

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

Commodity Futures Trading Commission,

Plaintiff,

vs.

Case No. 3:17-cv-774-J-32MCR

Jason B. Scharf (d/b/a Citrades.com and  
AutoTradingBinary.com); CIT Investments  
LLC; Brevspand EOOD; CIT Investments  
Ltd.; A&J Media Partners, Inc.; Michael  
Shah; and Zilmil, Inc.

Defendants.

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**JOINT MOTION OF RECEIVER AND ERIC SHAH, MANOJ SHAH, AND SUJATA  
SHAH FOR APPROVAL OF SETTLEMENT AGREEMENT AND ERIC SHAH,  
MANOJ SHAH, AND SUJATA SHAH’S REQUEST FOR BAR ORDER**

Kenneth Dante Murena (“the Receiver”), and Eric Shah, Manoj Shah, and Sujata Shah (together the “Shah Family”), notify the Court of their settlement in the matter styled *Kenneth Dante Murena, as Receiver for Zilmil, Inc. v. Eric Shah, Manoj Shah, and Sujata Shah*, Case No.: 3:19-cv-00856-TJC-PDB (the “Ancillary Case”), and jointly move the Court for approval of the Settlement and Release Agreement entered into by the parties, and the Shah Family seeks the entry of a bar order enjoining the parties in the instant matter (the “Main Case”), and other parties that have received actual notice of the Main Case, from bringing claims against the Shah Family for matters relating to Zilmil, Inc., and in support thereof, respectfully state:

**I.**

**Introduction**

The Receiver and the Shah Family have entered into a Settlement and Release Agreement that is subject to the Court’s approval (the “Settlement Agreement”), a copy of which is attached

hereto as **Exhibit A**. In exchange for the Shah Family paying the sum of One Million Three Hundred Forty-Seven Thousand Five Hundred Dollars (USD) (\$1,347,500.00) (the “Settlement Amount”) to the Receiver, the Shah Family will receive a full and general release of all claims of the Receiver against the Shah Family. The Settlement Agreement further provides for the Shah Family to seek the entry of a bar order (the “Bar Order”) enjoining (i) all parties in the Main Case and (ii) all persons who received actual notice of the Main Case, from bringing any claims against members of the Shah Family that relate to their dealings with Zilmil, Inc. (“Zilmil”) and Michael Shah (“Michael Shah, and together with Zilmil referred to as the “Zilmil Defendants”).

The parties request that the Court approve the Settlement Agreement and the entry of the proposed order attached to the Settlement Agreement as Exhibit A (“Approval Order”) and the Shah Family requests that the Approval Order includes a Bar Order attached hereto as **Exhibit B**.

## II.

### **Background and Joint Motion to Approve Settlement Agreement**

1. The Receiver, pursuant to his authority granted in the Main Case, filed the Ancillary Case on July 23, 2019, seeking to recover certain transfers allegedly made to the Shah Family by the Zilmil Defendants.

2. The Shah Family vigorously disputed the allegations made by the Receiver in the Ancillary Case. After months of active litigation, an initial mediation and the completion of significant discovery, the Receiver and the Shah Family participated in a second mediation and subsequent negotiations which resulted in an agreement to settle all matters between them with, without any admission of liability or wrongdoing by the Shah Family. The Shah Family and the Receiver executed the Settlement Agreement on September 10, 2020.

3. The Settlement Agreement provides for, *inter alia*, the following terms:

a. The Settlement Agreement is conditioned upon Court approval and the entry of the Approval Order.<sup>1</sup>

b. The Shah Family pays the Settlement Amount to the Receiver within the later of (i) sixty (60) days after the date of the Settlement Agreement or (ii) fifteen (15) days after the Court's entry of the Approval Order.

c. The Receiver and the Shah Family file a joint stipulation for dismissal of the Ancillary Case, with prejudice.

d. The Receiver and Eric Shah file an agreed Order in the Main Case denying the Receiver's Motion for Imposition of Constructive Trust on Funds, Assets, and Real Property Traceable to Zilmil, Inc. [ECF No. 268] as moot with respect to Eric Shah, with prejudice.<sup>2</sup>

e. The Receiver executes standalone general releases of the Shah Family and related persons in conformity with the Settlement Agreement.

4. The Receiver has diligently investigated all claims he believes he could have brought against the Shah Family. Among other things, the Receiver obtained thousands of pages of documents relating to Zilmil and the Shah Family, deposed multiple witnesses during the Ancillary Case, and engaged in multiple mediations and conferences with the Shah Family and their counsel. The Receiver's claims against the Shah Family involve disputed facts and legal issues that would require substantial time and expense to litigate further, with uncertainty as to the

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<sup>1</sup> The Settlement Agreement, while contingent upon the entry of an Approval Order, is not contingent upon inclusion of the Bar Order in the Approval Order. *See Exhibit A* at Section II.A and II.E. The inclusion of the Shah Family's ability to seek the Bar Order was a material inducement for their agreement to the Settlement Agreement and payment of the Settlement Amount.

