

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

In re:		Case No. 17-13328-FJB
RMA STRATEGIC OPPORTUNITY FUND, LLC,		Chapter 7
Debtor		Adv. Proc. No. 19-01115
MARK G. DEGIACOMO, CHAPTER 7 TRUSTEE FOR THE ESTATE OF RMA STRATEGIC OPPORTUNITY FUND, LLC, Plaintiff, v. CITIBANK, N.A., Defendant.		

**Ryan Montoya's Motion to Consolidate**

Now comes interested party and proposed intervenor-defendant Ryan Montoya ("Montoya"), through counsel, and hereby makes this Motion to Consolidate this proceeding with adversary proceeding 18-01019 (the "Motion"), pursuant to Fed. R. Civ. P. 42, made applicable to this proceeding by Fed. R. Bankr. P. 7042. Briefly stated, Montoya was already sued by Mark G. DeGiacomo (in his capacity as trustee of the Debtor) (the "Trustee") in another adversary proceeding pending before this Court at Docket No. 18-01019 (the "Montoya Adversary"), in which the complaint alleged fraudulent transfers to him or for his benefit; as more fully developed in Montoya's Motion to Intervene, filed contemporaneously herewith and incorporated herein by reference, this adversary has common questions of fact and law, and any resolution of it will affect Montoya. Accordingly, this adversary and the Montoya Adversary may be consolidated for trial. *See* Fed. R. Civ. P. 42.

**Relevant Facts**

1. Montoya is an adult son of Raymond K. Montoya (the founder of the debtor).  
Montoya is a physician.
2. Montoya is a defendant in Mark G. DeGiacomo, Chapter 7 Trustee for the Estate of RMA Strategic Opportunity Fund, LLC v. RAYMOND K. MONTOYA, ROSS P. MONTOYA, ALMA U. MONTOYA, RYAN J. MONTOYA, RESOURCE MANAGED ASSETS, LLC, RESEARCH MAGNATE ADVISORS, LLC and RMA GROUP, INC., captioned as case number 1:18-ap-01019 in this Court. Ex. A (“Montoya Complaint”) (the “Montoya Adversary”).
3. In the Montoya Complaint, the Trustee alleged that “During the four years prior to the Petition Date, and likely much earlier, [Montoya] regularly received payments of Debtor funds in the form of direct payments and payment of personal expenses on his behalf made directly to third parties.” Ex. A, para. 68.
4. This adversary proceeding was initiated by a complaint that alleges transfers to Citi by the Debtor, to pay credit cards of which “[Montoya’s father] or another member of his immediate family was the owner and obligor.” See Ex. B (“Citi Complaint”), paras. 41-45.
5. The Trustee and Citi now seek to compromise the Citi Adversary. The Motion to Compromise acknowledges that some of the Trustee’s asserted fraudulent transfers in the Citi Adversary were transfers to Montoya’s Citi credit card. Ex. C (“Motion to Approve Proposed Settlement Agreement”), para. 7.

### **Standard of Law**

The Court may consolidate actions that involve a common question of law or fact, including joining them for hearing or for trial, and issuing other orders that avoid unnecessary cost or delay. Fed. R. Civ. P. 42. Related cases that should be consolidated are those “which: (1) arise from substantially the same transaction or event; (2) involve substantially the same parties or property; . . . (4) call for resolution of substantially the same questions of law...” *See Notinger v. Lemery Dev., LLC (In re Lemery Bldg. Co.)*, 2005 Bankr. LEXIS 994, \*7-8 (Bankr. D.N.H. May 27, 2005) (Deasy, J.), quoting from U.S. Dist. Ct., D. N.H., R. 42.1(a).

### **Argument**

The Citi Adversary should be consolidated with the Montoya Adversary. While the District of Massachusetts does not have a local rule related to Fed. R. Civ. P. 42, the neighboring District of New Hampshire does, and this persuasive authority strongly favors consolidation. *See* D. N.H., R. 42.1(a). Even a cursory comparison of the two complaints suggests they arise from substantially the same transactions or events, involve substantially the same parties or property, and call for resolution of the same questions of law. These two adversaries are both cases in which the same plaintiff alleges fraudulent transfers, implicating similar if not identical questions of law. Finally, the parties are substantially the same – there is not a meaningful distinction between Montoya and Citi justifying separate adversaries for the same transfers. The Citi Complaint all but identifies Montoya as the alleged beneficiary of the transfers, *see* Ex. B, para. 41 (“immediate family”), the Proposed Settlement Agreement openly names him as one, *see* Ex. C, while the Montoya

Adversary specifically alleges that he is a beneficiary of them and treats him as a party. *Cf.* Ex. A.

Where there are common parties and common issues of law and fact, consolidation is commonly granted, unless the party opposing consolidation can show “demonstrable prejudice.” *Juan Juan Chen v. Wen Jing Huang (In re Wen Jing Huang)*, 509 B.R. 742, 748 (Bankr. D. Mass. 2014) (Boroff, J.) (internal citations omitted). The Montoya Adversary is presently pending trial scheduled to commence 8/10/2020, after being rescheduled from 5/18/2020 due to the pandemic. Montoya notes that at the time the Citi Adversary was filed on 10/02/2019, trial of the Montoya Adversary had not yet been scheduled. There was ample time for the Trustee to take action in the Montoya Adversary, which undersigned counsel likely would not have opposed. Filing the duplicative Citi Adversary was unnecessary. If there is a problem with prejudice or delay, it is of the Trustee’s own making, and the Trustee should therefore be estopped from that argument. Therefore, the cases should be consolidated.

### **Conclusion**

For the foregoing reasons, the Court should consolidate the Citi Adversary, adversary proceeding number 19-01115, with the Montoya Adversary, adversary proceeding number 18-01019.

WHEREFORE, Montoya respectfully requests that this honorable Court:

- 1) Grant this Motion;
- 2) Consolidate this adversary proceeding (the "Citi Adversary") with the adversary proceeding number 18-01019 (the "Montoya Adversary").
- 3) Take whatever further action is proper and just;

Dated: May 15, 2020

Respectfully submitted,  
Ryan Montoya,  
By his attorney,  
/s/ William C. Parks  
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**Certificate of Service**

I, William C. Parks, undersigned, hereby certify that on this day, May 15, 2020, I served a true copy of this Motion by the Court's CM/ECF system upon the parties listed below:

John Fitzgerald ([USTPRegion01.BO.ECF@USDOJ.GOV](mailto:USTPRegion01.BO.ECF@USDOJ.GOV))  
Eric K. Bradford ([Eric.K.Bradford@USDOJ.gov](mailto:Eric.K.Bradford@USDOJ.gov))

Mark G. DeGiacomo ([mdegiacomo@murthalaw.com](mailto:mdegiacomo@murthalaw.com))  
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/s/ William C. Parks (BBO# 679820)

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

In re:

RMA STRATEGIC OPPORTUNITY  
FUND, LLC,

Debtor.

CHAPTER 7  
CASE NO. 17-13328-FJB

MARK G. DEGIACOMO, CHAPTER 7  
TRUSTEE FOR THE ESTATE OF RMA  
STRATEGIC OPPORTUNITY  
FUND, LLC,

Plaintiff,

v.

18-

RAYMOND K. MONTOYA, ROSS P.  
MONTOYA, ALMA U. MONTOYA, RYAN  
J. MONTOYA, RESOURCE MANAGED  
ASSETS, LLC, RESEARCH MAGNATE  
ADVISORS, LLC and RMA GROUP, INC.,

Defendants,

CENTURY BANK AND TRUST COMPANY  
and SANTANDER BANK, N.A.

Trustee Process  
Defendants.

**COMPLAINT**

**INTRODUCTION**

1. An investment in the RMA Strategic Opportunity Fund, LLC (the “Debtor”) was billed to investors as an opportunity to invest in a multi-billion dollar hedge fund that consistently outperformed the S&P 500 Index. In fact, it was nothing

more than a Ponzi scheme that was operated as a slush fund for the benefit of defendant Raymond Montoya (“Raymond”) and his immediate family.

2. To carry out the fraud, Raymond and others utilized a web of entities and bank accounts to move investor money around, repay earlier investors with new investor money, and divert a substantial amount of the invested funds to themselves in the form of direct distributions and payments of their personal expenses to third parties. In all, between January 1, 2014 and the present, approximately \$30 million was received from investors.

3. On August 1, 2017 a Criminal Complaint was filed against Raymond in the United States District Court for the District of Massachusetts alleging that he committed wire fraud and mail fraud in his operation of the Debtor. Of the more than \$30 million received from investors, only a fraction of that amount remained at the time of Raymond’s arrest. This adversary proceeding attempts to recover funds that were diverted from the Debtor to Raymond and certain immediate family members.

#### **THE PARTIES**

4. The plaintiff, Mark G. DeGiacomo, the Chapter 7 Trustee (the "Plaintiff" or “Trustee”) of the bankruptcy estate of the Debtor brings this action.

5. Raymond is an individual with a last known and usual address of 26 High Rock Way, Allston, Massachusetts 02134-2415.

6. Alma U. Montoya (“Alma”) is an individual with a last known and usual address of 26 High Rock Way, Allston, Massachusetts 02134-2415. Alma is Raymond’s wife.



7. Ross P. Montoya (“Ross”) is an individual with a last known and usual address of 26 High Rock Way, Allston, Massachusetts 02134-2415. Ross is Raymond and Alma’s son.

8. Ryan J. Montoya (“Ryan”) is an individual with a last known and usual address of 26 High Rock Way, Allston, Massachusetts 02134-2415. Ryan is Raymond and Alma’s son.

