23. Following the denial of the Rotstain Investor Plaintiffs' motion for class certification, hundreds of Stanford investors unsuccessfully moved to intervene in the Rotstain Litigation (Rotstain ECF No. 562) on May 3, 2019, the denial of which: (A) prompted many of these investors to file a separate suit against HSBC and others in Harris County, Texas district court—the Smith Litigation—which was later removed to the U.S. District Court for the Southern District of Texas (Smith ECF No. 1) and then stayed without the opposition of the Smith Investor Plaintiffs in accordance with an order issued in the SEC Action (Smith ECF No. 10); and (B) prompted other would-be intervenors to seek immediate review of their denied motions to intervene in the U.S. Court of Appeals for the Fifth Circuit (Rotstain ECF No. 574) which, on

February 3, 2021, upheld this Court's denial of the would-be intervenors' motion to intervene in an opinion captioned *Rotstain v. Mendez*, No. 19-11131 (5th Cir.) (Op.; Feb. 3, 2021). *See also Order on Pet. For Reh'g En Banc*, *Rotstain v. Mendez*, 986 F.3d 931 (5th Cir. 2021) (No. 19-11131).

24. On June 15, 2020 the Committee filed its Second Amended Intervenor Complaint against HSBC and other defendants, seeking actual damages, punitive damages, costs, and attorneys' fees (Rotstain ECF No. 735), which remains the Committee's operative complaint against HSBC in the Rotstain Litigation.

25. The Committee and the Rotstain Investor Plaintiffs filed a notice on March 19, 2021 abandoning all of their respective claims against HSBC and other defendants with the exception of their claims for (A) aiding, abetting, or participating in violations of the Texas Securities Act (the "TSA"), (B) aiding, abetting, or participation in breaches of fiduciary duties, and (C) avoidance and recovery of fraudulent transfers (Rotstain ECF No. 976).

26. On August 3, 2021, the Court denied HSBC's and another defendant's motion to dismiss OSIC's Second Amended Intervenor Complaint for lack of personal jurisdiction (Rotstain ECF No. 1135).

27. In an order dated January 20, 2022, this Court granted in part and denied in part the motions for summary judgment filed by HSBC and other defendants (Rotstain ECF No. 1150) and recommended that the Rotstain Litigation be remanded to the Transferor Court in the U.S. District Court for the Southern District of Texas for further proceedings (Rotstain ECF No. 1151).

28. The Rotstain Litigation was transferred back to the Transferor Court in the U.S. District Court for the Southern District of Texas on March 10, 2022 (Rotstain ECF No. 1157).

29. The Transferor Court then denied a motion to dismiss brought by other defendants

under Rule 12(b)(1) for lack of standing in an order dated November 3, 2022 (Rotstain ECF No. 1319).

30. On November 10, 2022, the Transferor Court entered its Fifth and Final Amended Scheduling Order, setting a trial to begin on February 27, 2023 (Rotstain ECF No. 1326).

31. In an order dated November 17, 2022, the Transferor Court denied another motion to dismiss by HSBC and other defendants under Rule 12(b)(1) for lack of jurisdiction based on the TSA's statute of repose (Rotstain ECF No. 1328).

32. On January 31, 2023, HSBC and other defendants filed a petition for writ of mandamus in the Fifth Circuit, directing the district court to reverse its previous order denying HSBC and other defendants' Motion for Leave to Designate Responsible Third Parties.

33. In an order dated February 14, 2023, the Fifth Circuit denied HSBC and other defendants' petition for writ of mandamus. *See In re Toronto-Dominion Bank*, 59 F.4th 1326 (5th Cir. 2023). In the same order, the Fifth Circuit also denied a separate petition for writ of mandamus and a motion to stay trial proceedings that had previously been filed by another defendant (and supported by HSBC). *See id.*

D. Mediation

34. Mediation was held with HSBC on January 2-3, 2023. The Parties reconvened through the mediator on February 24, 2023, and on that date reached an agreement in principle. Since the settlement was reached, the Parties have spent considerable time and effort drafting, revising, and negotiating the form and terms of the HSBC Settlement Agreement, the Bar Order, the Notice, and the Scheduling Order, for which the Movants now seek approval.

E. Plaintiffs' and Examiner's Support of Settlement

35. Plaintiffs are confident that the investigation of HSBC's activities related to

Stanford performed by their counsel and the litigation of the Stanford Investor and Receivership Estate claims have been thorough. Plaintiffs are confident that they have sufficient information to enter into and endorse the HSBC Settlement. Plaintiffs are also confident that the HSBC Settlement is fair and reasonable taking into consideration not only the merits of the claims, but also the risks, uncertainties, and expenses associated with litigation. Therefore, Plaintiffs believe that the HSBC Settlement is in the best interests of the Stanford Receivership Estate and the Stanford Investors and should be approved by the Court. The Chairman of the Committee, who participated in the settlement negotiations, is also the Court-appointed Examiner, and he supports this Motion in both capacities.

36. All Stanford Investors have been given notice of the Receivership and the claims process, and the vast majority of them have filed claims and are participating in the Receivership distribution process. Given the finite resources of the Receivership and defendants and the reduced incentive to settle if each Stanford Investor retains an option to pursue full recovery in individual satellite litigation, the Bar Order component of the HSBC Settlement helps to solve the collective action problem that a receivership is designed to address. *See Zacarias v. Stanford Int'l Bank, Ltd.*, 945 F.3d 883, 900–01, 905 (5th Cir. 2019). The HSBC Settlement therefore "maximizes assets available to [Stanford Investors] and facilitates an orderly and equitable distribution of those assets." *Id.* at 902. The HSBC Settlement and the Bar Order protect both the HSBC Released Parties and the Stanford Investors.

F. The HSBC Settlement

37. The proposed HSBC Settlement is the result of many years and thousands of hours of work by the Receiver and the Committee, and the undersigned counsel, and was negotiated and entered into as a result of arm's-length negotiation.

38. The essential terms of the HSBC Settlement Agreement, attached as **Exhibit 1** to the Appendix, provide that:

a) HSBC will pay $40 million, which will be deposited with the Receiver as required pursuant to the Settlement Agreement;

b) Plaintiffs, including, without limitation, the Receiver on behalf of the Receivership Estate (including the Stanford Entities), will fully release the HSBC Released Parties from the Settled Claims, e.g., claims arising from or relating to Allen Stanford, the Stanford Entities, or any conduct by the HSBC Released Parties relating to Allen Stanford or the Stanford Entities, with prejudice;

c) The HSBC Settlement also requires entry of a Bar Order in the SEC Action, which permanently enjoins, among others, Interested Parties, including the Rotstain Investor Plaintiffs, plaintiffs in the Smith Litigation, the Joint Liquidators, Stanford Investors, and Claimants, from bringing, encouraging, assisting, continuing, or prosecuting, against HSBC or any of the HSBC Released Parties any action, lawsuit, cause of action, claim, investigation, demand, levy, complaint, or proceeding of any nature in any Forum that in any way relates to, is based upon, arises from, or is connected with the Stanford Entities; the Rotstain Litigation; the subject matter of the Rotstain Litigation, the Joint Liquidators' claim, the SEC Action, and/or the Smith Litigation; or any Settled Claim;

d) The Receiver will disseminate notice of the HSBC Settlement through one or more of the following methods as set forth in the HSBC Settlement Agreement, ¶ 29:

   a. *For Interested Parties*: via electronic mail, first-class mail, or international delivery service;

   b. *For any Person who is, at the time of the Notice, a party in any case included in* In re Stanford Entities Securities Litigation, *MDL No. 2099 (N.D. Tex.) (the "MDL"), the SEC Action, the Rotstain Litigation, or the Smith Litigation who are deemed to have consented to electronic service through the Court's CM/ECF System under Local Rule CV-5.1(d)*: via electronic service;

   c. *For any other counsel of record for any other Person who is, at the time of service, a party in any case included in the MDL, the SEC Action, the Rotstain Litigation, or the Smith Litigation*: via facsimile transmission and/or first-class mail;

   d. *General disclosures*: notice will also be posted on the websites of the Receiver and the Examiner along with complete copies of the HSBC Settlement Agreement and all filings with the Court relating to the Settlement, the HSBC Settlement Agreement, and approval of the Settlement. Plaintiffs will further propose that notice be published once in the national edition of *The Wall Street Journal* and once in the international edition of *The New York Times*.

e. The Receiver will develop and submit to the Court for approval a plan for distributing the Settlement Amount ("Distribution Plan");

f. Under the Distribution Plan, once approved, the Settlement Amount will be distributed by the Receiver, under the supervision of the Court, to Stanford Investors who have submitted claims that have been allowed by the Receiver;

g. Persons who accept funds from the HSBC Settlement Amount will, upon accepting the funds, fully release the HSBC Released Parties from any and all Settled Claims;

h. The Rotstain Litigation will be dismissed with prejudice as to HSBC, with each party bearing its own costs and attorneys' fees, after Plaintiffs file an agreed motion to dismiss the cases with prejudice; and

i. An entry of judgment of dismissal with prejudice of all of the Smith Plaintiffs' claims against HSBC will be obtained in the Smith Litigation pursuant to the Bar Order.