<sup>2</sup> Further, the Receiver has filed, with Defendant Michael Shah, a Joint Motion of Receiver and Defendant Michael Shah for Approval of Settlement Agreement and for Related Relief [ECF No. 305] to approve a settlement with Michael Shah, which is also contingent upon Court approval.

outcome of such litigation and any ensuing appeal. Throughout the litigation of the Ancillary Case, the Receiver and Shah Family were each represented by experienced and diligent counsel who vigorously advanced their respective client's position, creating the risk of litigation in terms of time, expense and uncertainty of outcome.

5. If approved, the Settlement Agreement will result in a substantial recovery for the Receivership Estate. Because the Settlement Amount is a reasonable calculation of the Receiver's risk-adjusted recovery should the Ancillary Case proceed to trial, and collection, the terms of the Settlement Agreement are fair, reasonable, and beneficial to the Receivership Estate.

### **III.**

#### **Shah Family's Motion for Bar Order**

6. The Bar Order is a key settlement term for the Shah Family. The Shah Family seeks a global resolution with respect to all claims that could be asserted against them concerning their former relationship with Zilmil and any transfers from the Zilmil Defendants. The parties affected by the Bar Order will be limited to only those parties that have received actual notice of the Main Case and would be creditors or victims of the Zilmil Defendants previously apprised of the Receivership Estate and the potential to recover for transfers made by the Zilmil Defendants to the Shah Family.

7. Specifically, the Bar Order will apply only to the following persons or entities: (i) Jason B. Scharf, individually and d/b/a Citrades.com and AutoBinaryTrading.com, (ii) CIT Investments, LLC, (iii) Brevspand EOOD, (iv) CIT Investments, Ltd., (v) A&J Media Partners, Inc., (vi) Michael Shah, (vii) Zilmil, Inc., (viii) the Commodities Futures Trading Commission, and by extension, the United States of America, and (ix) the other persons who have received

actual notice of the Main Case, including any who received a claims notice or filed a claim pursuant to the Receiver's Motion to (A) Approve Noticing of Claims Process and (B) Plan of Distribution filed in the Main Case [ECF No. 229] (the "Claims Process").

8. The Shah Family propose that the Court set a hearing on this Motion to occur no earlier than thirty (30) days after the filing of this Motion, so that any affected parties may appear and have any objections to the relief sought herein considered by the Court before the entry of an Approval Order with a Bar Order.

### III.

#### **Relief Requested**

The Shah Family respectfully request the entry of the Approval Order, to include the Bar Order, after a hearing on this Motion.

### IV.

#### **Basis for Relief**

"A district court has broad powers and wide discretion to determine relief in an equity receivership." *SEC. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). In actions such as the Main Case and the Ancillary Case, a district court has the power to approve a settlement that is fair, adequate and reasonable, and is the product of good faith after an adequate investigation by the receiver. *See Sterling v. Steward*, 158 F.3d 1199, 1202 (11th Cir. 1998) ("Determining the fairness of the settlement is left to the sound discretion of the trial court and we will not overturn the court's decision absent a clear showing of abuse of that discretion.").

A district court also has the power to enter a "bar order" that permanently enjoins certain third parties from bringing any claims against a settling party that could have been asserted by or through the receivership or in connection with the facts giving rise to the receivership. *See SEC*

*v. Kaleta*, 530 Fed. Appx. 360 (5th Cir. 2013) (approving bar order in receivership). Bar orders are appropriate “to assist the parties in reaching a settlement.” *Matter of Munford, Inc.*, 97 F.3d 449, 455 (11th Cir. 1996) (approving a bar order in a bankruptcy case).

Bar orders such as that being sought in this case have been approved by the Eleventh Circuit and in this District. *See e.g. In re Seaside Eng'g & Surveying, Inc.*, 780 F.3d 1070, 1076 (11th Cir. 2015) (approving a bar order in a chapter 11 bankruptcy case); *In re U.S. Oil and Gas Lit.*, 967 F.2d 480 (11th Cir. 1992) (approving bar order in a class action); SEC v. Nadel, No. 8:09-cv-87-T-26TBM, 2012 U.S. Dist. LEXIS 195974, at \*7 (M.D. Fla. Feb. 10, 2012) (Bar order approved in settlement involving Ponzi scheme receivership case). The Court is further empowered to fix the procedures for the grant of such relief, as long as due process has been afforded to affected persons. *See Elliott*, at 1566.