9. Resource Managed Assets, LLC (“RM Assets”) is a Delaware limited liability company with a last known principal place of business at 175 Federal Street, Suite 910, Boston, Massachusetts 02110. At all times relevant hereto Ross and Raymond were RM Assets’ managers, and RM Assets was the Debtor’s managing member. Upon information and belief, Ross was RM Assets’ managing director and chief executive officer.

10. Research Magnate Advisors, LLC (“RM Advisors”) is a Delaware limited liability company with a last known principal place of business located at 175 Federal Street, Suite 910, Boston, Massachusetts 02110. At all times relevant hereto Ross and Raymond were RM Advisors’ managers. Upon information and belief, Raymond was RM Advisors’ managing director and chief executive officer.

11. RMA Group, Inc. (“RMA Group”) is a Delaware corporation with a former principal place of business located at 175 Federal Street, Suite 910, Boston, Massachusetts 02110.

12. Upon information and belief, Century Bank and Trust Company is a banking and trust company organized under the laws of the Commonwealth of Massachusetts with a place of business at 400 Mystic Avenue, Medford, Massachusetts.

13. Upon information and belief, Santander Bank, N.A. is a national association with a place of business at 75 State Street, 5<sup>th</sup> Floor, Boston, Massachusetts.

### **JURISDICTION, VENUE AND STANDING**

14. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

15. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (F), (H) and (O).

16. Venue is proper in the District of Massachusetts pursuant to 28 U.S.C. § 1409.

### **FACTUAL ALLEGATIONS**

#### **I. Case Background**

17. On September 5, 2017, three petitioning creditors filed an involuntary petition pursuant to Chapter 11 of the Bankruptcy Code against the Debtor.

18. On October 6, 2017, this Court entered an Order for Relief.

19. On November 15, 2017, the Court entered an order converting the Debtor's case to Chapter 7.

20. On November 15, 2017, the Trustee was appointed as the Chapter 7 Trustee of this bankruptcy estate.

#### **II. The Debtor**

21. The Debtor was a pooled investment vehicle that was formed on May 16, 2007 as a Delaware limited liability company with the name RMA Group Galleon Fund, LLC.

22. On March 27, 2009 the Debtor registered to do business in Massachusetts,

at which time Raymond and Ross were its managers.

23. On October 23, 2009 the Debtor's name was changed to RMA Strategic Opportunity Fund, LLC.

24. On November 16, 2009, Raymond filed a Certificate of Amendment with the Office of the Secretary of the Commonwealth, changing the Debtor's managers from himself and Ross, to RM Assets. Following the change of managers, Raymond and Ross continued to manage the Debtor by virtue of their being the managers of the Debtor's sole manager, RM Assets.

25. At all times relevant hereto, Raymond and Ross were the managers of RM Advisors. RM Advisors purported to be the Debtor's "investment advisor."

### **III. The Debtor and Its Affiliates Were Operated as a Scheme to Defraud Investors**

#### **a. The Debtor's Investors Were Continually and Materially Misled**

26. Raymond formed the Debtor after a period of self-employment as a "management consultant" for certain members of this family from 2000 to 2007. Raymond conducted his consulting business as RMA Group, Inc.

27. At least by July 2012, and likely much earlier, Raymond and RM Assets distributed materially misleading marketing materials to current and prospective investors.

28. For example, in July 2012, the Administrative Manager and Compliance Officer for RM Assets, and Raymond's current daughter-in-law, e-mailed two prospective investors a number of documents, including a document titled "RMA Overview: 1995 to 2011 (the "RMA Overview").

29. The RMA Overview states, in part, "In 1995, RMA was founded and

raised \$1 billion in private equity by selling 1,000 investment shares at \$1 million each.

By 2011, this \$1 million investment share would be worth almost \$230 million."

30. The Debtor did not exist in 1995.

31. The RMA Overview further states:

From its inception in 1995 through 1999, RMA took advantage of the numerous investment opportunities available during this period now known as the "Internet bubble." Consequently, RMA was able to produce for our investors during these unique and unusual investment times an **average annual return of 113.8%**.

[ ]

The markets again crashed with a vengeance in 2008, producing one of the worst single year drops in S&P 500 history at -38.5%. However, once again RMA's analytic models warned of fundamental issues allowing RMA to take defensive investment positions during 2008 and still return 10.2% to our investors. As a result, from 2008 through 2011 when the S&P 500's annual returns were -3.8%, RMA's annual returns were 10.7%.

(Emphasis added).

32. The RMA Overview's statements of purported historical returns, including those for years in which the RMA Fund did not exist, were false.

33. In addition, Raymond and RM Assets provided investors statements purportedly showing a summary of the Debtor's investment holdings.

34. A statement provided to investors purportedly showing the Debtor's investment holdings as of December 31, 2014, stated that the Debtor had total investment holdings of \$4,996,692,062, of which \$98,355,562 was held in cash, \$320,834,630 in money market funds, \$1,177,515,321 in bonds, and \$3,399,986,549 in equity holdings.

35. These statements concerning the Debtor's investment holdings are false, and upon information and belief, even at its high water mark, the Debtor had no more than \$15 million in assets at any given time.

36. In another example, in October 2016, Montoya created and caused to be

distributed to investors in the Debtor a document purporting to show the Debtor's Fund's trading performance, net of fees, between January 2012 and October 2016 (the "RMA Returns Summary").

37. The RMA Returns Summary states that the Debtor outperformed the S&P 500 by 134% from January 2008 through October 2016.

38. The Debtor did not outperform the S&P 500 by 134% from January 2008 through October 2016.

39. The RMA Returns Summary states that the Debtor generated a cumulative return of 178.85% through trading gains from January 2008 through October 2016.

40. The Debtor did not generate a cumulative return of 178.85% through trading gains from January 2008 through October 2016.

41. The RMA Returns Summary states that the Debtor generated a positive return from trading results, net of fees, for 55 of the 58 preceding months.

42. In fact, the Debtor did not generate positive trading returns, net of fees, for 55 of the preceding 58 months.

43. In another piece of marketing material, RM Assets indicates that they utilize "distinct, specific, proprietary methods that have proven reliable and profitable during bull and bear market cycles."

44. When asked to identify and explain these methods, Montoya testified under oath on June 2, 2017 at an examination before the Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts that the Debtor utilized a proprietary algorithm, which he purchased from a software developer for \$5,000, that can predict the minute-to-minute price movements of individual stocks with 65% accuracy.

45. On information and belief, no such proprietary algorithm exists.

**b. Funds Intended for Investment in the Debtor Were Systemically Misappropriated by the Montoya Family**

46. After deciding to invest in the Debtor, prospective investors were directed to wire funds to an account at Citizens Bank in the name of RMA Group ending in -3582 (the “-3582 Citizens Account”), or to send a check to the Debtor’s office which was then deposited into the -3582 Citizens Account.

47. Raymond, his wife Alma, and their sons Ryan and Raymond Montoya II (“Raymond Jr.”), were all authorized signatories on the -3582 Citizens Account.

48. Between January 1, 2014 and the present, investors transferred approximately \$30 million to the -3582 Citizens Account that they intended as investments in the Debtor.

49. Over that same time period, a total of less than \$15,830,000 was transferred from the -3582 Citizens Account to one of five (5) brokerage accounts held at E\*TRADE Securities LLC (“E\*Trade”).

50. The respective E\*Trade accounts stood in the names of: (1) the Debtor; (2) RM Advisors; (3) RM Assets; (4) RMA Group Consultants, Inc.; and (5) Raymond and Alma, individually.

51. From January 1, 2014 to the present, approximately \$12,830,000 of Debtor investor funds were transferred from the -3582 Citizens Account to Raymond and Alma’s personal E\*Trade account.

52. During that same time period approximately \$1,500,000 of Debtor investor funds were transferred to the Debtor’s E\*Trade account, and approximately \$1,500,000 were transferred to the three other E\*Trade accounts.

53. From January 1, 2014 to the present, over \$16 million of Debtor investor funds were never transferred from the -3582 Citizens Account to any brokerage account. Instead, these funds were used to pay, among other things, purported capital distributions to the Debtor's investors, purported operational expenses, and personal expenses for Raymond and his family.

54. On June 8, 2017, the Massachusetts Securities Division Enforcement Section filed an Administrative Complaint against Raymond, RM Advisors and RM Assets, alleging that they had violated Massachusetts securities laws by operating the Debtor as "a fraudulent hedge fund" whereby he raised money by misleading investors while using the money for his own personal benefit and that of his immediate family and make Ponzi-like repayments to certain other investors.

55. On August 1, 2017, a Criminal Complaint was filed against Raymond in the United States District Court for the District of Massachusetts alleging that Raymond committed wire and mail fraud by using the Debtor to commit a scheme to defraud investors.

**c. Transfers to or for the Benefit of Montoya Family Members**

**i. Transfers to or For the Benefit of Raymond**

56. During the four years prior to the Petition Date, and likely much earlier, Raymond regularly received payments of Debtor funds in the form of distributions, salary and payment of personal expenses on his behalf made directly to third parties.

57. During the four years prior to the Petition Date, Raymond personally received many millions of dollars of Debtor funds that he diverted to his own personal use, including but not limited to more than twelve million transferred to his an E\*Trade

account in the name of himself and Alma, individually (the “Raymond Four Year Transfers”).

58. During the two years prior to the Petition Date Raymond received personally at least seven million dollars of investor funds that he diverted to his own personal use (the “Raymond Two Year Transfers”).

59. On January 27, 2015, Raymond deposited a check for \$125,000 of Debtor funds in an account held at Santander Bank. Upon information and belief, from time to time Raymond deposited additional Debtor funds into an account at Santander Bank.

**ii. Transfers to or For the Benefit of Alma**

60. During the four years prior to the Petition Date, and likely much earlier, in addition to transfers to her and Raymond’s personal E\*Trade account totaling more than twelve million dollars, Alma regularly received payments of Debtor funds in the form of direct payments, “salary” and payment of personal expenses on her behalf made directly to third parties.