Copies of the HSBC Settlement Agreement, this Motion, and other supporting papers may be obtained from the Court's docket and will also be available on the websites of the Receiver (http://www.stanfordfinancialreceivership.com) and the Examiner (www.lpf-law.com/examiner-stanford-financial-group/). Copies of these documents may also be requested by email, by sending the request to Peter Morgenstern at morgenstern@butzel.com; or by telephone, by calling (212) 818-1110.

39. For the reasons described herein, the HSBC Settlement is fair, equitable, reasonable, and in the interests of the Receivership Estate and all those who would claim substantive rights to distribution of its assets. Movants urge the Court to approve it.

III. <u>REQUEST FOR APPROVAL OF THE HSBC SETTLEMENT</u>

A. Legal Standards

40. The district court has "broad jurisdiction" to protect the *res* of a receivership.

Zacarias, 945 F.3d at 902. In the context of an SEC enforcement action, Congress has given the SEC "access to the courts' full powers, including the use of the traditional equity receivership, to coordinate the interests in a troubled entity and to ensure that its assets are fairly distributed to investors." *Id.* at 895. The receiver is tasked with pursuing the troubled entity's claims—including through ancillary litigation against third-party defendants. *Id.* at 896. To effectively gather and distribute the entity's assets to innocent investors, the court's powers vis-à-vis a receivership include "orders preventing interference with its administration of the receivership property," *id.* at 896–97 (quotation omitted), and "can include . . . bar orders foreclosing suit against third-party defendants with whom the receiver is also engaged in litigation." *Id.* at 897.

41. "[N]o federal rules prescribe a particular standard for approving settlements in the context of an equity receivership; instead, a district court has wide discretion to determine what relief is appropriate." *SEC v. Kaleta*, No. CIV.A. 4:09-3674, 2012 WL 401069, at *4 (S.D. Tex. Feb. 7, 2012) (quoting *Gordon v. Dadante*, 336 F. App'x 540, 549 (6th Cir. 2009)), *aff'd*, 530 F. App'x 360 (5th Cir. 2013); *see also SEC v. Stanford Int'l Bank, Ltd.*, 927 F.3d 830, 840 (5th Cir. 2019) ("Receivership Courts, like bankruptcy courts, may also exercise discretion to approve settlements of disputed claims to receivership assets, provided that the settlements are fair and equitable and in the best interests of the estate" (quotation omitted)). Congress enacted a "loose scheme" for federal equity receivers "on purpose" and "wished to expand the reach and power of federal equity receivers, especially in the context of consolidation." *Janvey v. Alguire*, No. 3:09-cv-00724, slip op. at 31, 34 (N.D. Tex. July 30, 2014).

42. Moreover, "courts have consistently held that Congress intended for federal equity receivers to be utilized in situations involving federal securities laws, like the present receivership," and in such cases for the court to act as a court in equity for the benefit of defrauded

investors. *See id.* at 35 (internal quotation marks omitted); *see also Zacarias*, 945 F.3d at 895 (noting that, in the context of SEC enforcement actions, Congress "granted the SEC access to the courts' full powers, including use of the traditional equity receivership, to coordinate the interests in a troubled entity and to ensure that its assets are fairly distributed to investors"); 15 U.S.C. § 80a-41(d). "Now . . . the corporations created and initially controlled by [Stanford] are controlled by a receiver whose only object is to maximize the value of the corporations for the benefit of their investors and any creditors." *Janvey v. Alguire*, slip op. at 44 (quoting *Democratic Senatorial Campaign Comm.*, 712 F.3d 185, 191 (5th Cir. 2013) (quoting *Scholes v. Lehmann*, 56 F.3d 750, 755 (7th Cir. 1995)).

43. The Receivership Order in the SEC Action closely reflects and furthers all of the above objectives, directing the Receiver to prosecute, defend, and compromise actions in order to maximize timely distributions to claimants. Second Order ¶ 5; *see supra* ¶¶ 6–7.

44. The ability to compromise claims is critical to this Receivership. Courts have long emphasized that public policy favors settlement. *See, e.g.*, *Lydondell Chem. Co. v. Occidental Chem. Corp.*, 608 F.3d 284, 297 n.43 (5th Cir. 2010). That is especially true here, where the victims of Stanford's Ponzi scheme continue to await recoveries after more than 14 years, further costs would come directly out of the Receivership Estate, and the HSBC Settlement would allow the Receiver to make a significant distribution.

45. Consistent with all of the foregoing purposes, this Court has the authority to enter a bar order prohibiting litigation against settling third parties in receivership cases. *See Zacarias*, 945 F.3d at 897; *see also Kaleta*, 530 F. App'x. 360, 362–63 (5th Cir. 2013) (unpublished) (approving bar order). Bar orders have been used in similar receivership cases to achieve these purposes. *See, e.g.*, *Zacarias*, 945 F.3d at 902; *SEC v. DeYoung*, 850 F.3d 1172, 1180–81 (10th

Cir. 2017); *Gordon*, 336 F. App'x at 549; *SEC v. Faulkner*, No. 3:16-cv-1735-D, 2021 WL 3930091, at *1 (N.D. Tex. Sept. 2, 2021); *SEC v. Parish*, No. 2:07-cv-00919, 2010 WL 8347143, at *4-7 (D.S.C. Feb. 10, 2010), *modified*, 2010 WL 8347144 (D.S.C. Apr. 8, 2010); *SEC v. Enterprise Trust Co.*, No. 1:08-cv-01260, slip op. at 2 (N.D. Ill. Jan. 29, 2009); *Harmelin v. Man Fin. Inc.*, Nos. 06-1944, 05-2973, 2007 WL 4571021, at *4-5 (E.D. Pa. Dec. 28, 2007); *CFTC v. Equity Fin. Grp.*, No. 04-1512, 2007 WL 2139399, at *2 (D.N.J. July 23, 2007).

46. The Bar Order will prevent would-be claimants from "jump[ing] the queue, circumventing the receivership in an attempt to recover beyond their pro rata share" and will minimize the "inefficiency" and dissipation of receivership assets that would result from "piecemeal and duplicative litigation." *Zacarias*, 945 F.3d at 896.

47. Specifically, the Fifth Circuit in *Zacarias* stated that a district court was within its discretion to enter a bar order, such as the one requested here, if (i) the objecting investors (if any) can participate in the receivership process, (ii) their claims are derivative of and dependent on the receiver's claims, and (iii) their suits directly affect the Receivership's assets. *Id.* at 897. The HSBC Settlement satisfies each of these requirements.