**A. *The Settlement Agreement is fair, adequate, and reasonable.***

To approve a settlement in an equity receivership, the court must find that the settlement is fair, adequate and reasonable, and not the product of collusion between the parties. *See Sterling*, 158 F.3d at 1203. To determine whether the settlement is fair, the court examines the following factors: “(1) the likelihood of success; (2) the range of possible [recovery]; (3) the point on or below the range of [recovery] at which settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.” *Id.* at 1203 n.6.

The Settlement Agreement should be approved based on an evaluation of the factors in *Sterling*. Before entering into the Settlement Agreement, the Receiver and his counsel carefully considered and dutifully investigated all potential claims of the Receivership against the Shah Family, the defenses asserted by the Shah Family, the delay and expense of continuing to litigate

such claims, the uncertainty of outcome in the litigation and the possibility of the appeal of any adverse outcome. The Receiver entered into the Settlement Agreement after extensive and arm's length negotiations conducted between the Parties and their experienced counsel in good faith. The Settlement Agreement was therefore not the product of collusion.

The entire process of negotiating the terms of the proposed settlement occurred over a period of months, and only after significant discovery and a summary judgment hearing in the Ancillary Case and Main Case. The proposed settlement is the product of well-informed Parties and provides for a payment of \$1,347,500.00 to the Receiver. This recovery is well within the range of reasonableness and will provide the Receiver significant liquidity to maximize the value of the assets owned by the Receivership Entities for the benefit of claimants under the Claims Process and other creditors, including any parties subject to the Bar Order that participate in the Claims Process.

**B. *The Bar Order is Necessary and Appropriate Ancillary Relief.***

*i. The Court has the authority to approve the Bar Order.*

This power to enter bar orders is consistent with the district court's "broad powers and wide discretion to determine relief in an equity receivership [that] derives from the inherent powers of an equity court [to] fashion relief." *See Elliott*, 953 F.2d at 1566. Further the Eleventh Circuit has expressly held that district courts have the power to enter bar orders. *See Seaside Engineering & Surveying*, 780 F.3d at 1081 (affirming entry of a bar order through a chapter 11 plan where "fair and equitable").

*ii. The Court should approve the Bar Order.*

Whether a bar order should be approved turns on the specific facts and circumstance of each individual case. *See Kaleta*, 530 Fed. Appx at 362 ("receivership cases are highly fact-

specific”). In this case, there are ample facts establishing that the Bar Order is necessary and appropriate ancillary relief.

Here, the scope of the Bar Order is limited to those parties that have received notice of the Main Case and are thereby aware of the potential for claims against the Shah Family for transfers received from the Zilmil Defendants. This finite universe of persons, having received actual notice of the Main Case proceeding, will not be denied due process by the imposition of the Bar Order because they have had adequate notice of the proceeding and have had ample opportunity to seek redress.

The limited universe of persons with respect to whom the Bar Order is sought have all received notice of the Claims Process and have the opportunity to file a claim in the Claims Process for any claims against the Zilmil Defendants that would underpin their right to recover against the Shah Family for transfers received by them. Any claims against the Shah Family with respect to the transfers alleged as received would necessarily require that the claimant be a creditor or victim of the Zilmil Defendants in the first place. Further, it has now been over three (3) years after the commencement of the Main Case and more than four (4) years after nearly all of the alleged transfers. As such, the statute of limitations has run for nearly all transfers from the Zilmil Defendants alleged as received by the Shah Family.

In this case, the Receiver has done an ample job of protecting the interest of parties who would be entitled to claim against the Shah Family for any transfers they received from the Zilmil Defendants. The Settlement Amount paid by the Shah Family will provide significant liquidity and funds to satisfy claimants and creditors under the Claims Process, including any brought by any of the parties for whom the Bar Order is sought. The limited number of parties affected by the Bar Order have received notice and an opportunity to be heard on their claims. The entry of



the Bar Order is therefore necessary and appropriate ancillary relief because it is narrow in scope and has been specifically tailored to its unique circumstances of the case. The Shah Family is seeking closure for these issues and a Bar Order provides that.

***C. Imposing the Bar Order Complies with Due Process, as the Impacted Persons Have Been Afforded Notice and an Opportunity to be Heard.***

“Due process requires notice and an opportunity to be heard.” *Elliot*, 953 F.2d at 1566. The procedures required to satisfy due process vary “according to the nature of the right and to the type of proceedings.” *Id.* “[A] hearing is not required if there is no factual dispute.” *Elliot*, 953 F.2d at 1566. Ultimately, due process when considering the entry of a Bar Order requires procedures that are “fair.” *See Id.* As set forth above, the facts of this case satisfy the fairness required.