61. As detailed on Exhibit A hereto, the Debtor made payments directly to Alma or for her benefit, of no less than \$686,341.93 within four years of the Petition Date (the “Alma Four Year Transfers”), of which \$426,821.07 was received within two years of the Petition Date (the “Alma Two Year Transfers”), and \$202,615.00 was received within one year of the Petition Date (the “Alma One Year Transfers”).

62. During this time Alma had signing authority for the -3582 Citizens Account and, upon information and belief, regularly caused Debtor investor funds in that account to be transferred to her or for her benefit.

63. Alma knowingly received payments of investor funds purportedly as



salary, even though she never provided services to the Debtor or any of its affiliates.

64. On June 13, 2016, Alma deposited a check for \$200,000 of Debtor funds in an account held at Century Bank.

65. On February 16, 2017, Alma deposited a check for \$200,000 of Debtor funds in an account held at Century Bank. Upon information and belief, from time to time Alma deposited additional Debtor funds into an account at Century Bank.

**iii. Transfers to or For the Benefit of Ross**

66. During the four years prior to the Petition Date, and likely much earlier, Ross regularly received payments of Debtor funds in the form of direct payments, “salary” and payment of personal expenses on his behalf made directly to third parties.

67. As detailed on Exhibit B hereto, the Debtor made payments directly to Ross or for his benefit, of no less than \$484,653.33 within four years of the Petition Date (the “Ross Four Year Transfers”), of which \$283,572.13 was received within two years of the Petition Date (the “Ross Two Year Transfers”), and \$221,775.00 was received within one year of the Petition Date (the “Ross One Year Transfers”).

**iv. Transfers to or for the Benefit of Ryan**

68. During the four years prior to the Petition Date, and likely much earlier, Ryan regularly received payments of Debtor funds in the form of direct payments and payment of personal expenses on his behalf made directly to third parties.

69. As detailed on Exhibit C hereto, the Debtor made payments directly to Ryan, or for his benefit, of no less than \$143,393.70 within four years of the Petition Date (the “Ryan Four Year Transfers”), of which \$82,662.32 was received within two years of the Petition Date (the “Ryan Two Year Transfers”), and \$29,816.32 was received within

one year of the Petition Date (the “Ryan One Year Transfers”).

**d. The Debtor Was Insolvent At All Times and Perpetrated a Fraud On Existing and Future Creditors**

70. At all times relevant hereto the Debtor was insolvent.

71. At all times relevant hereto the Debtor was operated as a scheme to defraud then existing and future creditors.

72. RM Assets, RM Advisors and RMA Group were each used as instrumentalities to further the Debtor’s fraudulent scheme.

73. Neither RM Assets, RM Advisors nor RMA Group had any legitimate business operation, and were operated solely in furtherance of the Debtor’s fraudulent scheme.

**COUNT I**

Fraudulent Transfer – Constructive  
11 U.S.C. §§ 548, 550, 551  
Against Raymond, Ross, Alma and Ryan

74. The Trustee reasserts and realleges paragraphs 1 through 73 of this Adversary Complaint as if fully set forth herein.

75. Each of the Raymond Two Year Transfers, the Ross Two Year Transfers, the Alma Two Year Transfers and the Ryan Two Year Transfers (collectively the “Two Year Transfers”) constitute a “transfer” as that term is defined in 11 U.S.C. § 548, of an asset or interest in an asset of the Debtor.

76. Each of the Two Year Transfers was made within two years of the Petition Date.

77. Each of the Two Year Transfers was made while the Debtor was insolvent.

78. Each of the Two Year Transfers was made for less than reasonably

equivalent value.

79. The Two Year Transfers constitute fraudulent transfers avoidable by the Trustee pursuant to § 548(a)(1)(B) of the Bankruptcy Code and recoverable from Raymond, Ross, Alma and Ryan pursuant to §§ 550 and 551 of the Bankruptcy Code.

80. As a result of the forgoing, the Trustee is entitled to a judgment against Raymond, Ross, Alma and Ryan: (a) avoiding and preserving the Two Year Transfers, (b) directing that the Two Year Transfers be set aside, and (c) recovering the Two Year Transfers from Raymond, Ross, Alma and Ryan for the benefit of the Debtor's estate, in amounts to be determined by the Court.

## COUNT II

Fraudulent Transfer – Actual Fraud  
11 U.S.C. §§ 548, 550, 551  
Against Raymond, Ross, Alma and Ryan

81. The Trustee reasserts and realleges paragraphs 1 through 80 of this Adversary Complaint as if fully set forth herein.

82. Each of the Two Year Transfers constitute a “transfer” as that term is defined in 11 U.S.C. § 548, of an asset or interest in an asset of the Debtor.

83. Each of the Two Year Transfers was made within two years of the Petition Date.

84. Each of the Two Year Transfers was made with the actual intent to hinder, delay or defraud the Debtor's then existing and future creditors.

85. The Two Year Transfers constitute fraudulent transfers avoidable by the Trustee pursuant to § 548(a)(1)(A) of the Bankruptcy Code and recoverable from Raymond, Ross and Alma pursuant to §§ 550 and 551 of the Bankruptcy Code.

86. As a result of the forgoing, the Trustee is entitled to a judgment against Raymond, Ross, Alma and Ryan: (a) avoiding and preserving the Two Year Transfers, (b) directing that the Two Year Transfers be set aside, and (c) recovering the Two Year Transfers from Raymond, Ross, Alma and Ryan for the benefit of the Debtor's estate, in amounts to be determined by the Court.

### COUNT III

Fraudulent Transfer – Constructive  
11 U.S.C. §§ 544(b), 550, 551 & M.G.L. ch.109A, §§ 5(a)(2) & (8)  
Against Raymond, Ross, Alma and Ryan

87. The Trustee reasserts and realleges paragraphs 1 through 86 of this Adversary Complaint as if fully set forth herein.

88. Pursuant to 11 U.S.C. § 544, the Trustee may avoid any transfer of an interest of the Debtor in property, or any obligation incurred by the Debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under § 502.

89. Each of the Raymond Four Year Transfers, Ross Four Year Transfers, Alma Four Year Transfers and Ryan Four Year Transfers (collectively the "Four Year Transfers") constitute a transfer of the Debtor's property.

90. Each of the Four Year Transfers occurred within four years prior to the Petition Date.

91. The Debtor did not receive reasonably equivalent value in exchange for any of the Four Year Transfers.

92. Each of the Four Year Transfers were made when the Debtor was insolvent.

93. As of the Petition Date, there existed a creditor of the Debtor holding an unsecured claim allowable under 11 U.S.C. § 502 who could avoid the Four Year Transfers under applicable Massachusetts law.

94. Each of the Four Year Transfers Transfer may be avoided by the Trustee as a fraudulent transfer pursuant to the provisions of 11 U.S.C. § 544 and M.G.L. ch.109A, §§ 5(a)(2) & (8), and preserved for the bankruptcy estate pursuant to the provisions of 11 U.S.C. § 550 and 551.

#### COUNT IV

Fraudulent Transfer – Actual Fraud  
11 U.S.C. §§ 544(b), 550, 551 & M.G.L. ch.109A, §§ 5(a)(1) & (8)  
Against Raymond, Ross, Alma and Ryan

95. The Trustee reasserts and realleges paragraphs 1 through 94 of this Adversary Complaint as if fully set forth herein.

96. Pursuant to 11 U.S.C. § 544, the Trustee may avoid any transfer of an interest of the Debtor in property, or any obligation incurred by the Debtor that is avoidable under applicable law by a creditor holding an unsecured claim that is allowable under § 502.

97. Each of the Four Year Transfers constitute a transfer of the Debtor's property.

98. Each of the Four Year Transfers occurred within four years prior to the Petition Date.

99. Each of the Four Year Transfers was made by the Debtor with actual intent to hinder, delay, or defraud the Debtors' creditors.

100. Each of the Four Year Transfers was to an insider.

101. The Debtor did not receive reasonably equivalent value in consideration for any of the Four Year Transfers.

102. Each of the Four Year Transfers was made at a time when the Debtor was insolvent.

103. As of the Petition Date, there existed a creditor of the Debtor holding an unsecured claims allowable under 11 U.S.C. § 502 who could avoid each of the Four Year Transfers under applicable Massachusetts law.

104. Each of the Four Year Transfers may be avoided by the Trustee as a fraudulent transfer pursuant to the provisions of 11 U.S.C. § 544 and ch.109A, §§ 5(a)(1) & (8), and preserved for the estate pursuant to the provisions of 11 U.S.C. § 550 and 551.

#### **COUNT V**

#### **Unjust Enrichment**

#### **Against Raymond, Ross, Alma and Ryan**

105. The Trustee reasserts and realleges paragraphs 1 through 104 of this Adversary Complaint as if fully set forth herein.

106. Each of Raymond, Ross, Alma and Ryan received a benefit to which they were not entitled in the form of the value of the Four Year Transfers, at the expense of the Debtor's defrauded investors and creditors.

107. It would be unjust for Raymond, Ross, Alma and Ryan to retain the benefit of the Four Year Transfers.

108. The Trustee, on behalf of the Debtor's estate, is entitled to restitution from Raymond, Ross, Alma and Ryan in the amount of the Four Year Transfers.

**COUNT VI**

Breach of Duty of Care  
Against Raymond and Ross

109. The Trustee reasserts and realleges paragraphs 1 through 108 of this Adversary Complaint as if fully set forth herein.

110. Raymond and Ross, as managers of the Debtor, RM Advisors and RM Assets, owed a fiduciary duty to the Debtor.

111. As such, Raymond and Ross had an obligation (i) to exercise due care and diligence in the management and administration of the Debtor and in the use and preservation of the Debtor's property, funds and assets; and (ii) to ensure that the Debtor did not engage in any unsound management and investment practices.