48. In approving settlements, district courts in this Circuit have also looked to factors such as: (1) the value of the proposed settlement; (2) the value and merits of the receiver's potential claims; (3) the risk that litigation would dissipate the receivership assets; (4) the complexity and costs of future litigation; (5) the implications of any satisfaction of an award on other claimants; (6) the value and merits of any foreclosed parties' potential claims; and (7) other equities incident to the situation. *Kaleta*, 2012 WL 401069, at *4 (citations omitted); *see also Zacarias*, 945 F.3d at 897, 900, 902 (citing (1) the prevention of the dissipation of receivership assets, (2) the costs of prolonged litigation, and (3) the effect of the settlement on other claimants as reasons to approve

a settlement).[6]

49. In *Kaleta*, the court approved a receivership settlement and entered a bar order prohibiting litigation, including claims of investors, against the settling parties. *Kaleta*, 2012 WL 401069, at *4. The Fifth Circuit's opinion affirming the trial court noted that, like the HSBC Settlement here, "the settlement expressly permits Appellants and other investors to pursue their claims by 'participat[ing] in the claims process for the Receiver's ultimate plan of distribution for the Receivership Estate.'" *Kaleta*, 530 F. App'x at 362; *see also Zacarias*, 945 F.3d at 897 (noting the importance of the ability of an objecting investor to participate in the receivership process).

50. Most recently, in *Zacarias*, the Fifth Circuit confirmed approval of a settlement that was conditioned on bar orders enjoining Stanford-related suits filed against the defendants in that litigation and entry of the bar orders. The court held that the bar orders enjoining investors' third-party claims "fall well within the broad jurisdiction of the district court to protect the receivership res," and that the court may bar proceedings that "would undermine the receivership's operation." *Zacarias*, 945 F.3d at 902.

B. The HSBC Settlement Satisfies the Factors for Settlement Approval

51. First and most importantly, the HSBC Settlement does not exceed the limits of a district court's broad power to "impose a receivership free of interference in other court

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[6] The Rotstain Litigation is not a class action nor is it a case under Title 11 of the United States Code. However, the Fifth Circuit has noted a "kinship—at a high level—in function between [a] receivership and a . . . class action." *Zacarias*, 945 F.3d at 904. Though they are not binding here, both class action and Title 11 cases define tests for approving the aggregate settlements that may be tailored for a receivership case such as the Rotstain Litigation. *See, e.g.*, *Newby v. Enron Corp.*, 394 F.3d 296, 301 (5th Cir. 2004) (class action); *In re Moore*, 608 F.3d 253, 263 (5th Cir. 2010) (Title 11 bankruptcy). Broadly speaking, before approving a global settlement the Court must determine that the settlement (i) is reached after arm's-length negotiations; (ii) provides relief commensurate with the risks and expenses of litigating the claim to judgment; and (iii) represents the considered opinions of the parties and their counsel, and has the support of persons appointed to represent those who ultimately benefit from the settlement. For the same reasons that the HSBC Settlement satisfies the factors set forth in the decision of the district court in *Kaleta*, and as set forth herein, the HSBC Settlement easily satisfies the tests set out in *Newby* or *Moore*.

proceedings," *id.* at 896. Namely, (1) any objecting investors can participate in the receivership process, (2) their claims are derivative of and dependent on the Receiver's claims, and (3) their suits directly affect the Receivership's assets.

52. As to the first limitation, the bar order in the HSBC Settlement concerns the claims of Stanford Investors and the receivership itself against HSBC—i.e., aiding in breaches of fiduciary duty and in violations of the Texas Securities Act. The alleged facts concern banking services provided by HSBC to Stanford. It is inconceivable that these facts could support a claim by anyone other than Stanford Investors (directly or indirectly) or the Receivership itself. Thus, Stanford Investors are the only persons plausibly affected by the entry of the Bar Order in this case. But because Stanford Investors can participate in the Receivership Process—and the vast majority are already participating in the process—the HSBC Settlement does not violate the first limitation noted above.

53. The HSBC Settlement also satisfies the second limitation noted above that a potential objector's claims be derivative of and dependent on the receiver's claims. The Fifth Circuit has already settled the issue as applied to non-party Stanford Investors. In *Rotstain v. Mendez*, 986 F.3d 931, 941 (5th Cir. 2021), the Fifth Circuit considered an appeal of this Court's denial of non-party Stanford Investors' motion to intervene in the litigation against HSBC. The Stanford Investors in that case argued that they were not adequately represented by the Committee because the Committee lacked standing to bring the claims against HSBC. The Fifth Circuit rejected this argument and "affirmatively h[eld] that OSIC has standing to assert the claims Appellants seek to bring because *such claims are derivative of and dependent on the receiver's claims*." *Id.* at 941 (emphasis added). As noted above, the scope of the proposed bar order could only conceivably encompass claims held by Stanford Investors or the Receivership itself. Thus,

because the Fifth Circuit has already "affirmatively h[eld]" that Stanford Investors' claims are "derivative of and dependent on the receiver's claims," *id.*, the settlement satisfies the second limitation noted above.

54. For similar reasons, the HSBC Settlement falls within the third limitation that the barred suit would directly affect the Receivership's assets. This is because, without the bar order, there would be no settlement. As the Fifth Circuit has already held in this litigation, "any dollars the [objecting] investors independently recover would be dollars OSIC cannot." *Mendez*, 986 F.3d at 941. Thus, "the costs of undermining this settlement are potentially large" and would, in this case, include depriving the Receivership of $40 million in settlement proceeds. *See Zacarias*, 945 F.3d at 900. The failure of the settlement would also potentially diminish the value available to Stanford Investors because of "the costs of prolonged litigation over the same assets, not only in the receiver's own action but also in [potential objectors'] myriad satellite suits, into which the receivership is likely to be drawn." *Id.* at 900–01; *see also Faulkner*, 2021 WL, at *16 (citing *Zacarias* and noting that "the bar order is a *sine qua non* of the settlement, because without a Bar Order, there will be no settlement between the Receiver and [defendants]" (quotation omitted)).

55. Additionally, the HSBC Settlement satisfies other factors considered by courts in this circuit in approving settlements, as set forth in the subheadings and accompanying text below.

(1) Value of the Proposed Settlement

56. The $40 million payment in the HSBC Settlement is substantial. "A proposed settlement need not obtain the largest conceivable recovery . . . to be worthy of approval; it must simply be fair and adequate considering all the relevant circumstances." *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 649 (N.D. Tex. 2010). In the absence of evidence otherwise, a district court may conclude that a proposed settlement amount is sufficient. *Faulkner*, 2021 WL, at *15 (citing

Kaleta, 2012 WL 401069, at *4). Moreover, no federal rules prescribe a particular standard for approving settlements in the context of an equity receivership; instead, a district court has wide discretion to determine what relief is appropriate. *Id.* at *5 (citing *Gordon*, 336 F. App'x at 549). The value of the HSBC Settlement to the Receivership Estate and Stanford's victims is significant. And though the Court has not yet had the opportunity to give consideration to final approval of a settlement of Stanford-related litigation involving a bank, the Court has in recent years approved settlements for similar or lesser amounts with other Stanford service-providers. *See Wilkinson et al. v. BDO USA, LLP*, Case No. 3:12-cv-01447-N-BG (Bar Order in connection with $40 million settlement with accounting firm BDO USA, LLP); *Janvey v. Greenberg Traurig, LLP*, Case No. 3:12-cv-04641-N (Bar Orders in connection with $65 million settlement with Greenberg Traurig, LLP, and $34 million settlement with Hunton & Williams, LLP); *Janvey v. Willis of Colorado Inc.*, Case No. 3:13-CV-03980-N (Bar Order in connection with $120 million settlement with insurance broker Willis North America Inc.); *Janvey v. Proskauer Rose LLP*, Case No. 3:13-cv-00477-N-BQ (Bar Orders in connection with $63 million settlement with Proskauer Rose, LLP and $35 million settlement with Chadbourne & Parke, LLP).