All parties that will be impacted by the Bar Order have received notice of the Main Case proceeding and have had an opportunity to present their claims. By setting a hearing on the matter, the Court will further ensure that all affected parties have an opportunity to present any objections before the Bar Order is entered. Further, all such parties have the ability to recover amounts owed by the Zilmil Defendants, which is a predicate for any claims against the Shah Family, through the Receiver’s Claims Process. As such, all impacted parties will have received a full and fair opportunity to evaluate claims against the Zilmil Defendants, and by extension against the Shah Family for any transfers received by them, and receive compensation for any such wrongdoing. The affected parties will further have an opportunity to object to the imposition of the Bar Order at a hearing on the matter. It is further anticipated that the amount of funds available will be sufficient to pay 100% of any claims actually brought through the Claims Process, which underscores the fairness of the Bar Order for the Shah Family.

V.

**Conclusion**

WHEREFORE, the Receiver and the Shah Family jointly move for entry of an Order approving the Settlement and Release Agreement, and the Shah Family separately move the Court for inclusion of the Bar Order language in the form attached hereto as **Exhibit B**, and for such further relief as the Court deems just and proper.

**LOCAL RULE 3.01(g) CERTIFICATION**

The undersigned counsel for the Receiver and the Shah Family have conferred and their respective clients agree to the relief requested herein of approval of the Settlement Agreement. Pursuant to the terms of the Settlement Agreement, the Receiver consents to the entry of the Bar Order requested by the Shah Family. Further, the Receiver has conferred with counsel for the CFTC who confirmed that the CFTC consents to the approval of the Settlement Agreement but does not consent to the entry of the Bar Order sought herein.

/s/ Russell Landy  
Russell Landy, Esq.  
Florida Bar No.: 44417

**DAMIAN & VALORI LLP**  
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*Counsel for Eric Shah, Manoj Shah, and  
Sujata Shah*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on September 24, 2020, I electronically filed the foregoing  
with the Clerk of the Court by using the CM/ECF system.

*/s/ Russell Landy*

\_\_\_\_\_  
Russell Landy, Esq.

## SETTLEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT AND RELEASE AGREEMENT (the “Settlement Agreement”) is made and entered into by and between **Kenneth D. Murena**, as Receiver of Zilmil, Inc. (“Zilmil”), Michael Shah, Jason B. Scharf (d/b/a Citrades.com and AutoTradingBinary.com), CIT Investments, LLC, and Brevspand EOOD (the “Receiver”), and **Eric Shah, Manoj Shah, and Sujata Shah** (together the “Defendants”, and together with the Receiver referred to individually as a “Party” and collectively as the “Parties”).

### **I. RECITALS**

A. WHEREAS, on July 10, 2017, the Commodity Futures Trading Commission (“CFTC”) filed a Complaint in the U.S. District Court for the Middle District of Florida (the “District Court”) styled *United States Commodity Futures Trading Commission v. Jason B. Scharf, et al.*, Case No. 17-cv-774-J-32MCR (the “Main Case”).

B. WHEREAS, Mr. Murena was appointed as full equity Receiver for Zilmil and the other Main Case defendants.

C. WHEREAS, on July 23, 2019, the Receiver filed a complaint in the District Court asserting claims for fraudulent transfer and unjust enrichment (collectively, the “Transfers”) against, *inter alia*, the Defendants initiating the case styled *Kenneth Dante Murena, as Receiver of Zilmil, Inc., v. Manoj Shah, Eric Shah, and Sujata Shah*, Case No. 3:19-cv-00856-TJC-PDB (the “Litigation”).

D. WHEREAS, on April 22, 2020, the Receiver filed a Motion for Constructive Trust in the Main Case (the “Constructive Trust Motion”).

**NOW THEREFORE**, in consideration of the mutual promises, exchanges and forbearances set forth below, the sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

### **II. GENERAL PROVISIONS**

A. **Approval:** The Parties acknowledge and agree that this Settlement Agreement is subject only to the approval of the District Court. Should the District Court deny the Motion to Approve this Settlement as set forth in Section II.E. below, or fail to enter the Approval Order, this Settlement Agreement shall be void *ab initio* and of no effect, and the Parties shall return to the Litigation. The Parties agree they are bound by the terms of the Settlement Agreement as of the date executed, subject only to the event that the District Court denies the Motion to Approve as set forth in Section II.E. below or fails to enter the Approval Order. By way of clarification, if the District Court grants the Motion to Approve and enters the Approval Order, but fails to enter the Approval Order With Additional Bar Order Language (defined in Section II.E. below) or a separate Bar Order, this Settlement Agreement will nonetheless be deemed approved for all purposes and be fully binding upon the Parties.