112. Raymond and Ross breached their fiduciary duty of care to the Debtor by, other among things, causing the Debtor to engage in a Ponzi scheme, where operations were funded not principally from the sale of a legitimate product or service but from the contributions of new investors, and misleading potential investors to invest in the Debtor in order to continue the Ponzi scheme for the benefit of themselves and other immediate family members.

113. As a result of Raymond Ross's conduct, the Debtor and its investors incurred more than \$30 million in damages, and the Trustee on behalf of the Debtor's estate is entitled to a judgment against Raymond and Ross in that amount.

**COUNT VII**

Breach of Duty of Good Faith  
Against Raymond and Ross

114. The Trustee reasserts and realleges paragraphs 1 through 113 of this Adversary Complaint as if fully set forth herein.

115. Raymond and Ross, as managers of the Debtor, RM Advisors and RM Assets, owed a fiduciary duty of good faith to the Debtor.

116. As such, Raymond and Ross had an obligation (i) to deal fairly and honestly with the Debtor; (ii) to act in a responsible and lawful manner; with undivided loyalty; and (iii) to ensure that the Debtor did not engage in any unsound management and investment practices.

117. Raymond and Ross breached their fiduciary duty of good faith to the Debtor by, among other things, causing the Debtor to engage in a Ponzi scheme, where operations were funded not principally from the sale of a legitimate product or service but from the contributions of new investors, and misleading potential investors to invest in the Debtor in order to continue the Ponzi scheme for the benefit of themselves and other immediate family members.

118. As a result of Raymond Ross's conduct, the Debtor and its investors incurred more than \$30 million in damages, and the Trustee on behalf of the Debtor's estate is entitled to a judgment against Raymond and Ross in that amount.

### **COUNT VIII**

#### **Declaratory Judgment Substantively Consolidating and/or Piercing the Veil of RM Assets**

119. The Trustee reasserts and realleges paragraphs 1 through 118 of this Adversary Complaint as if fully set forth herein.

120. At all material and relevant times hereto, RM Assets was the Debtor's affiliate, acted as the Debtor's managing member, and was managed and controlled by Raymond and Ross.

121. At all material and relevant times hereto, Raymond and Ross controlled



and operated RM Assets in furtherance of a scheme to defraud the Debtor's then existing and future investors and creditors, for their own personal benefit without regard to corporate formalities, such that the business of RM Assets and the Debtor were one and the same.

122. Raymond and Ross used RM Assets to perpetrate a fraud upon the Debtor's creditors by, among other things, utilizing accounts in the name of RM Assets to make transfers of the Debtor's property for their own benefit and for the benefit of other family members.

123. The Trustee is entitled to a declaratory judgment piercing RM Assets corporate veil and/or substantively consolidating RM Assets with the Debtor's estate, which is necessary to remedy an injustice and fraud upon the Debtor's creditors.

#### **COUNT IX**

#### **Declaratory Judgment Substantively Consolidating and/or Piercing the Veil of RM Advisors**

124. The Trustee reasserts and realleges paragraphs 1 through 123 of this Adversary Complaint as if fully set forth herein.

125. At all material and relevant times hereto, RM Advisors was the Debtor's affiliate, purportedly acted as the Debtor's investment advisor, and was managed and controlled by Raymond and Ross.

126. At all material and relevant times hereto, Raymond and Ross controlled and operated RM Advisors in furtherance of a scheme to defraud the Debtor's then existing and future investors and creditors, for their own personal benefit without regard to corporate formalities, such that the business of RM Advisors and the Debtor were one and the same.

127. Raymond and Ross used RM Advisors to perpetrate a fraud upon the Debtor's creditors by, among other things, utilizing accounts in the name of RM Advisors to make transfers of the Debtor's property for their own benefit and for the benefit of other family members.

128. The Trustee is entitled to a declaratory judgment piercing RM Advisors corporate veil and/or substantively consolidating RM Advisors with the Debtor's estate, which is necessary to remedy an injustice and fraud upon the Debtor's creditors.

**COUNT X**  
Declaratory Judgment Substantively Consolidating  
and/or Piercing the Veil of RMA Group

129. The Trustee reasserts and realleges paragraphs 1 through 128 of this Adversary Complaint as if fully set forth herein.

130. At all material and relevant times hereto, RMA Group was the Debtor's affiliate and was managed and controlled by Raymond and Ross.

131. At all material and relevant times hereto, Raymond and Ross controlled and operated RMA Group in furtherance of a scheme to defraud the Debtor's then existing and future investors and creditors, for their own personal benefit without regard to corporate formalities, such that the business of RMA Group and the Debtor were one and the same.

132. Raymond and Ross used RMA Group to perpetrate a fraud upon the Debtor's creditors by utilizing accounts in the name of RMA Group to make transfers of the Debtor's property for their own benefit and for the benefit of other family members.

133. The Trustee is entitled to a declaratory judgment piercing RMA Group's corporate veil and/or substantively consolidating RMA Group with the Debtor's estate,

which is necessary to remedy an injustice and fraud upon the Debtor's creditors.

**COUNT XI**  
Trustee Process  
Against Century Bank

134. The Trustee reasserts and realleges paragraphs 1 through 133 of this Adversary Complaint as if fully set forth herein.

135. Upon information and belief, Century Bank holds Debtor funds that were converted by Alma and/or Raymond and deposited into a Century Bank account.

136. The Trustee is entitled to attach and recover for the benefit of the estate any funds held by Alma or Raymond at Century Bank.

**COUNT XII**  
Trustee Process  
Against Santander Bank

137. The Trustee reasserts and realleges paragraphs 1 through 136 of this Adversary Complaint as if fully set forth herein.

138. Upon information and belief, Santander Bank holds Debtor funds that were converted by Raymond and deposited into a Santander Bank account.

139. The Trustee is entitled to attach and recover for the benefit of the estate any funds held by Alma or Raymond at Santander Bank.

WHEREFORE, Mark G. DeGiacomo, Chapter 7 Trustee respectfully requests that this Court enter an order and judgment as follows:

1. Under **Count I**: (a) avoiding the Two Year Transfers as fraudulent transfers; (b) directing the Two Year Transfers be set aside and (c) recovering such amounts from Raymond, Alma, Ross and Ryan for the benefit of the Debtor's estate;

2. Under **Count II**: (a) avoiding the Two Year Transfers as fraudulent transfers; (b) directing the Two Year Transfers be set aside and (c) recovering such amounts from Raymond, Alma, Ross and Ryan for the benefit of the Debtor's estate;

3. Under **Count III**: (a) avoiding the Four Year Transfers as fraudulent transfers; (b) directing the Four Year Transfers be set aside and (c) recovering such amounts from Raymond, Alma, Ross and Ryan for the benefit of the Debtor's estate;

4. Under **Count IV**: (a) avoiding the Four Year Transfers as fraudulent transfers; (b) directing the Four Year Transfers be set aside and (c) recovering such amounts from Raymond, Alma, Ross and Ryan for the benefit of the Debtor's estate;

5. Under **Count V**, finding that Raymond, Alma, Ross and Ryan were unjustly enriched and awarding damages against them;

6. Under **Count VI**, finding that Raymond and Ross breached their fiduciary duties to the Debtor and awarding damages against them;

7. Under **Count VII**, finding that Raymond and Ross breached their fiduciary duties to the Debtor and awarding damages against them;

8. Under **Count VIII**, for a declaratory judgment piercing the corporate veil of RM Assets and substantively consolidating RM Assets with the Debtor's estate;

9. Under **Count IX**, for a declaratory judgment piercing the corporate veil of RM Advisors and substantively consolidating RM Advisors with the Debtor's estate;

10. Under **Count X**, for a declaratory judgment piercing the corporate veil of RMA Group and substantively consolidating RMA Group with the Debtor's estate;

11. Under **Count XI**, for a trustee process attachment of any funds held by Alma or Raymond at Century Bank; and

12. Under **Count XII**, for a trustee process attachment of any funds held by Alma or Raymond at Santander Bank;
13. Grant such other and further relief this Court deems just and proper.