(2) Value and Merits of the Receiver and Stanford Investors' Potential Claims

57. Movants and Plaintiffs of course believe that the claims filed against HSBC in the Rotstain Litigation are meritorious and would be successful. However, they are not without substantial risk and uncertainty. Indeed, parts of the original case were either dismissed at the summary judgment stage (constructive fraudulent transfer against certain defendants) or voluntarily abandoned by plaintiffs at summary judgment (Rotstain ECF 976). Moreover, the ability to collect the maximum value of a judgment from HSBC is not without risk and uncertainty, especially as HSBC is a regulated banking institution that is subject to strict capital requirements

and is a foreign entity. HSBC vigorously disputes the validity of the remaining claims asserted in the Rotstain Litigation. Among others, the following issues are hotly contested and promise years of uncertain litigation:

a. Whether Texas recognizes a claim for aiding and abetting or knowing participation in breaches of fiduciary duty;[7]

b. whether, if such a claim exists, HSBC had sufficient knowledge to meet the standards for the Plaintiffs' claims for aiding and abetting or knowing participation in breaches of fiduciary duty;

c. whether the Plaintiffs' claims under TUFTA and the TSA are time-barred;

d. whether the TSA applies to foreign transactions involving HSBC;

e. whether HSBC had the requisite scienter for "aider" liability under the TSA;

f. whether HSBC materially aided a primary violator in committing a TSA violation;

g. whether the district court has personal jurisdiction over HSBC;

h. whether HSBC is entitled to pursue defensive theories related to responsible third parties;

i. whether the Plaintiffs have valid, supportable damage models; and

j. whether, even after a successful judgment in the Rotstain Litigation, Plaintiffs would be able to collect any more from HSBC than the HSBC Settlement already offers.

58. For these and other reasons, but for the HSBC Settlement, the Rotstain Litigation

[7] In raising this and other issues herein, Movants and Plaintiffs do not concede that these issues would be finally determined adversely to Plaintiffs.

would be vigorously defended by HSBC, its prosecution would be expensive and protracted, and the ultimate outcome of such litigation would be uncertain. In light of these issues, Movants and Plaintiffs believe that the HSBC Settlement reflects a fair and reasonable compromise between the parties.

(3) The Risk that Litigation Would Dissipate Receivership Assets

59. Movants and Plaintiffs believe that litigation against HSBC would most likely go on for years, with no guarantee of a recovery. While some of Plaintiffs' Counsel have entered into contingent fee arrangements with Plaintiffs to prosecute the claims, the Receiver and the Examiner are paid by the hour and are involved in overseeing the litigation and coordinating strategy with the overall Stanford Receivership case and other litigation. Additionally, OSIC's lead trial counsel from Baker Botts is paid by the hour. The HSBC Settlement avoids further expense associated with the prosecution of the Rotstain Litigation and continued monitoring and oversight of the case by the Receiver and the Committee Chairman/Examiner.

60. Furthermore, as part of their fee agreement with their counsel, the Committee and Receiver have agreed that the Receiver would fund or reimburse all expenses associated with Plaintiffs' litigation against HSBC, including, *inter alia*, expert fees and out-of-pocket litigation expenses (depositions, court reporters, videographers, travel, copy expenses, etc.). Because the case against HSBC involves complicated issues of international banking and regulation, corporate governance, and forensic accounting, expert witness testimony as to HSBC is necessary. Expert witness fees have been and would continue to be a significant expense going forward if the Rotstain Litigation were not settled. At trial, expert testimony would be needed to prove the details of the scheme, the knowledge of Stanford's illicit activities possessed by HSBC, as well as to provide opinions concerning causation and damages. Absent the HSBC Settlement, additional expert

witness fees as to HSBC's alleged liability would have been substantial, with added costs for working with expert witnesses and examining expert witnesses at trial. Other out-of-pocket litigation costs could have been substantial going into trial, including trial graphics, and cost of reproduction of documents and trial exhibits. Thus, total additional out-of-pocket costs to prosecute the claims against HSBC would have almost certainly been substantial due to the complex nature of the claims, the need for expert testimony, and the voluminous nature of the records involved.

(4) The Complexity and Costs of Future Litigation

61. The prosecution of the Rotstain Litigation would undoubtedly be challenging and expensive, as discussed above. As the Court is aware, the facts and legal analysis of Stanford's scheme are extraordinarily complex. There is no question that the Rotstain Litigation, involving billions of dollars in claimed damages and an international scheme operated by Stanford through a complex web of interrelated international companies that spanned nearly 20 years, is extraordinarily complex, and would cause the Receivership Estate to incur substantial expense to litigate to final judgment.

(5) The Implications of HSBC's Settlement Payment on Other Claimants

62. As the Fifth Circuit stressed in *Kaleta*, "investors [can] pursue their claims by 'participating in the claims process for the Receiver[ship].'" 530 F. App'x at 362; *see also Zacarias*, 945 F.3d at 897 (noting that the requirement that objecting investors have the ability to participate in the receivership process is a key limitation on a receivership court's power). The Receiver is not collecting HSBC's settlement payment for Allen Stanford or for Mr. Janvey, but for the Stanford Investors. Thus, other potential claimants—that is, Stanford Investors who are not parties to the HSBC Settlement—will have the ability to pursue their claims by participating

in the Receivership claims process. And as such, the relief Movants request will further "[t]he primary purpose of the equitable receivership [which] is the marshaling of the estate's assets for the benefit of all the aggrieved investors and other creditors of the receivership entities." *Parish*, 2010 WL 8347143, at *6 (approving settlement and bar order); *see also Zacarias*, 945 F.3d at 905 (noting that one of "the central purposes of the receivership" is "to achieve maximum recovery from the malefactors for distribution pro rata to all investors").

(6) The Value and Merits of Any Foreclosed Parties' Potential Claims

63. Movants are conscious of the fact that the Bar Order they are requesting will preclude Stanford Investors and others from asserting claims against HSBC in connection with the Stanford enterprise. While there have been Stanford Investors apart from the Parties who have attempted to pursue claims against HSBC, the Fifth Circuit has already ruled that the claims of those very investors are "derivative of and dependent on the receiver's claims" and that "any recovery OSIC obtains [in this case] will be distributed to the Stanford investors . . . ." *Mendez*, 986 F.3d at 941.

64. Given that all Stanford Investors have been put on notice of the Receivership and have been given opportunities to file claims in the Receivership, and that the vast majority of the Stanford Investors have filed claims and are already participating in the distribution process and will receive a distribution from the HSBC Settlement, the Stanford Investors' rights are not being unduly prejudiced by the HSBC Settlement. They have all had the opportunity to participate through the pre-existing receivership claims process.

65. Movants believe that the Bar Order should be approved because it is in the collective best interest of ***all*** Stanford Investors. The Bar Order should not be rejected based upon the possibility that some individual investor(s) or counsel might otherwise wish to pursue

individual claims against HSBC now or in the future, particularly since the Fifth Circuit has held that the investor claims against HSBC are "derivative of and dependent on the receiver's claims" and that "[a]ny recovery OSIC obtains [in this case] will be distributed to the Stanford investors . . . ." *Mendez*, 986 F.3d at 941; *see also Zacarias*, 945 F.3d at 902 (noting that "the receivership solves a collective-action problem among the Stanford entities' defrauded investors, all suffering losses from the same Ponzi scheme" and that "[a]llowing investors to circumvent the receivership would dissolve th[e] orderly" distribution of assets that the receivership structure allows); *Harmelin v. Man Fin. Inc.*, Nos. 06-1944, 05-2973, 2007 WL 4571021, at *4 (E.D. Pa. Dec. 28, 2007) (approving bar order which would not "in any realistic sense, preclude any investors rights, but [would] give the settling parties the assurance of peace and [eliminate] any future claim that might be filed out of spite or for some other vindictive or improper reason").

66. For all these reasons, "it is highly unlikely that any such investor could obtain a more favorable settlement than that proposed in the Settlement Agreement, nor one that could benefit ***as many*** aggrieved investors as stand to be benefited under the Settlement Agreement." *Parish*, 2010 WL 8347143, at *6 (approving settlement and bar order) (emphasis added).

67. The proposed HSBC Settlement represents the best opportunity to provide funds quickly to Stanford's victims and to distribute those funds in an orderly fashion, without consumption of additional expenses or a race to the courthouse by various counsel. Against this backdrop, the Court should approve the HSBC Settlement and enter the Bar Order.

(7) Other Equities Attendant to the Situation

68. The entry of the Bar Order is a material term under the HSBC Settlement Agreement. HSBC "would not otherwise secure 'peace' from other litigation if any investors were able to institute their own suit against [HSBC], potentially in other, including foreign,

jurisdictions." *Harmelin*, 2007 WL 4571021, at *4 (approving settlement and bar order); *see also Zacarias*, 945 F.3d at 900 (noting that defendants' "incentives to settle are reduced—likely eliminated—if each SIB CD investor retains an option to pursue full recovery in individual satellite litigation. Such resolution is no resolution.").