B. **Recitals:** The Parties acknowledge and agree that the Recitals set forth hereinabove are true, accurate and correct and the same are hereby incorporated into this Settlement

Agreement.

C. **Settlement Amount and Payment Schedule:** The Defendants will pay to the Receiver a total of One Million Three Hundred Forty-Seven Thousand Five Hundred Dollars (USD) (\$1,347,500.00) (the “Settlement Amount”) on or before the later of (i) sixty (60) days after the date of this Settlement Agreement or (ii) fifteen (15) days after the Court’s entry of an Order granting the Motion to Approve (the “Approval Order”). The payment of the Settlement Amount to the Receiver shall be in the form of immediately available funds, including cashier’s check or money order, made payable to “Kenneth D. Murena, as Receiver”, delivered to Damian & Valori LLP, 1000 Brickell Avenue, Suite 1020, Miami, Florida 33131, Attn: Russell Landy, Esq., or by wire transfer to the Receiver’s Trust Account.

D. **General Release:** Effective immediately upon clearance of the payment of the Settlement Amount required herein by or on behalf of the Defendants, the Receiver will release and discharge the Defendants, and their heirs, attorneys, agents, successors and assigns, along with any person or entity to whom the Defendants have transferred any portion of the Transfers (together the “Released Parties”) from any and all claims, demands, obligations, actions, causes of action, rights, damages, punitive damages, attorneys’ fees, costs, expenses and compensation of any nature whatsoever, which the Receiver or Zilmil now has or which may hereafter accrue or otherwise be acquired against the Released Parties, known and unknown, foreseen and unforeseen, from the beginning of time until the date hereof, including without limitation any arising from the Transfers, the Litigation or the Main Case.

E. **Motion to Approve and Approval Order:** The Parties shall, within ten (10) days following the execution of this Settlement Agreement file in the Main Case a joint motion to approve this Settlement Agreement in a form acceptable to Defendants (the “Motion to Approve”), which Motion to Approve may, at the option of the Defendants, include without limitation, a prayer for relief that includes a “bar order” in a form acceptable to Defendants enjoining all persons, including without limitation any past, present or future creditors of Zilmil, any Main Case Defendant, the Commodities Futures Exchange Commission (“CFTC”), from commencing any action against any of the Defendants for any matter related to their receipt of the Transfers or their involvement with Zilmil in any capacity, whether as employee, independent contractor, officer, director, shareholder or otherwise (the “Bar Order”). The proposed order approving the Motion to Approve shall at a minimum contain language that is substantially similar to that included on the attached **Exhibit A** and accomplishes an equivalent outcome (the “Approval Order”).

The Approval Order may also include the Bar Order and related additional language, provided that any Approval Order that includes the Bar Order or any other language that is in addition to the Approval Order shall be referred to as the “Approval Order With Additional Bar Order Language.” The Receiver will consent to an effort of the Defendants to obtain an Approval Order With Additional Bar Order Language, but is not obligated to advocate for an Approval Order With Additional Bar Order Language. The Defendants may prepare separate standalone notice(s) of the Motion to Approve, the proposed Approval Order or Approval Order With Additional Bar Order Language, and any hearing on the matter, in a form acceptable to Defendants, and serve the same on parties in the Main Case or other persons at their own expense. Should the District Court decline to enter an Approval Order With Additional Bar Order Language or a separate Bar Order, but otherwise approve this Settlement Agreement and enter the Approval Order (whether as a standalone order, or as an order that grants only the Approval Order language, or substantially

similar language that effects an equivalent outcome, without the additional language included in the Approval Order With Additional Bar Order Language), the Settlement Agreement will be deemed approved by the District Court.

F. **Dismissal of Litigation and Denial of the Constructive Trust Motion:** Upon clearance of the payment of the Settlement Amount, the Parties shall (i) file a joint stipulation for dismissal of the Litigation with prejudice in a form agreed to by Defendants, (ii) file an agreed order to the Court in the Main Case denying the Constructive Trust Motion as moot and with prejudice, and (iii) execute a standalone general and unconditional release of each Defendant on terms identical to that provided in Section II.D. above. Upon the request of a Defendant, the Receiver will provide any reasonable cooperation requested of a Defendant, and execute such documents, as may be reasonably required to ensure that any encumbrance or cloud on the title of the real property that is the subject of the Constructive Trust Motion is cleared and removed.