Respectfully submitted,

MARK G. DEGIACOMO, CHAPTER 7  
TRUSTEE OF RMA STRATEGIC  
OPPORTUNITY FUND, LLC,

/s/ Jonathan Horne

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Dated: February 12, 2018

# Exhibit A

Transfers to or for the benefit of Alma Montoya				
Date	Amount	Payee	Account Ending	Check No.
1/13/2014	\$ 870.35	NSTAR	-3582	5360
1/21/2014	\$ 284.38	Sprint	-3582	5363
3/24/2014	\$ 603.28	Sprint	-3582	5401
3/24/2014	\$ 982.66	NSTAR	-3582	5403
5/15/2014	\$ 198.40	NSTAR	-3582	5456
5/19/2014	\$ 292.04	Sprint	-3582	5450
5/30/2014	\$ 37.56	Bank of America	-3582	5472
5/30/2014	\$ 4,000.00	Alma Montoya	-3582	5482
5/30/2014	\$ 1,108.05	Alma Montoya	-3582	5483
6/6/2014	\$ 51,100.02	MBF Account Services, LLC	-3582	5495
6/23/2014	\$ 203.03	NSTAR	-3582	5509
6/23/2014	\$ 305.91	Sprint	-3582	5510
7/29/2014	\$ 321.97	NSTAR	-3582	5558
7/30/2014	\$ 293.45	Sprint	-3582	5552
8/19/2014	\$ 150.02	Sprint	-3582	5595
8/20/2014	\$ 314.94	NSTAR	-3582	5594
9/15/2014	\$ 928.68	Bank of America	-3582	5615
10/17/2014	\$ 170,000.00	Alma Montoya	-3582	5632
10/17/2014	\$ 1,000.00	Alma Montoya	-3582	5633
10/28/2014	\$ 4,619.00	Bunker Hill Home Insurance	-3582	5645
10/30/2014	\$ 248.99	Sprint	-3582	5642
10/30/2014	\$ 213.82	NSTAR	-3582	5646
12/1/2014	\$ 204.78	Sprint	-3582	5682
12/3/2014	\$ 8,000.00	Alma Montoya	-3582	5690
12/18/2014	\$ 500.00	Alma Montoya	-3582	5701
5/19/2015	\$ 462.42	Eversource	-3582	5837
8/3/2015	\$ 6,149.21	Alma Montoya	-3241	1888
8/3/2015	\$ 6,127.90	Alma Montoya	-3241	1932
11/12/2015	\$ 6,127.90	Alma Montoya	-3241	2052
12/9/2015	\$ 4,388.41	Bank of America	-3582	5978
12/10/2015	\$ 6,604.83	Alma Montoya	-3241	2113
12/14/2015	\$ 164.66	Victoria's Secret	-3582	5980
6/13/2016	\$ 200,000.00	Alma Montoya	-3582	5969
6/13/2016	\$ 1,539.26	Alma Montoya	-3241	2413
9/1/2016	\$ 1,539.26	Alma Montoya	-3241	2435
9/1/2016	\$ 1,536.23	Alma Montoya	-3241	2454
9/1/2016	\$ 1,536.24	Alma Montoya	-3241	2476
9/1/2016	\$ 769.28	Alma Montoya	-3241	2494
9/9/2016	\$ 217.70	Skincare Physicians, Inc.	-3582	6014
2/9/2017	\$ 197.44	Alma Montoya	-3582	6110
2/14/2017	\$ 618.82	Alma Montoya	-3241	2806
2/16/2017	\$ 200,000.00	Alma Montoya	-3582	6034
3/9/2017	\$ 454.00	Alma Montoya	-3582	6112

3/17/2017	\$ 210.00	Alma Montoya	-3582	6113
5/5/2017	\$ 391.56	Alma Montoya	-3582	6123
5/25/2017	\$ 525.48	Alma Montoya	-3582	6125
<b>Total</b>	<b>\$ 686,341.93</b>			



# Exhibit B

<b>Transfers to or for the Benefit of Ross Montoya</b>				
<b>Date</b>	<b>Amount</b>	<b>Payee</b>	<b>Account</b>	<b>Check No.</b>
1/9/2014	\$ 10,000.00	Ross Montoya	-3582	5358
1/16/2014	\$ 5,330.79	Bank of America	-3582	5364
3/24/2014	\$ 612.00	City of Boston	-3582	5408
3/24/2014	\$ 115.00	City of Boston	-3582	5409
5/9/2014	\$ 10,100.00	Avalon University School of Medicine	-3582	5446
5/23/2014	\$ 1,139.62	Bank of America	-3582	5469
6/6/2014	\$ 5,703.19	Bank of America	-3582	5488
6/23/2014	\$ 173.31	Bank of America	-3582	5515
7/1/2014	\$ 1,253.00	Plymouth Rock Assurance	-3582	5521
7/7/2014	\$ 4,663.48	Bank of America	-3582	5534
7/28/2014	\$ 94.95	Bank of America	-3582	5553
8/6/2014	\$ 10,387.17	Bank of America	-3582	5571
8/25/2014	\$ 30,000.00	Ross Montoya	-3582	5599
9/17/2014	\$ 10,096.04	Bank of America	-3582	5611
10/29/2014	\$ 94.95	Bank of America	-3582	5647
12/30/2014	\$ 1,666.98	Farmers Insurance Exchange	-3582	5707
2/9/2015	\$ 25,000.00	Ross P Montoya	-3582	5733
4/8/2015	\$ 50,000.00	Lamborghini Boston	-3582	5775
5/15/2015	\$ 7,124.02	Ross Montoya	-3241	1851
7/28/2015	\$ 9,201.84	Ross Montoya	-3241	1869
7/28/2015	\$ 9,168.47	Ross Montoya	-3241	1886
7/28/2015	\$ 9,156.39	Ross Montoya	-3241	1930
9/8/2015	\$ 9,156.38	Ross Montoya	-3241	1961
11/5/2015	\$ 9,871.77	Ross Montoya	-3241	2037
11/24/2015	\$ 9,871.77	Ross Montoya	-3241	2054
11/24/2015	\$ 9,871.77	Ross Montoya	-3241	2083
11/24/2015	\$ 9,871.78	Ross Montoya	-3241	2095
12/10/2015	\$ 9,871.77	Ross Montoya	-3241	2116
7/13/2016	\$ 3,281.89	Bank of America	-3582	6009
9/6/2016	\$ 3,519.00	Private Client Group	-3582	6015
9/6/2016	\$ 1,872.24	Commerce Insurance Group	-3582	6017
10/25/2016	\$ 2,307.76	Ross Montoya	-3241	2373
2/3/2017	\$ 200,000.00	Ross Montoya	-3582	6031
2/15/2017	\$ 14,076.00	Private Client Group	-3582	6032
<b>Total</b>	<b>\$ 484,653.33</b>			

# Exhibit C

<b>Transfers to or for the benefit of Ryan Montoya</b>				
<b>Date</b>	<b>Amount</b>	<b>Payee</b>	<b>Account</b>	<b>Check No.</b>
3/24/2014	\$ 852.50	Ryan Montoya	-3582	5410
4/25/2014	\$ 1,275.00	Plymouth Rock Assurance	-3582	5436
4/28/2014	\$ 184.41	National Grid	-3582	5439
7/23/2014	\$ 50,000.00	Ryan Montoya	-3582	5544
7/29/2014	\$ 76.23	National Grid	-3582	5556
8/19/2014	\$ 55.94	National Grid	-3582	5593
10/28/2014	\$ 608.00	Plymouth Rock Assurance	-3582	5636
4/27/2015	\$ 179.30	Plymouth Rock Assurance	-3582	5827
6/15/2015	\$ 7,500.00	Ryan Montoya	-3582	5887
9/8/2015	\$ 1,000.00	Ryan Montoya	-3582	5862
11/24/2015	\$ 19,582.00	Ryan Montoya	-3582	5947
1/19/2016	\$ 1,000.00	Ryan Montoya	-3582	5960
3/25/2016	\$ 31,264.00	Ryan Montoya	-3582	5874
12/27/2016	\$ 10,816.32	Ryan Montoya	-3582	6098
12/27/2016	\$ 10,000.00	Ryan Montoya	-3582	6099
12/27/2016	\$ 9,000.00	Ryan Montoya	-3582	6100
<b>Total</b>	<b>\$ 143,393.70</b>			

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

In re:  RMA STRATEGIC OPPORTUNITY FUND, LLC,  Debtor	CHAPTER 7  CASE NO. 17-13328-FJB
MARK G. DEGIACOMO, CHAPTER 7 TRUSTEE FOR THE ESTATE OF RMA STRATEGIC OPPORTUNITY FUND, LLC,  Plaintiff,  v.  CITIBANK, N.A.,  Defendant.	Adversary Proceeding No. _____

**ADVERSARY COMPLAINT**

Plaintiff Mark G. DeGiacomo, Chapter 7 Trustee (the “Trustee”) for the estate of RMA Strategic Opportunity Fund, LLC (the “Debtor”), alleges as follows:

**INTRODUCTION**

1. This adversary proceeding arises from the Ponzi scheme perpetrated by Raymond Montoya Sr. (“Montoya”). Over the course of the scheme, between 2009 and 2017, the Debtor solicited dozens of customers which, when added together, contributed over \$52,000,000 with the Debtor between 2009 and 2017. As of the date of the Debtor’s involuntary bankruptcy filing in September, 2017, the Debtor had assets on hand worth a small fraction of that amount.

2. In August 2017, Montoya was arrested and charged in federal court in Massachusetts with mail fraud and wire fraud. In October, 2018, Montoya pleaded guilty to three counts of wire fraud, five counts of mail fraud, and two counts of conducting an unlawful monetary transaction. On March 21, 2019, U.S. Senior District Court Judge George A. O’Toole Jr. sentenced Montoya to 175 months imprisonment, to be followed by 36 months of supervised release.

3. Prior to the scheme’s collapse, Montoya misappropriated substantial sums of investor capital from the Debtor, and used these investor funds to finance his own lavish lifestyle. The within Defendant, Citibank, N.A. was the beneficiary of multiple avoidable transfers, through which the Defendant received Debtor funds in exchange for payment of non-Debtor expenses. In other words, while the Defendant received transfers of Debtor funds, it did not provide value to the Debtor in exchange. In total, the Defendant received \$921,582.53 in investor funds from the Debtor, without providing reasonably equivalent value to the Debtor, all while the Debtor was hopelessly insolvent. This action is brought to recover these fraudulent transfers so that the funds can be distributed among all of the claimants in the Debtor’s bankruptcy case in the manner required by the Bankruptcy Code.

## **I. JURISDICTION, VENUE AND STANDING**

4. The Trustee brings this adversary proceeding pursuant to 11 U.S.C. §§ 101-1330 of the Bankruptcy Code and Rule 7001 of the Federal Rules of Bankruptcy Procedure.

5. This is a core proceeding as defined in 28 U.S.C. §157 relating directly to the property and affairs of the Debtor and the administration of the Debtor’s estate. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 157 (b)(2)(A), (H) and (O).

6. Because this proceeding arises under Title 11 and arises in a bankruptcy case that

is pending in the District of Massachusetts, Eastern Division, venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

## **II. PARTIES**

7. The Trustee is the duly appointed Chapter 7 Trustee of the Debtor's bankruptcy estate and maintains the right to bring and prosecute all actions against the Defendants pursuant to 11 U.S.C. §§ 544, 548, 550, and Mass. Gen. Laws c. 109A.