69. HSBC has made clear that in consideration of paying $40 million, it must achieve "peace" through the HSBC Settlement, wholly and finally, with respect to all Stanford-related claims. HSBC has stated that it would not enter into the HSBC Settlement without securing such relief, particularly given what it believes are its strong factual and legal defenses.

70. The Receiver and the Committee were appointed to protect the interests of <u>*all*</u> of the defrauded investors and other creditors of the Receivership Estate, and to act in a manner that will maximize the eventual distribution to Estate claimants. The proposed Bar Order will help maximize the eventual distribution to Receivership Estate claimants of HSBC's $40 million payment and provide HSBC with a full and final resolution of Stanford-related litigation. Movants believe that the entry of the Bar Order is fully justified by the Settlement Amount being paid by HSBC. Thus far, this Court has already enjoined and barred all claims against the settling defendants and related parties pursuant to settlements with Greenberg Traurig and Hunton & Williams (Case No. 3:12-cv-04641-N), BDO (Case No. 3:12-cv-01447-N-BG), Adams & Reese (Case No. 3:12-cv-0495-N), Chadbourne and Proskauer (Case No. 3:13-cv-00477-N-BQ), Willis North America Inc. (Case No. 3:13-cv-3980), and Kroll (SEC Action, ECF No. 2363). Movants ask the Court to similarly enjoin and bar all claims and potential claims against the HSBC Released Parties in order to effectuate the HSBC Settlement.

71. Plaintiffs and their counsel spent considerable time and effort to reach a settlement that is fair and equitable to the Receivership Estate and the defrauded Stanford Investors. Movants

and Plaintiffs firmly believe that Plaintiffs could prevail in their causes of action against HSBC, though HSBC vigorously denies any wrongdoing or liability, and has indicated that it equally firmly believes it would successfully defend any claims against it. HSBC also has the resources to defend itself and to litigate the issues through a final trial court judgment, and appeal if necessary, which means the litigation would take years to be resolved without a settlement.

72. Movants and Plaintiffs believe that the terms of the HSBC Settlement Agreement offer the highest net benefit to the Receivership Estate, in terms of maximizing Receivership assets and minimizing the expense to obtain them.

73. The overall context of the MDL and Stanford Receivership also is relevant to the equities of the situation. The Stanford Ponzi scheme collapsed more than 14 years ago. The parties—on both sides—are confronted by uncertainty, risk, and delay. In this circumstance, the example of settlement is to be encouraged.

74. It additionally bears on the equities that Stanford's victims, including a vast number of retirees, are aging. For many of Stanford's victims, recovery delayed is recovery denied. If possible, the time that Stanford's victims have waited to date should not be extended further.

75. The equities of the HSBC Settlement, including its Bar Order, are also enhanced by the participation and endorsement of the various parties specially constituted to pursue recovery for Stanford's victims. The Receiver, the Examiner, and the Committee have cooperated and joined together in the HSBC Settlement. In this complex international fraud, this level of coordination and quality of resolution are eminently desirable. The roles and obligations of each of the foregoing parties enhance the equities attending this outstanding conclusion to many years of litigation between HSBC and Plaintiffs. The result of this coordination will be the most orderly distribution to Stanford's victims that possibly can be achieved.

76. The Court is well within its discretion to approve the HSBC Settlement and enter the Bar Order. Recently, in *Zacarias*, 945 F.3d at 905, the Fifth Circuit upheld the district court's approval of the Willis settlement that was conditioned upon entry of similar bar orders enjoining other investor lawsuits filed against the settling defendants in the Willis case. The court held that the bar orders enjoining investors' third-party claims "fall well within the broad jurisdiction of the district court to protect the receivership res," and that the court may bar proceedings that "would undermine the receivership's operation." *Id*. at 902.

77. Similarly, in *SEC v. DeYoung*, the Tenth Circuit upheld the district court's entry of a bar order in an SEC receivership settlement similar to the bar order in the HSBC Settlement, holding that "the district court found that the settlement offered the highest potential recovery for the Receivership Estate and the IRA Account Owners, and that the Claims Bar Order was necessary to that settlement." 850 F.3d 1172, 1183 (10th Cir. 2017) (citing *Kaleta*, this Court's bar order in the BDO lawsuit, and several other district court cases approving entry of bar orders similar to the bar order requested in connection with the HSBC Settlement).

78. In *Kaleta*, the SEC filed suit against the defendants for violating federal securities laws and defrauding investors. 2012 WL 401069, at *1. The trial court appointed a receiver with similar rights and duties to the Stanford Receiver, including the duty "to preserve the Receivership Estate and minimize expenses in furtherance of maximum and timely disbursements to claimants." *Id*. The *Kaleta* receiver settled with third parties and agreed to a bar order precluding claims against them related to the receivership. The trial court approved the settlement and the bar order, and the Fifth Circuit affirmed. *Kaleta*, 530 F. App'x at 362-63.

79. In approving the bar order, the district court noted the receiver's "goal of limiting litigation" related to the settling third parties and the Receivership Estate. *Kaleta*, 2012 WL

401069, at *7. "The Bar Order advances that goal by arranging for reasonably prompt collection of the maximum amount of funds possible from the [settling third parties] under the present litigation and financial circumstances." *Id*.

80. In another case, this Court approved a settlement and bar order, noting that the "bar order is a *sine qua non* of the settlement, because without a Bar Order, there will be no settlement between the Receiver and [the defendants]." *Faulkner*, 2021 WL at *16 (quotation omitted). The court went on to emphasize that negotiating for a bar order as a precondition to settlement "is not unusual." *Id.*

81. And in still another case, a Texas federal district court approved a receivership settlement and entered a bar order preventing litigation against the settling parties. *SEC v. Temme*, No. 4:11-cv-655, 2014 WL 1493399 (E.D. Tex. Apr. 16, 2014). The bar order was intended to "prevent duplicative and piecemeal litigation that would only dissipate the limited assets of the Receivership Estate and thus reduce the amounts ultimately distributed by the Receiver to the claimants" and to "protect the [settling third parties] from re-litigation of potentially duplicative liabilities." *Id.* at *2.[8]

82. Thus, the Bar Order requested by the parties in connection with the HSBC Settlement is well within the Court's discretion and authority for a settlement of this nature and magnitude.

IV. REQUEST FOR APPROVAL OF ATTORNEYS' FEES AND EXPENSES

83. In addition to approving the HSBC Settlement, Movants and Plaintiffs also request

[8] The *Temme* court also approved a similar settlement agreement and bar order preventing litigation against another settling party. *See SEC v. Temme*, No. 4:11–cv–655, (ECF No. 162) (E.D. Tex. Nov. 21, 2012).

that the Court approve an award of attorneys' fees to Plaintiffs' Counsel, consisting of Friedman Kaplan Seiler Adelman & Robbins LLP ("Friedman Kaplan") and Butzel Long, a professional corporation ("Butzel Long") under the terms of the fee agreement between Plaintiffs' Counsel and the Committee, as well as reimbursement of expenses incurred in the prosecution of the claims against HSBC.

A. Terms of Plaintiffs' Counsel's Engagement

84. As reflected in the Declaration of Peter D. Morgenstern, attached as **Exhibit 2** to the Appendix in Support of this Motion, and the Declaration of Scott M. Berman, attached to the Appendix as **Exhibit 3**, Plaintiffs' Counsel have been handling this action pursuant to a 25% contingency fee agreement with the Committee.