G. **Material Breach:** The Parties acknowledge and agree that the failure by the Defendants to pay the Settlement Amount as set forth above will constitute a material breach of this Settlement Agreement and that should such a material breach occur, the Receiver shall be entitled to the entry of a final judgment against the Defendants, jointly and severally, in the amount of \$1,347,500.00, plus post-judgment interest, less any and all amounts that the Receiver received hereunder. In addition, the Receiver shall be entitled to any and all attorneys' fees and costs that he incurs in connection with obtaining such final judgement and any efforts to have the judgment entered and to collect the judgment amount. The Parties further acknowledge and agree that the failure of the Receiver to perform its obligations set forth herein shall constitute a material breach, and should that material breach occur, any of the Defendants shall be entitled to enforce this Settlement Agreement by specific performance and recover their attorneys' fees and costs that they incur in connection the Receiver's breach, provided there remain funds in the Receivership Estate and the District Court approves such payment of fees and costs therefrom.

H. **No Admission of Liability:** Nothing herein shall be construed as an admission of liability by either Party, any such liability being expressly disputed and denied, and shall never be construed as an admission(s) by the Parties hereto. The Parties acknowledge that the nature of the Litigation related to a contested liability and, further, that the claims are being released in exchange for a release from these contested liabilities. As such, the Parties agree that the claims made to contest such liability were made in good faith, and, as a result, the Parties agree that the Receiver shall not issue a Form 1099-C or any other tax document that seeks to or would result in imputation of income to the Defendants.

### III. **WARRANTIES AND REPRESENTATIONS**

The Parties represent and warrant that no other person or entity has or has had any interest in the claims, demands, obligations or causes of action referred to in this Settlement Agreement; that they have the sole and exclusive right to receive sums specified in it; that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement; that the person executing this Settlement Agreement has the authority, on behalf of each Party, to execute the terms and conditions of the Settlement Agreement; and that the Parties will pursue District Court approval of this Settlement Agreement, the Motion to Approve and the Approval Order in the Main Case.

The Parties shall not disclose any information or documentation obtained in the Litigation from or relating to the other Party, except as may be required pursuant to a lawfully served subpoena or other legal process, or regular reporting by the Receiver to the District Court in the Main Case, but only after written notice to the other affected Parties. Nothing herein shall preclude the disclosure of any information to a Party's attorneys, accountants, consultants, or employees as the Party deems reasonably necessary to comply with this Settlement Agreement.

**IV. ENTIRE AGREEMENT AND SUCCESSORS-IN-INTEREST**

The Parties agree that this Settlement Agreement contains the entire agreement between the Parties with regard to the matters set forth in it, and shall be binding upon and inure to the benefit of their respective successors and assigns. There are no other understandings or agreements, verbal or otherwise, in relation thereto between the Parties, except as herein expressly set forth. There have been no representations not set forth herein that the Parties have relied upon when entering into this Settlement Agreement. Should any provision of this Settlement Agreement require interpretation or construction, the Parties agree that all Parties have participated in the drafting of this document and no presumption regarding construing the document against one Party shall apply.

**V. PARTIES' OPPORTUNITY TO BE REPRESENTED BY COUNSEL**

The Parties acknowledge that each has had the opportunity to consult with the attorney of their choice. Furthermore, each Party to this Settlement Agreement represents and warrants that they are entering into this Settlement Agreement of their own free will, without having been subjected to any form of duress or coercion of any kind.

**VI. ATTORNEYS' FEES**

In any action brought to enforce the terms of this Settlement Agreement, the prevailing Party shall be entitled to recover their reasonable attorneys' fees and costs including expert witness fees incurred in seeking the enforcement of the terms of this Settlement Agreement, including fees and costs on appeal and the fees and costs incurred in litigating the amount of such fees and costs.

**VII. EXECUTION**

This document may be executed in multiple parts, each of which shall be deemed an original and all such counterparts together shall constitute one and the same instrument. Electronic, PDF, and facsimile signatures are binding as originals.

**VIII. SEVERABILITY**

In the event any provision of this Settlement Agreement is found to be invalid by any court of law, the remaining provisions of the Settlement Agreement shall remain valid and binding on the Parties.

**IX. JURISDICTION AND VENUE FOR LITIGATION OF DISPUTES**

In the event of a dispute as to the interpretation, enforcement, application or violation of this Settlement Agreement, it is understood and agreed that the District Court shall retain exclusive jurisdiction, and be the exclusive venue, in which to resolve such dispute. In addition, the Parties specifically agree that the District Court retains the right to award to the prevailing Party the attorneys' fees and costs incurred in connection with the enforcement of this Settlement.

**X. CONSTRUCTION BY STATE LAW**

This Settlement Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Florida to the extent state law is applicable, without giving effect to principles of conflicts of law.