8. Defendant Citibank, N.A. is a national banking institution with, upon information and belief, a principal place of business located at 5800 S. Corporate Place, Sioux Falls, South Dakota.

## **III. FACTUAL ALLEGATIONS**

### **A. Procedural Background**

9. On September 5, 2017 (the "Petition Date"), three petitioning creditors filed an involuntary petition pursuant to Chapter 11 of the Bankruptcy Code against the Debtor in this Court.

10. On October 6, 2017, the Court entered an Order for Relief.

11. On November 15, 2017, the Court entered an order converting the Debtor's case to Chapter 7.

12. On November 15, 2017, the Trustee was appointed as the Chapter 7 Trustee of this bankruptcy estate.

### **B. The Debtor and its Affiliates**

13. The Debtor was a pooled investment vehicle formed on May 16, 2007 as a Delaware limited liability company with the name RMA Group Galleon Fund, LLC but later changed its name to RMA Strategic Opportunity Fund, LLC.

14. On March 27, 2009, the Debtor registered to do business in Massachusetts, at which time Montoya was its manager.

15. On November 16, 2009, Montoya filed a Certificate of Amendment with the Office of the Secretary of the Commonwealth, changing the Debtor's manager from himself to Resource Managed Assets, LLC ("RM Assets"). Following the change of managers, Montoya continued to manage the Debtor by virtue of his being the manager of the Debtor's sole manager, RM Assets.

**C. The Debtor and Its Affiliates Were Operated as a Scheme to Defraud Investors**

**a. Montoya Admitted to Carrying out a Ponzi Scheme and Pled Guilty to Criminal Charges.**

16. On August 1, 2017, a criminal complaint was filed against Montoya in the United States District Court for the District of Massachusetts alleging that Montoya committed wire and mail fraud by using the Debtor to commit a scheme to defraud investors. See Exhibit 1.

17. In support of the criminal complaint, the United States Attorneys' Office filed an Affidavit of Ryan Lane in Support of Criminal Complaint ("Lane Affidavit") for the purpose of establishing probable cause to support the criminal complaint against Montoya. See Exhibit 2.

18. According to the Lane Affidavit: "During a consensual interview with law enforcement on June 12, 2017, Montoya admitted to defrauding investors of the [Debtor] and covering up substantial losses that the [Debtor] incurred beginning in 2015. Montoya stated that in 2012 and 2013, the [Debtor] was breaking even and then incurred mild losses, and that by 2015 and 2016, the [Debtor] was suffering substantial losses." See Exhibit 2, par. 31.

19. According to the Lane Affidavit: "Despite these losses, Montoya said he falsely told investors that they were earning modest returns. Montoya said he fabricated higher returns on the monthly statements he provided to investors because he feared he would lose investor subscriptions and investors would pull their money out of the [Debtor]. **Montoya** admitted that he paid redemptions to earlier investors using money invested by subsequent investors." See Exhibit 2, par. 32.

20. According to the Lane Affidavit: "Montoya further admitted that around 2014 he started to use investor funds for personal expenses, including travel, the purchase of numerous



high-end vehicles, tuition for his children, and the mortgage on his son's residence in Illinois.”

See Exhibit 2, par. 33.

21. Finally, according to the Lane Affidavit: “Montoya admitted that the [Debtor] never had any type of proprietary investment software, and that there was never any outside audit of the [Debtor].” See Exhibit 2, par. 34.

22. On July 16, 2018, the United States Attorneys’ Office filed an Information (Felony), charging Montoya with mail fraud, wire fraud, unlawful monetary transaction and fraud forfeiture. See Exhibit 3.

23. On October 17, 2018, Montoya signed a plea agreement in which he “expressly and unequivocally admits that he committed the crimes charged in Counts One through Ten of the Information, did so knowingly, intentionally and willfully, and is in fact guilty of those offenses.” See Exhibit 4, p. 1.

24. On March 21, 2019, U.S. Senior District Court Judge George A. O’Toole Jr. sentenced Montoya to 175 months imprisonment, to be followed by 36 months of supervised release.

**b. Funds Intended for Investment in the Debtor Were Systemically Misappropriated by the Montoya Family and Repaid to Existing Investors as “Profits”**

25. After deciding to invest in the Debtor, prospective investors were directed to wire funds to an account at Citizens Bank in the name of RMA Group, Inc. (an affiliated entity controlled by Montoya) ending in -3582 (the “-3582 Citizens Account”), or to send a check to the Debtor’s office which was then deposited into the -3582 Citizens Account.

26. At all relevant times, several Montoya family members were authorized signatories on the -3582 Citizens Account.

27. The Trustee's investigation continues but, to date, the Trustee has determined, based on the Debtor's records, that between January 1, 2014 and mid-2017, investors transferred at least \$30 million to the -3582 Citizens Account intended for investment in the Debtor.

28. Over that same time period, a total of less than \$15,830,000 was transferred from the -3582 Citizens Account to one of five (5) brokerage accounts held at E\*TRADE Securities LLC ("E\*Trade").

29. The respective E\*Trade accounts stood in the names of: (1) RMA Strategic Opportunity Fund, LLC (the Debtor); (2) RM Advisors; (3) RM Assets; (4) RMA Group Consultants, Inc.; and (5) Montoya individually.

30. From January 1, 2014 to the present, at least \$12,830,000 of Debtor investor funds were transferred from the -3582 Citizens Account to Montoya's personal E\*Trade account.

31. During that same time period approximately \$1,500,000 of Debtor investor funds were transferred to the Debtor's E\*Trade account, and at least \$1,500,000 were transferred to the three other E\*Trade accounts.

32. From January 1, 2014 to the present, over \$16 million of Debtor investor funds were never transferred from the -3582 Citizens Account to any brokerage account. Instead, these funds were used to pay, among other things, purported capital distributions to the Debtor's investors, purported operational expenses, and personal expenses for Montoya and his family members.

33. The Trustee's investigation has shown that investor funds were also transferred from the -3582 Citizens Account to another Citizens Bank account, held in the name of RM Assets and ending in -3241 (the "3241 Citizens Account"). In furtherance of the scheme to defraud, investor funds which had been transferred from the -3582 Citizens Account to the -3241 Citizens Account were likewise used to pay, among other things, purported capital distribution to the Debtor's investors, purported operational expenses, and personal expenses for Montoya and his family members.

**c. The Debtor Was Insolvent At All Relevant Times**

34. At all relevant times, the Debtor was insolvent.

35. At all relevant times, the Debtor was operated as a scheme to defraud then existing and future creditors.

36. For all periods relevant hereto, the Debtor was operated as a Ponzi scheme and Montoya and others at his direction concealed the ongoing fraud in an effort to hinder, delay or defraud other current and prospective investors of the Debtor. The money received from investors was not set aside to buy securities as purported, but instead was either transferred to Montoya or his family members to pay personal expenses or to make the distributions to – or payments on behalf of – other investors. The money sent to the Debtor for investment, in short, was simply used to keep the scheme going and to enrich Montoya, his family and others, including the Defendants, until such time as the requests for redemptions overwhelmed the flow of new investments and caused the inevitable collapse of the Ponzi scheme.

37. The Debtor was able to stay afloat only by using the principal invested by some clients to pay other investors or their designees.

38. As of mid-2017, the Debtor had approximately 240 active client accounts into which investors had deposited, over time, approximately \$52 million.

39. At all relevant times, the Debtor's liabilities were tens of millions of dollars greater than the Debtor's assets. At all relevant times, the Debtor was insolvent in that (i) its assets were worth less than the value of its liabilities; (ii) it could not meet its obligations as they came due; and (iii) at the time of the transfers, the Debtor was left with insufficient capital.

**D. The Transfers To Defendant**

40. The Trustee's investigation to date has revealed that investor funds belonging to the Debtor were used to pay the Defendant for non-Debtor liabilities.

41. Specifically, Montoya or another member of his immediate family was the owner and obligor on at least two credit card accounts maintained with the Defendant. Upon information and belief, the Debtor was not an obligor on the credit card accounts.

42. Montoya or another member of his immediate family was the owner and obligor on a Brooks Brothers Platinum Mastercard maintained with the Defendant. Brooks Brothers is a luxury men's clothing retailer. In total, Montoya used \$52,815.25 of investor funds belonging to the Debtor to pay down the balance on this Brooks Brothers Platinum Mastercard.

43. In addition, Montoya or another member of his immediate family was the owner and obligor on at least one other "Citi Card" credit card account maintained with the Defendant. In total, Montoya used \$868,767.28 of investor funds belonging to the Debtor to pay down the balance on these Citi Card accounts.

44. Although the Debtor received no value from Montoya's personal spending and expenditures, investor funds owned by the Debtor were used to pay the Defendant for Montoya's credit card expenses.

45. According to the Debtor's records, the Debtor made transfers to the Defendant in repayment of Montoya's credit card expenses (collectively, the "Transfers") totaling \$921,582.53. A complete ledger of the Transfers made from the Debtor to the Defendant is attached hereto as Exhibit 5.

46. The Transfers received by the Defendant were made with misappropriated investor funds, for which the Debtor received no reasonably equivalent value.

47. The Transfers that are avoidable and recoverable under sections 544(b), 550(a)(1) and 551 of the Bankruptcy Code and applicable provisions of Mass. Gen. Laws. c. 109A total \$921,582.53 and are referred to hereafter as the "Four Year Transfers."

48. The Transfers that are avoidable and recoverable under sections 548(a), 550(a)(1) and 551 of the Bankruptcy Code, total \$384,995.28 and are referred to hereafter as the “Two Year Transfers.”

49. The Trustee’s investigation is ongoing and the Trustee reserves the right to (i) supplement the information regarding the Transfers and any additional transfers and (ii) seek recovery of such additional transfers.