85. Pursuant to the fee agreements, the Movants seek Court approval to pay attorneys' fees to Plaintiffs' Counsel equal to an aggregate of 25% of the Net Recovery from the HSBC Settlement (*i.e.*, the settlement amount less allowable disbursements), and to reimburse Plaintiffs' Counsel as well as the Receiver for expenses they have incurred and carried in the Rotstain Litigation. The gross amount of the settlement to be paid by HSBC is $40,000,000.00. The expense disbursements for which Movants seek reimbursement and which are to be deducted from the settlement amount to calculate the Net Recovery from the HSBC Settlement are **$4,185,400.88**, which are expenses that were incurred in the Rotstain Litigation and paid by the Receiver directly or reimbursed by the Receiver to Plaintiffs' Counsel pursuant to a fee agreement following court approval of such expenses. *See* Declaration of Scott D. Powers Decl., Appendix **Exhibit 4,** at ¶ 11.

86. Thus, the Net Recovery from HSBC after reimbursement of expenses is **$35,814,599.12**, and 25% of the Net Recovery is **$8,953,649.78**. This is the fee agreed to be paid

to Plaintiffs' Counsel by the Committee, and this is the amount of the fee for which approval is sought in this Motion.

B. The Proposed Fee is Reasonable as a Percentage of the Overall Recovery

87. Trial courts can determine attorneys' fee awards in common fund cases such as this one[9] using different methods. One is the percentage method, under which a court awards fees based on a percentage of the common fund. *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 642–43 (5th Cir. 2012). The Fifth Circuit is "amenable to [the percentage method's] use, so long as the *Johnson* framework is utilized to ensure that the fee award is reasonable." *Id.* at 643 (citing *Johnson v. Georgia Hwy. Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)).[10] Thus, when considering fee awards in class action cases, "district courts in [the Fifth] Circuit regularly use the percentage method blended with a *Johnson* reasonableness check." *Id*. (internal citations omitted); *see Schwartz v. TXU Corp.*, No. 3:02–CV–2243–K (lead case), 2005 WL 3148350, at *25 (N.D. Tex. Nov. 8, 2005) (collecting cases).[11]

88. While the HSBC Settlement is not a class action settlement, this Motion analyzes the award of attorneys' fees to Plaintiffs' Counsel under the law applicable to class action

[9] The common-fund doctrine applies when "a litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *In re Harmon*, No. 10-33789, 2011 WL 1457236, at *7 (Bankr. S.D. Tex. April 14, 2011) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)).

[10] The *Johnson* factors are discussed in Subsection C below.

[11] While the Fifth Circuit has also permitted analysis of fee awards under the lodestar method, both the Fifth Circuit and this Court have recognized that the percentage method is the preferred method of many courts. *Dell*, 669 F.3d at 643; *Schwartz*, 2005 WL 3148350, at *25. In *Schwartz*, the court observed that the percentage method is "vastly superior to the lodestar method for a variety of reasons, including the incentive for counsel to 'run up the bill' and the heavy burden that calculation under the lodestar method places upon the court." 2005 WL 3148350, at *25. The court also observed that, because it is calculated based on the number of attorney hours spent on the case, the lodestar method deters early settlement of disputes. *Id*. Thus, there is a "strong consensus in favor of awarding attorneys' fees in common fund cases as a percentage of the recovery." *Id*. at *26.

settlements in an abundance of caution because the settlement is structured as a settlement with the Receiver and the Committee, with the Bar Order.

89. In other Stanford litigation settlements, this Court analyzed the pertinent fee requests under both the common fund and *Johnson* approaches. *See, e.g., Official Stanford Inv'rs Comm. v. Greenberg Traurig, LLP*, No. 3:12-cv-04641-N-BQ (N.D. Tex. Feb. 25, 2020), ECF No. 374 (approving a 25% contingency fee on a $65 million settlement); *Official Stanford Inv'rs Comm. v. BDO USA, LLP*, No. 3:12-cv-01447-N-BG (N.D. Tex. Sep. 23, 2015), ECF No. 80 (approving a 25% contingency fee on a $40 million settlement); *see also* SEC Action, ECF No. 2366 (order approving 25% contingency fee on a $35 million settlement with Chadbourne & Parke LLP). Whether analyzed under the common fund approach, the *Johnson* framework, or both, the 25% fee sought by Plaintiffs' Counsel pursuant to their fee agreements is reasonable and should be approved by the Court.

90. The proposed 25% amount is a reasonable percentage of the common fund (*i.e.*, the $40 million settlement). "The vast majority of Texas federal courts and courts in this District have awarded fees of 25%–33% in securities class actions." *Schwartz*, 2005 WL 3148350, at *31 (collecting cases); *see also Al's Pals Pet Care v. Woodforest Nat'l Bank, NA*, No. 4:17-CV-3852, 2019 WL 387409, at *4 (S.D. Tex. Jan. 30, 2019) (noting that a fee of 33% "is an oft-awarded percentage in common fund class action settlements in this Circuit.").[12] Combined with the

[12] As set forth in *Schwartz*, courts in the Northern District of Texas and throughout the Fifth Circuit have routinely approved such awards. *See, e.g*, *Erica P. John Fund, Inc. v. Halliburton Co.*, No. 3:02-cv-1152-M (N.D. Tex. Apr. 25, 2018) (Chief Judge Lynn) (approving fee of 33% in a securities class action case); *Southland Secs. Corp. v. INSpire Ins. Solutions, Inc.*, No. 4:00-CV-355-y (N.D. Tex. Mar. 9, 2005 (Judge Means) (approving fee of 30% in securities class action); *Scheiner v. i2 Techs., Inc.*, No. 3:01-CV-418-H (N.D. Tex. Oct. 1, 2004) (Judge Sanders) (approving fee of 25% of $80 million settlement in securities class action); *Hoech v. Compusa, Inc.*, No. 3:98-CV-0998-M (N.D. Tex. Oct. 14, 2003) (Judge Lynn) (awarding 30% fee); *In re Firstplus Fin. Group, Inc. Sec. Litig.*, No 3:98-CV-2551-M (N.D. Tex.

Johnson analysis set forth below, the proposed fee award is reasonable and appropriate under the common fund doctrine as applied in the Fifth Circuit.

C. The Proposed Fee is Reasonable Under the Johnson Factors

91. The *Johnson* factors include: (1) time and labor required; (2) novelty and difficulty of the issues; (3) required skill; (4) whether other employment is precluded; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations; (8) the amount involved and the results obtained; (9) the attorneys' experience, reputation and ability; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *See Johnson*, 488 F.2d at 717–19. A review of these factors also reveals that the proposed 25% fee is reasonable and should be approved.

(1) Time and Labor Required

92. As reflected in the Berman and Morgenstern Declarations, Plaintiffs' Counsel invested significant time and labor in the Rotstain Litigation. Even a cursory review of the Rotstain Litigation docket (there are over 1,400 docket entries) reveals the immense amount of work required from Plaintiffs' Counsel to prosecute the claims against HSBC.

93. Moreover, as the Court is aware, the prosecution of a lawsuit of this magnitude and complexity requires a tremendous amount of time and effort to investigate the facts, research the relevant legal issues, coordinate and strategize with counsel and clients regarding the handling of the cases, conduct discovery (foreign and domestic), prepare the briefs and motions, attempt to

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Oct. 14, 2003) (Judge Lynn) (awarding 30% fee in securities class action); *Warstadt v. Hastings Entm't, Inc.*, No. 2:00-CV-089-J (N.D. Tex. Mar. 10, 2003 (Judge Robinson) (awarding 30% fee in securities class action); *Wolfe v. Anchor Drilling Fluids USA Inc.*, No. 4:15-CV-1344 (S.D. Tex. Dec. 7, 2015) (Judge Hoyt) (approving fee of 40% in FLSA class action); *Frost v. Oil States Energy Servs.*, No. 4:15-cv-1100 (S.D. Tex. Nov. 19, 2015) (Judge Lake) (approving fee of 33% in FLSA class action); *Campton v. Ignite Restaurant Group, Inc.*, No. 4:12-2196 (S.D. Tex. June 5, 2015) (Judge Gilmore) (approving fee of 33% in securities class action).

negotiate settlements, and prepare cases for summary judgment and/or trial. Plaintiffs' Counsel have spent thousands of hours since 2009 in their investigation and prosecution of the claims against HSBC.