Eric Shah  
Eric Shah

Dated: 09/10/2020

Sujata Shah  
Sujata Shah

Dated: 09/10/2020

Manoj Shah  
Manoj Shah

Dated: 09-10-2020

Kenneth D. Murena, as Receiver for Zilmil, Inc.,  
Michael Shah, Jason B. Scharf (d/b/a Citrades.com  
and AutoTradingBinary.com), CIT Investments, LLC,  
and Brevspand EOOD

Dated: \_\_\_\_\_



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\_\_\_\_\_  
Eric Shah

\_\_\_\_\_  
Sujata Shah

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Manoj Shah

  
\_\_\_\_\_  
Kenneth D. Murena, as Receiver for Zilmil, Inc.,  
Michael Shah, Jason B. Scharf (d/b/a Citrades.com  
and AutoTradingBinary.com), CIT Investments, LLC,  
and Brevspand EOOD

Dated: \_\_\_\_\_

Dated: 9/10/20

**Exhibit A to Settlement Agreement**

**Approval Order**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

Case No. 17-cv-774-J-32MCR

Commodity Futures Trading Commission,

Plaintiff,

v.

Jason B. Scharf (d/b/a Citrades.com and  
AutoTradingBinary.com); *et al.*

Defendants.

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Kenneth Dante Murena, as Receiver for  
Zilmil, Inc.,

ANCILLARY CASE NO.:  
3:19-cv-00856-TJC-PDB

Plaintiff,

v.

Manoj Shah; Bhavana Babulal Shah;  
Eric Shah; Sujata Shah; and Udaykumar Shah,

Defendants.

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**ORDER GRANTING JOINT MOTION OF RECEIVER AND DEFENDANTS FOR  
APPROVAL OF SETTLEMENT AGREEMENT**

THIS CAUSE came before the Court upon the Joint Motion of Receiver and Defendants for Approval of Settlement Agreement [ECF No. \_\_\_\_] (the "Motion"). The Court, having reviewed the Motion, noting that no objection to the motion has been filed, and otherwise being fully advised in the matter, finds that the relief requested in the Motion should be granted.

Accordingly, it is,

**ORDERED** as follows:

1. The Motion is **GRANTED**.
2. The Settlement Agreement entered into between the Parties is **APPROVED**, and is final and binding upon the Parties, their successors and assigns, as provided in the Settlement Agreement.
3. The Parties to the Settlement Agreement are authorized to perform their obligations under the Settlement Agreement.
4. Without limitation of the foregoing, upon the payment of the Settlement Amount as provided in Section II.C. of the Settlement Agreement, the general releases set forth in Section II.D of the Settlement Agreement are **APPROVED**, and are final and binding on the Parties and their successors and assigns, as provided in the Settlement Agreement.
5. Nothing in this Order or the Settlement Agreement, and no aspect of the Parties' settlement or negotiations thereof, is or shall be construed to be an admission or concession of any violation of any statute or law, of any fault, liability or wrongdoing.
6. The Parties' settlement and the Settlement Agreement reflect the Parties settlement of disputed claims that were contested between the Parties, and settled, in good faith.
7. In accordance with the Settlement Agreement, upon the payment of the Settlement Amount as provided in Section II.C. of the Settlement Agreement, the Receiver is directed and authorized to dismiss with prejudice that certain ancillary case that is related to this matter, namely *Kenneth Dante Murena, as Receiver of Zilmil, Inc., v. Manoj Shah, Eric Shah, and Sujata Shah, et al.*, Case No. 3:19-cv-00856-TJC-PD (the "Ancillary Case"), against all defendants.
8. The Receiver's Motion for Imposition of Constructive Trust on Funds, Assets, and Real Property Traceable to Zilmil, Inc. (Doc. 268) is hereby **DENIED AS MOOT** to Eric Shah.

9. Without impairing or affecting the finality of this Order, the Court retains continuing and exclusive jurisdiction to construe, interpret and enforce this Order and the Settlement Agreement including, without limitation, the general releases in the Settlement Agreement.

**DONE AND ORDERED** in Chambers at Jacksonville, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2020.

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HONORABLE TIMOTHY J. CORRIGAN

United States District Judge, United States District  
Court for the Middle District of Florida

Copies to: All Parties of Record in the instant case and the Ancillary Case

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

Case No. 17-cv-774-J-32MCR

Commodity Futures Trading Commission,

Plaintiff,

v.

Jason B. Scharf (d/b/a Citrades.com and  
AutoTradingBinary.com); *et al.*

Defendants.