### **COUNT I**

#### **Fraudulent Transfer – Constructive Fraud**

#### **11 U.S.C. §§ 548, 550, 551**

50. The Trustee reasserts and realleges the foregoing paragraphs of this Complaint as if fully set forth herein.

51. Each of the Two Year Transfers constitutes a “transfer,” as that term is defined in 11 U.S.C. § 548, of an asset or interest in an asset of the Debtor.

52. Each of the Two Year Transfers was made within two years of the Petition Date.

53. Each of the Two Year Transfers was made while the Debtor was insolvent.

54. Each of the Two Year Transfers was made for less than reasonably equivalent value.

55. On the date of each of the Two Year Transfers, the Debtor was engaged in a business or a transaction for which the remaining assets of the Debtor were unreasonably small in relation to the business or transaction.

56. On the date of each of the Two Year Transfers, the Debtor intended to incur, or believed that the Debtor would incur, debts that would be beyond the Debtor’s ability to pay as such debts matured.

57. The Two Year Transfers constitute fraudulent transfers avoidable by the Trustee pursuant to 11 U.S.C. § 548(a)(1)(B) and recoverable from the Defendant pursuant to 11 U.S.C. §§ 550 and 551.

58. As a result of the foregoing, the Trustee is entitled to a judgment against the Defendant: (a) avoiding and preserving the Two Year Transfers, (b) directing that the Two Year Transfers be set aside, and (c) recovering the Two Year Transfers, or the value thereof, from the Defendant for the benefit of the Debtor's estate, in amounts to be determined by the Court.

### **COUNT II**

#### **Fraudulent Transfer – Actual Fraud**

##### **11 U.S.C. §§ 548, 550, 551**

59. The Trustee reasserts and realleges the foregoing paragraphs of this Complaint as if fully set forth herein.

60. Each of the Two Year Transfers constitutes a "transfer," as that term is defined in 11 U.S.C. § 548, of an asset or interest in an asset of the Debtor.

61. Each of the Two Year Transfers was made within two years of the Petition Date.

62. Each of Two Year Transfers was made with the actual intent to hinder, delay or defraud the Debtor's then existing and future creditors.

63. Each of the Two Year Transfers constitutes a fraudulent transfer avoidable by the Trustee pursuant to section 548(a)(1)(A) of the Bankruptcy Code and recoverable from the Defendant pursuant to section 550(a) of the Bankruptcy Code.

64. As a result of the foregoing, the Trustee is entitled to a judgment against the Defendant: (a) avoiding and preserving the Two Year Transfers, (b) directing that the Two Year Transfers be set aside, and (c) recovering the Two Year Transfers, or the value thereof, from the Defendant for the benefit of the Debtor's estate, in amounts to be determined by the Court.

### **COUNT III**

#### **Fraudulent Transfer – Constructive Fraud**

##### **11 U.S.C. §§ 544(b), 550, 551; M.G.L. ch.109A, §§ 5(a)(2) & (8)**

65. The Trustee reasserts and realleges the foregoing paragraphs of this Complaint as if fully set forth herein.

66. Pursuant to 11 U.S.C. § 544, the Trustee may avoid any transfer of an interest of the Debtor in property or any obligation incurred by the Debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under 11 U.S.C. § 502.

67. Each of the Four Year Transfers constitutes a transfer of the Debtor's property.

68. Each of the Four Year Transfers occurred within four years prior to the Petition Date.

69. The Debtor did not receive reasonably equivalent value in exchange for any of the Four Year Transfers.

70. Each of the Four Year Transfers were made when the Debtor was insolvent.

71. On the date of each of the Four Year Transfers, the Debtor was engaged in a business or a transaction for which the remaining assets of the Debtor were unreasonably small in relation to the business or transaction.

72. On the date of each of the Four Year Transfers, the Debtor intended to incur, or believed that the Debtor would incur, debts that would be beyond the Debtor's ability to pay as such debts matured.

73. As of the Petition Date, there existed a creditor of the Debtor holding an unsecured claim allowable under 11 U.S.C. § 502 who could avoid the Four Year Transfers under applicable law.

74. Each of the Four Year Transfers may be avoided by the Trustee as a fraudulent transfer pursuant to the provisions of 11 U.S.C. § 544 and preserved for the bankruptcy estate pursuant to the provisions of 11 U.S.C. §§ 550 and 551.

75. As a result of the foregoing, the Trustee is entitled to a judgment against the Defendant: (a) avoiding and preserving the Four Year Transfers, (b) directing that the Four Year Transfers be set aside, and (c) recovering the Four Year Transfers, or the value thereof, from the Defendant for the benefit of the Debtor's estate, in amounts to be determined by the Court.

**COUNT IV**

**Fraudulent Transfer – Actual Fraud**

**11 U.S.C. §§ 544(b), 550, 551; M.G.L. ch.109A, §§ 5(a)(1) & (8)**

76. The Trustee reasserts and realleges the foregoing paragraphs of this Complaint as if fully set forth herein.

77. Pursuant to 11 U.S.C. § 544, the Trustee may avoid any transfer of an interest of the Debtor in property or any obligation incurred by the Debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under 11 U.S.C. § 502.

78. Each of the Four Year Transfers constitutes a transfer of the Debtor's property.

79. Each of the Four Year Transfers occurred within four years prior to the Petition Date.

80. Upon information and belief, each of the Four Year Transfers was made by the Debtor with actual intent to hinder, delay, or defraud the Debtor's creditors.

81. The Debtor did not receive reasonably equivalent value in consideration for any of the Four Year Transfers.

82. Each of the Four Year Transfers was made at a time when the Debtor was insolvent.

83. As of the Petition Date, there existed a creditor of the Debtor holding an unsecured claims allowable under 11 U.S.C. § 502 who could avoid each of the Four Year Transfers under applicable Massachusetts law.

84. Each of the Four Year Transfers may be avoided by the Trustee as a fraudulent transfer pursuant to the provisions of 11 U.S.C. § 544 and preserved for the estate pursuant to the provisions of 11 U.S.C. §§ 550 and 551.

85. As a result of the foregoing, the Trustee is entitled to a judgment against the Defendant: (a) avoiding and preserving the Four Year Transfers, (b) directing that the Four Year Transfers be set aside, and (c) recovering the Four Year Transfers, or the value thereof, from the Defendant for the benefit of the Debtor's estate, in amounts to be determined by the Court.



## COUNT V

### **Fraudulent Transfer**

#### **11 U.S.C. §§ 544(b), 550, 551; M.G.L. ch.109A, §§ 6(a) & (8)**

86. The Trustee reasserts and realleges the foregoing paragraphs of this Complaint as if fully set forth herein.

87. Pursuant to 11 U.S.C. § 544, the Trustee may avoid any transfer of an interest of the Debtor in property or any obligation incurred by the Debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under 11 U.S.C. § 502.

88. Each of the Four Year Transfers constitutes a transfer of the Debtor's property.

89. Each of the Four Year Transfers occurred within four years prior to the Petition Date.

90. The Debtor did not receive reasonably equivalent value in consideration for any of the Four Year Transfers.

91. Each of the Four Year Transfers was made at a time when the Debtor was insolvent.

92. As of the date of each of the Four Year Transfers, there existed a creditor of the Debtor holding an unsecured claims allowable under 11 U.S.C. § 502 who could avoid each of the Four Year Transfers under applicable Massachusetts law.

93. Each of the Four Year Transfers may be avoided by the Trustee as a fraudulent transfer pursuant to the provisions of 11 U.S.C. § 544 and preserved for the estate pursuant to the provisions of 11 U.S.C. §§ 550 and 551.

94. As a result of the foregoing, the Trustee is entitled to a judgment against the Defendants: (a) avoiding and preserving the Four Year Transfers, (b) directing that the Four Year Transfers be set aside, and (c) recovering the Four Year Transfers, or the value thereof, from the Defendants for the benefit of the Debtor's estate, in amounts to be determined by the Court.

**PRAYER FOR RELIEF**

**WHEREFORE**, Mark G. DeGiacomo, Chapter 7 Trustee, respectfully requests that this Court enter an order and judgment as follows:

1. Under **Count I**: (a) avoiding the Two Year Transfers as fraudulent transfers; (b) directing the Two Year Transfers be set aside and (c) recovering such amounts from the Defendants for the benefit of the Debtor's estate;

2. Under **Count II**: (a) avoiding the Two Year Transfers as fraudulent transfers; (b) directing the Two Year Transfers be set aside and (c) recovering such amounts from the Defendants for the benefit of the Debtor's estate;

3. Under **Count III**: (a) avoiding the Four Year Transfers as fraudulent transfers; (b) directing the Four Year Transfers be set aside and (c) recovering such amounts from the Defendants for the benefit of the Debtor's estate;

4. Under **Count IV**: (a) avoiding the Four Year Transfers as fraudulent transfers; (b) directing the Four Year Transfers be set aside; (c) recovering such amounts from the Defendants for the benefit of the Debtor's estate;

5. Under **Count V**: (a) avoiding the Four Year Transfers as fraudulent transfers; (b) directing the Four Year Transfers be set aside; (c) recovering such amounts from the Defendants for the benefit of the Debtor's estate;

6. On All Counts, for pre-judgment and post-judgment interest at the highest rate allowed by law, costs of suit incurred herein, and such other and further relief as the Court deems just and proper.