94. Plaintiffs' Counsel have spent over 13 years and thousands of hours investigating and pursuing claims against HSBC on behalf of the Stanford Investors. Since 2010, Friedman Kaplan has invested thousands of hours, worth millions of dollars pursuing and litigating the Rotstain Litigation. Specifically, through February 28, 2023, Friedman Kaplan invested **24,131 hours** of time worth over **$16.6 million** at Friedman Kaplan's applicable hourly rates in the Rotstain Litigation, a substantial portion of which was dedicated to prosecution of the claims against HSBC. *See* Berman Decl., at ¶ 35. Butzel Long also has invested thousands of hours and millions of dollars of time pursuing claims against third parties related to the Stanford Receivership, including over **21,900 hours** of time worth more than **$14.3 million** at its applicable hourly rates on the Rotstain Litigation and related matters for which it has previously not been compensated. *See* Morgenstern Decl., at ¶ 30.

95. The tremendous amount of work required by Plaintiffs' Counsel to prosecute the claims against HSBC is described in the Berman and Morgenstern Declarations and this Motion. *See, e.g.*, Mot. ¶¶ 92-94.

96. Plaintiffs' Counsel's efforts, specifically with respect to claims against HSBC, included, among other things:

- researching, compiling evidence for, and filing the Committee's initial complaint and its Second Amended Intervenor Complaint;
- obtaining the production of discovery from multiple defendants;

- reviewing hundreds of thousands of documents produced by defendants, the Department of Justice, the SEC, the Receiver, the Joint Liquidators in Antigua, and others;
- compiling and designating exhibits for depositions and trial;
- briefing and defeating multiple rounds of motions to dismiss;
- taking the depositions of fact witnesses affiliated with HSBC, including Ian Brooks, Mark Stadler, Bradley Johnson, Augusto Ducreux, Caroline Roberts, and Nigel Weir;
- selecting, retaining, and briefing expert witnesses and preparing them for depositions, including Richard Palette, Karyl Van Tassel, and James Spindler in connection with the case against HSBC;
- reviewing the reports of experts retained by defendants, including HSBC;
- defending depositions of expert witnesses, including Messrs. Palette and Spindler, as well as working with other counsel in connection with defending multiple other depositions not specific to the case against the HSBC;
- taking the depositions of expert witnesses, including HSBC's experts Larry Iwanski and Bill Waldie;
- drafting initial disclosures;
- propounding and responding to numerous interrogatories, requests for production and requests for admission;
- drafting protective orders;
- preparing witness files and privilege logs;
- briefing legal issues such as participating in breach of fiduciary duty, aiding and abetting liability under the TSA, damages, causation, standing, jurisdiction, joint and several liability, proportionate responsibility, settlement credits, the extraterritorial application of the TSA and TUFTA, and responsible third parties;
- drafting and responding to *Daubert* motions to exclude or limit expert testimony;
- responding to a motion to designate responsible third parties;
- responding to motions for summary judgment;

- analyzing the propriety and timing of remand of the matter from the Stanford MDL back to the USDC for the Southern District of Texas;
- marshaling the enormous evidentiary record to assimilate the materials into Plaintiffs' planned and prepared trial presentation;
- analyzing all the contested legal and factual issues posed by the litigation to make appropriate demands and proper evaluations of HSBC's positions;
- consulting with a jury consultant; and
- responding to HSBC's petition for writ of mandamus within two weeks of the petition's filing and within 30 days of the trial date.

(2) Novelty and Difficulty of the Issues

97. The factual and legal issues presented in the Rotstain Litigation were difficult and complex. Plaintiffs' Counsel's investigation involved poring over numerous and voluminous banking records and transactional statements to understand HSBC's involvement in banking Stanford's sprawling group of companies.

98. Plaintiffs' Counsel conducted a thorough analysis of the potential claims against HSBC, considering: claims available under both state and federal law; the viability of those claims considering the facts underlying HSBC's banking relationship with Stanford and this Court's previous rulings; the success of similar claims in other fraud-scheme cases, both in the Fifth Circuit and elsewhere; as well as defenses raised by HSBC in its motions to dismiss and motions for summary judgment.

99. The case contained complex and novel issues raised by HSBC and its co-defendants via various motions, including OSIC's standing to assert its claims, the timeliness of the claims asserted, the availability of certain claims under Texas law, class certification, the viability of the participation in breach of fiduciary duty and aiding and abetting breach of the Texas Securities Act claims, causation and damages theories, and whether HSBC was subject to personal jurisdiction

in Texas.

100. The foregoing summary of the issues faced by Plaintiffs' Counsel in their investigation and litigation of the claims against HSBC illustrates the novelty, difficulty, and complexity of the issues in the Rotstain Litigation and supports the approval of the proposed fee.

(3) Skill Required

101. Given the complexity of the factual and legal issues presented in the Rotstain Litigation, the preparation, prosecution, and settlement of that Action required significant skill and effort on the part of Plaintiffs' Counsel. Plaintiffs' Counsel have been involved in numerous complex financial fraud and Ponzi scheme cases, on behalf of investors as well as receivership and bankruptcy estates on numerous occasions, and Butzel Long has served as counsel for the Receiver, the Committee, and other investor plaintiffs, both individually and as representatives of putative classes of Stanford Investors, in multiple other lawsuits pending before the Court. *See* Berman Decl., ¶¶ 3-10; Morgenstern Decl., at ¶¶ 3-6. Movants submit that the favorable result obtained in the HSBC Settlement is indicative of Plaintiffs' Counsel's skill and expertise in matters of this nature.

(4) Whether Other Employment is Precluded

102. Although participation in the Rotstain Litigation against HSBC did not necessarily preclude Plaintiffs' Counsel from accepting other employment, the sheer amount of time and resources involved in investigating, preparing, and prosecuting the claims against HSBC, as reflected by the hours invested in the case, significantly reduced Plaintiffs' Counsel's ability to devote time and effort to other matters. *See* Berman Decl. at ¶¶ 32-38; Morgenstern Decl., at ¶¶ 27-33.

(5) The Customary Fee

103. The 25% fee requested is substantially below the typical market rate contingency fee percentage of 33% to 40% that most law firms would demand to handle cases of this complexity and magnitude. *See Schwartz*, 2005 WL 3148350, at *31 (collecting cases and noting that 30% is standard fee in complex securities cases). "Attorney fees awarded under the percentage method are often between 25% and 30% of the fund." *Klein*, 705 F. Supp. 2d at 675 (citing *Manual for Complex Litig. (Fourth)* § 14.121 (2010)); *see, e.g.*, *SEC v. Temme*, No.4:11-cv-00655-ALM, at *4–5 (E.D. Tex. November 21, 2012), ECF No. 162 (25% contingent fee for a $1,335,000 receivership settlement); *Billitteri v. Sec. Am., Inc.*, No. 3:09–cv–01568–F (lead case), 2011 WL 3585983, *4–9 (N.D. Tex. 2011) (25% fee for a $80 million settlement); *Klein*, 705 F. Supp. 2d at 675–81 (30% fee for a $110 million settlement); *Al's Pals Pet Care*, 2019 WL 387409, at *4 (noting that "one-third of the . . . settlement fund . . . is an oft-awarded percentage in common fund class action settlements in this Circuit").

104. The Rotstain Litigation against HSBC is extraordinarily complex, involving voluminous records and electronic data and requiring many years of investigation, discovery, and dispositive motions to get to trial. The prosecution of the claims against HSBC has involved significant financial outlay and risk by Plaintiffs' Counsel, the risk of loss at trial after years of work for no compensation, and an almost certain appeal following any victory at trial. Plaintiffs' Counsel agreed to handle the Rotstain Litigation against HSBC on a 25% contingency fee basis, and that percentage is reasonable given the time and effort required to litigate the Action, its complexity and the risks involved.

(6) Whether the Fee is Fixed or Contingent

105. As set forth above, the fee was contingent upon success against HSBC. As a result,

Plaintiffs' Counsel bore significant risk in accepting the engagement.

(7) Time Limitations

106. At the time of the HSBC Settlement, Plaintiffs' Counsel were subject to significant time limitations, as the Parties finally reached an agreement within three days of trial. Indeed, given the breadth and scope of activity in the recent history of the Rotstain Litigation, including repeated rounds of briefing and motion practice, and numerous depositions, Plaintiffs' Counsel has been consistently under deadlines and time pressure.

(8) The Amount Involved and Results Obtained

107. As discussed further herein, $40 million represents a substantial settlement and value to the Receivership Estate. This factor also supports approval of the requested fee.

(9) The Attorneys' Experience, Reputation, and Ability

108. As noted above, Plaintiffs' Counsel have represented numerous investors, receivers, bankruptcy trustees, offshore liquidators and other parties in complex litigation matters related to bankruptcy proceedings and equity receiverships like the Stanford receivership proceeding. *See* ¶ 101 above. Moreover, counsel at Butzel Long has been actively engaged in the Stanford proceeding since its inception. Given the complexity of the issues in the Rotstain Litigation, Plaintiffs submit that the HSBC Settlement is indicative of Plaintiffs' Counsel's ability to obtain a favorable result in such proceedings.

(10) The Undesirability of the Case

109. The Rotstain Litigation is not *per se* undesirable, although suing banks and other financial institutions under a secondary liability theory is a challenging endeavor that may later preclude representing such institutions as clients.

(11) Nature and Length of Professional Relationship with the Client

110. As the Court is aware, Friedman Kaplan and Butzel Long have represented the Committee in the Rotstain Litigation since 2011 (and the Rotstain Investor Plaintiffs since 2010 and 2009, respectively). Additionally, Butzel Long has represented the Receiver, the Committee, and Investor Plaintiffs in numerous actions pending before the Court since 2009. Butzel Long has handled many cases on the same 25% contingency fee arrangement that has previously been approved by the Court. *See* SEC Action, ECF No. 1267, p. 2 ("The Court finds that the fee arrangement set forth in the Agreement is reasonable."); *see also* OSIC-Receiver Agreement, SEC Action, ECF No. 1208, p. 3 (providing a "contingency fee" of twenty-five percent (25%) of any Net Recovery in actions prosecuted by the Committee's designated professionals). This factor also weighs in favor of approval of the requested fee.

(12) Awards in Similar Cases

111. As noted above, a 25% contingency fee has previously been approved as reasonable by this Court in its order approving the Receiver's agreement with the Committee regarding the joint prosecution of fraudulent transfer and other claims by the Receiver and the Committee (the "OSIC-Receiver Agreement"). *See* SEC Action, ECF No. 1267, p. 2 ("The Court finds that the fee arrangement set forth in the Agreement is reasonable."); *see also* OSIC-Receiver Agreement, SEC Action, ECF No. 1208, Ex. A, p. 3 (providing a "contingency fee" of 25% of any Net Recovery in actions prosecuted by the Committee's designated professionals). The Court's order approving the OSIC-Receiver Agreement also provided that the Committee need not submit a fee application seeking an award of fees consistent with the percentage authorized under the Court's previous order unless required by Rule 23. *See* SEC Action, ECF No. 1267, p. 2.

112. The OSIC-Receiver Agreement further provided that the Committee "would prosecute certain fraudulent transfer claims and other actions for the benefit of Stanford investors/creditors in cooperation with Ralph S. Janvey, as receiver." *See* OSIC-Receiver Agreement, SEC Action, ECF No. 1208, Ex. A, p. 1. The Agreement further provided that "this proposal will apply to the litigation of all fraudulent transfer and similar claims that may be brought under common law, statute . . . or otherwise . . ." and "unless otherwise agreed, the terms of this agreement will likewise apply to the pursuit of any other claims and causes of action that the Receiver and the Committee determine to jointly pursue." *Id*. at pp. 1-2.

113. Further, this Court has approved a 25% contingency fee arrangement in the cases against BDO, Adams & Reese, Chadbourne, Proskauer, Hunton & Williams, and Greenberg. *See* Orders Approving Attorneys' Fees in *Official Stanford Inv'rs Comm. v. Greenberg Traurig, LLP*, No. 3:12-cv-04641-N-BQ (N.D. Tex. Feb. 25, 2020) [ECF No. 374]; *Official Stanford Inv'rs Comm. v. BDO USA, LLP*, No. 3:12-cv-01447-N-BG (N.D. Tex. Sep. 23, 2015) [ECF No. 80]; *Ralph S. Janvey v. Adams & Reese, LLP*, Civil Action No. 3:12-CV-00495-B [SEC Action, ECF. No. 2231]; *Ralph S. Janvey v. Proskauer Rose, LLP, et al.*, 3:13-cv-00477 [SEC Action, ECF No. 2366] (approving 25% contingency fee on a $35 million settlement with Chadbourne & Parke LLP), [SEC Action, ECF No. 2820] (approving 25% contingency fee on a $63 million settlement with Proskauer Rose, LLP); and *Ralph S. Janvey v. Willis, et al.* [SEC Action, ECF No. 2567] (approving 25% contingency fee in settlement with BMB defendants).

114. As set forth in *Schwartz*, courts in this district have routinely approved 25%, and more often 30%, fee awards in complex securities class actions. 2005 WL 3148350, at *27

(collecting cases). Under the circumstances of this case, such an award is appropriate here as well.

D. The Proposed Fee Should Be Approved

115. For the same reasons the Court previously found the 25% contingency fee OSIC-Receiver Agreement to be reasonable in the cases referenced above the Court should find the 25% contingency fee applicable to the HSBC Settlement to be reasonable and approve it for payment. Here, there is even more reason to find the fee to be reasonable given the vast amount of work and risk undertaken by Plaintiffs' Counsel. The settlement of the claims against HSBC has yielded an enormous benefit to the Stanford Receivership Estate and the Stanford Investors and compares favorably to the other settlements of third-party lawsuits in the almost 14-year history of the Stanford receivership. Thus, Movants submit that an award of attorneys' fees equal to 25% of the net recovery from the HSBC Settlement, as requested, is reasonable and appropriate and should be approved under applicable Fifth Circuit law, whether using a common fund approach, the *Johnson* factor approach, or a blended approach.

116. Movants therefore request that the Court approve the reimbursement, from the Settlement Amount, of expenses advanced by the Receiver and Plaintiffs' Counsel as described herein in the total amount of **$4,185,400.88**, and that the Court approve attorneys' fees in the total amount of **$8,953,649.78**.[13] A proposed form of Order Approving Attorneys' Fees is attached as **Exhibit 5** to the Appendix to this Motion.

E. Examiner Support for Fee Award

117. John J. Little in his capacity as Court-appointed Examiner also supports the award of Plaintiffs' attorneys' fees, and requests that the Court approve them. *See* Declaration of

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13 Expenses will increase from this amount due to the incorporation of additional costs arising out of final trial preparation activities and costs incurred to give notice of the settlement.

Examiner John J. Little, attached as **Exhibit 6** to the Appendix to this Motion.

V. CONCLUSION & PRAYER

118. The HSBC Settlement represents a substantial and important recovery for the Receivership Estate and the Stanford Investors. The large amount of the recovery, the time and costs involved in pursuing litigation against HSBC, and the uncertain prospects for obtaining and then recovering a judgment against HSBC, all weigh heavily toward approving the HSBC Settlement, entering the Bar Order, and approving the attorneys' fees of Plaintiffs' Counsel.

WHEREFORE, PREMISES CONSIDERED, Movants respectfully request this Court:

a. Enter the proposed Scheduling Order providing for notice and a hearing on this Motion;

b. Grant this Motion;

c. Approve the HSBC Settlement;

d. Enter the Bar Order in the SEC Action;

e. Approve the reimbursement of expenses to Plaintiffs' Counsel in the total amount of $4,185,400.88 and payment of attorneys' fees to Plaintiffs' Counsel in the total amount of $8,953,649.78; and

f. Grant Plaintiffs all other relief to which they are entitled.

Dated: March 8, 2023

Respectfully submitted,

BAKER BOTTS L.L.P.

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CERTIFICATE OF SERVICE

On March 8, 2023, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I will serve the Court-appointed Examiner, all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

On March 8, 2023, I served a true and correct copy of the foregoing document and the notice of electronic filing by United States Postal Certified Mail, Return Receipt required to the persons noticed below who are non-CM/ECF participants:

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