Respectfully submitted,

MARK G. DEGIACOMO, CHAPTER 7  
TRUSTEE OF THE ESTATE OF RMA  
STRATEGIC OPPORTUNITY FUND, LLC,

/s/ Jonathan M. Horne

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Dated: October 2, 2019

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

In re:

RMA STRATEGIC OPPORTUNITY  
FUND, LLC,  
Debtor

CHAPTER 7

CASE NO. 17-13328-FJB

**CHAPTER 7 TRUSTEE’S MOTION TO APPROVE  
SETTLEMENT BY AND AMONG THE CHAPTER 7 TRUSTEE,  
CITIBANK, N.A. AND DEPARTMENT STORES NATIONAL BANK**

Mark G. DeGiacomo, the duly-appointed Chapter 7 trustee (the “Trustee”) of the bankruptcy estate of RMA Strategic Opportunity Fund, LLC (the “Debtor”), hereby moves this Court pursuant to Fed. R. Bankr. P. 9019 and MLBR 9019-1 for the entry of an Order approving the Settlement Agreement (the “Settlement Agreement”) by and among the Chapter 7 Trustee, CitiBank, N.A. (“Citi”) and Department Stores National Bank (“DSNB”) (the “Recipients”), which is being filed contemporaneously herewith.

In support of this Motion, the Trustee states as follows:

**Background**

1. On September 5, 2017, an involuntary Chapter 11 bankruptcy petition was filed against the Debtor (the “Petition Date”).
2. On October 6, 2017, this Court entered an Order for Relief.
3. On November 9, 2017, this Court entered an Order converting the Debtor’s case to Chapter 7.
4. On November 15, 2017, the Trustee was appointed as the Chapter 7 trustee of Debtor’s bankruptcy estate.

5. The Trustee has determined that the Debtor was run as a Ponzi scheme.

6. Based on his investigation of the Debtor's financial affairs, the Trustee alleged that during the four year period just prior to the Petition Date, Citi received payments from the Debtor totaling \$921,582.53 (the "Citi Payments") and DSNB (an affiliate of Citi) received payments from the Debtor totaling \$48,221.52 (the "DSNB Payments") (together the Citi Payments and the DSNB Payments are referred to as the "Payments").

7. The Trustee asserted that the Citi Payments were made to pay balances due on the following credit card accounts, none of which stood in the Debtor's name:

Brooks Brothers MasterCard	\$52,815.25
Citi Business Card	\$611,996.28
Ryan Montoya CitiCard	\$82,146.12
Alma Montoya CitCard	\$174,620.85

8. The Trustee asserted that the DSNB Payments were made to pay balances due on the following two credit cards, neither of which stood in the Debtor's name:

Alma Montoya Macy's Credit Card	\$7,885.53
Alma Montoya Bloomingdale's Card	\$40,335.99

9. The Trustee asserts that the Debtor was not obligated on the above referenced credit card accounts and that the Recipients did not provide services to the Debtor in exchange for the Payments or otherwise provide reasonably equivalent value to the Debtor in exchange for the Payments.

10. On October 2, 2019, the Trustee filed an adversary complaint against Citi (*DeGiacomo, trustee v. CitiBank, N.A.*, Case No. 19-01115) seeking recovery of the Citi Payments as fraudulent transfers (the "Citi Adversary Proceeding"). In response, the Recipient denied liability for the Citi Payments and asserted various defenses to the Adversary Proceeding.

11. Also on October 10, 2019, the Trustee filed an Adversary Complaint against DSNB (*DeGiacomo, trustee v. Department Stores National Bank*, Case No. 19-01116) seeking recovery of the DSNB Payments as fraudulent transfers (the “DSNB Adversary Proceeding”). In response, the Recipient denied liability for the DSNB Payments and asserted various defenses to the Adversary Proceeding.

12. Through discovery, the Trustee has determined that subsequent to the dates the Citi Payments were transferred, Citi purchased a portfolio that included Brooks Brother’s credit cards. As a result, it is likely that Citi not did not receive the \$52,815.25 in payments made on account of the Brooks Brother’s MasterCard account and would likely be found not to be liable for the return of those payments.

13. The Trustee has also determined that Citi has as a substantial defense to the Citi Payments that were used to pay the Citi Business card because the documents relevant to that account indicate that only Raymond Montoya and RMA Group, Inc. (the entity which held the Debtor’s funds and from which account the Citi Payments were made) were liable on the credit card. If Citi were to prevail on this defense the Trustee would be unable to recover any of the \$611,996.28 of transfers made to pay the Citi Business credit card.

14. Following good faith, arms’ length negotiations, and in order to avoid the risks, costs and delay of litigation, the Trustee and the Recipients have reached a settlement of both Adversary Proceedings without any admission of liability on the part of the Recipients, the terms of which are set forth in the Settlement Agreement.

15. The Settlement Agreement provides in relevant part that: the Recipients will deliver to the Trustee the amount of four hundred eighty thousand dollars (\$480,000.00) (the “Settlement Amount”) within forty five (45) business days of execution of the Settlement Agreement. The Trustee will accept the Settlement Amount in full satisfaction of any and all

claims, debts and obligations which were asserted or could have been asserted against the Recipients in the Adversary Proceedings or otherwise and upon Bankruptcy Court approval of this Motion, the Trustee and Recipients shall be deemed to have exchanged mutual releases.

**The Settlement Should Be Approved**

16. Rule 9019 of the Federal Rules of Bankruptcy Procedure provides, in pertinent part:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indentured trustees as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019(a).

17. The primary purpose of a compromise or settlement is to avoid the necessity of determining sharply contested and dubious issues. See, e.g., Wil-Rud Corp. v. Lynch (In re California Associated Prods. Co.), 183 F.2d 946, 949 (9th Cir. 1950).

18. Settlements and compromises are a normal part of the bankruptcy process. Protective Comm. For Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968), *quoting* Case v. Los Angeles Lumber Prods. Co., 308 U.S. 106, 130 (1939). See Hicks, Muse & Co. v. Brandt (In re Healthco Int'l, Inc.), 136 F.3d 45, 50 n.5 (1st Cir. 1998) (“[c]ompromises are favored in bankruptcy”).

19. Courts traditionally defer to the trustee or debtor-in-possession when examining the reasonableness of a settlement. See, e.g., Newman v. Stein, 464 F.2d 689, 693 (2d Cir. 1972) (“The responsibility of the bankruptcy judge ... is not to decide the numerous questions of law and fact raised ... but rather to canvass the issues and see whether the settlement ‘fall[s] below the lowest point in the range of reasonableness.’”); In re Media Cent., Inc., 190 B.R. 316 (E.D. Tenn. 1994) (court presumed trustee had subjected settlement to his independent review and analysis where trustee recommended approval of proposed compromise and settlement); see also

9 Lawrence P. King, Collier on Bankruptcy ¶ 9019.03[1] (15th ed.1993) (to minimize litigation and expedite the administration of a bankruptcy estate, “[c]ompromises are favored in bankruptcy.”).

20. The First Circuit Court of Appeals has described the test to be used by Bankruptcy Courts called upon to approve or reject proposed compromises and settlements as follows:

A bankruptcy judge has the authority to approve a compromise of a claim pursuant to Bankruptcy Rule 9019(a). The ultimate issue on appeal is whether the bankruptcy court abused its discretion when it approved the compromise, which is a process requiring the bankruptcy court to “assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal.” In re GHR Cos., 50 B.R. 925, 931 (Bankr. D. Mass. 1985) (*quoting In re Boston & Providence R.R.*, 673 F.2d. 11, 12 (1st Cir. 1982)). The specific factors which a bankruptcy court considers when making this determination include: (i) the probability of success in the litigation being compromised; (ii) the difficulties, if any, to be encountered in the matter of collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay attending it; and (iv) the paramount interest of the creditors and a proper deference to their reasonable views in the premise. In re Anolik, 107 B.R. 427, 429 (D. Mass. 1989).

Jeffrey v. Desmond, 70 F.3d 183, 185 (1st Cir. 1995).

21. The duty of a Chapter 7 trustee, in considering whether or not to settle a claim, is “to reach an informed judgment, after diligent investigation, as to whether it would be prudent to eliminate the inherent risks, delays and expense of prolonged litigation in an uncertain case.” In re C.R. Stone Concrete Contractors, Inc., 346 B.R. 32, 49 (Bankr. D. Mass. 2006).

22. The Trustee submits that the Settlement Agreement is in the best interests of the Debtor’s estate and its creditors and should be approved. Indeed, the proposed settlement provides for a cash payment to the estate of \$480,000, while avoiding the risks and costs of continued litigation. As stated above, the Trustee believes he is unlikely to recover the \$52,815.25 paid on account of the Brooks Brothers MasterCard as Citi has provided evidence that it did not own the Brooks Brother’s account at the time of the transfers, and thus did not



receive those transfers.

23. In addition, Citi has asserted one or more defenses to recovery of the \$611,996.28 paid on account of the Citi Business card, namely: that RMA Group was an obligor on the account; each of the payments at issue came from an RMA Group bank account; and Citi had no knowledge, or any reason to believe, that the Debtor was utilizing the RMA Group account in furtherance of its Ponzi scheme and that the funds in the RMA Group account actually belonged to the Debtor. As a result, the Trustee believes that his avoidance and recovery of payments made on account of the Citi Business account are less certain than his recovery of other transfers made to the Recipients. As a result, the Trustee believes that the recovery of \$480,000.00 pursuant to the Settlement Agreement is a very good result for the bankruptcy estate.

24. As a result, the Trustee respectfully submits that the Settlement Agreement is in the best interests of the bankruptcy estate and creditors and should be approved.

WHEREFORE, Mark G. DeGiacomo, the duly-appointed Chapter 7 Trustee respectfully requests that this Court enter an Order (i) approving the Settlement Agreement, and (ii) granting him such further relief this Court deems just and proper.

Respectfully submitted,

MARK G. DEGIACOMO, CHAPTER 7  
TRUSTEE OF THE ESTATE OF RMA  
STRATEGIC OPPORTUNIT FUND, LLC,

By his attorneys,

/s/ Jonathan M. Horne

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Dated: April 22, 2020