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**ORDER GRANTING JOINT MOTION OF RECEIVER AND DEFENDANTS  
FOR APPROVAL OF SETTLEMENT AGREEMENT AND BARRING CERTAIN  
CLAIMS AGAINST ERIC SHAH, MANOJ SHAH AND SUJATA SHAH**

THIS CAUSE came before the Court upon the joint motion of the Receiver and Eric Shah, Manoj Shah, and Sujata Shah (collectively the “Shah Family”), defendants in the ancillary case styled *Kenneth Dante Murena, as Receiver for Zilmil, Inc. v. Eric Shah, Manoj Shah, and Sujata Shah*, Case No.: 3:19-cv-00856-TJC-PDB (the “Ancillary Case”), for approval of their Settlement Agreement, and the Shah Family seeking inclusion of bar order language in the approval order [ECF No. \_\_\_\_] (the “Motion”). The Court, having reviewed the Motion, noting that no objection to the Motion has been filed, and otherwise being fully advised in the matter, finds that the relief requested in the Motion should be granted and further **FINDS AND DETERMINES** as follows:

A. The Court has jurisdiction over the subject matter, including, without limitation, jurisdiction to consider the Motion<sup>1</sup>, the Settlement Agreement and the proposed Approval Order with Bar Order language, and authority to grant the Motion, approve the Settlement Agreement,

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<sup>1</sup> All capitalized terms not defined herein shall have the meaning set forth in the Motion.

and enter the Approval Order with Bar Order language.

B. The receipt of notice of the instant lawsuit by the parties thereto, and the service of claims notices upon persons by the Receiver in its Claims Process, constitutes good and sufficient notice upon such persons, and is reasonably calculated under the circumstances to notify all affected persons of the Motion, and the Settlement Agreement, of their opportunity to object thereto, and of their opportunity to appear and be heard at the hearing concerning these matters. Accordingly, all affected parties were furnished a full and fair opportunity to object to the Motion, the Settlement Agreement, the proposed Approval Order with Bar Order language and all matters related thereto, and to be heard at the hearing on the Motion, therefore complying with all requirements of applicable law, including, without limitation, the Federal Rules of Civil Procedure, the Court's Local Rules, and the due process requirements of the United States Constitution.

C. The Court has allowed any parties to the instant case or persons that have received a claim notice under the Receiver's Claims Process to be heard if they desired to participate. Each of these persons or entities has standing to be heard on these issues.

D. The Receiver and Shah Family negotiated for a period of several months; their negotiations included the exchange and review of numerous documents, multiple depositions, several telephone conferences, and two mediation sessions.

E. The Settlement Agreement was entered into in good faith, is the product of arm's length negotiations, and is not collusive. The claims the Receiver brought against the Shah Family involve disputed facts and issues of law that would require substantial time and expense to litigate, with significant uncertainty as to the outcome of such litigation, the measurement of damages, and any ensuing appeal.

F. The Receiver has a duty to preserve and maximize the value of the assets of the Receivership Estate for the benefit of claimants and creditors of Zilmil.

G. Based upon the foregoing findings, the Court further finds and determines that entry into the Settlement Agreement is a prudent exercise of business judgment by the Receiver, that the proposed settlement as set forth in the Settlement Agreement is fair, adequate and reasonable, that the interests of all affected persons were fairly and reasonably considered and addressed, and that the Settlement Amount provides a recovery to the Receiver for the benefit of the Receivership Estate that is well within the range of reasonableness.

H. The notice given to the limited universe of parties impacted by the Bar Order, which consist of the parties to the instant action and all persons who received notice under the Claims Process, through their respective participation in these proceedings and the Claims Process, is the best practical manner and method of providing notice of the proposed Settlement Agreement and Bar Order to such persons. Through these notices, anyone with an interest in the Receivership Estate should have become aware of the Settlement Agreement and Bar Order and has been provided sufficient information to put them on notice how to obtain more information and/or object, if they wished to do so.

I. The releases and other provisions in the Settlement Agreement are fair, adequate and reasonable, and in the best interests of all parties thereto.

J. The Shah Family entered into the Settlement Agreement with a reasonable expectation of the entry of the Bar Order upon the limited persons to whom it applies.

K. The Bar Order is appropriate in light of the limited number of persons that are subject to its terms, the nature of the potential claims against the Shah Family that are thereby barred, and the opportunity for the persons subject to the Bar Order to receive compensation through the Claims Process. The interests of persons affected by the Bar Order and the releases in the Settlement Agreement were well represented by the Receiver, acting in the best interests of the Receivership estate in his fiduciary capacity. Accordingly, the Settlement Agreement is fair,

adequate and reasonable, and in the best interests of the Receivership Estate, all persons impacted thereby, including without limitation all persons who are subject to the Bar Order and may have claims against the Shah Family relating to their involvement with the Zilmil Defendants. The Bar Order is a necessary and appropriate order granting ancillary relief.

Based on the foregoing findings and conclusions, the Court **ORDERS, ADJUDGES, AND DECREES** as follows:

1. The Motion is **GRANTED**.
2. The Settlement Agreement entered into between the Parties is **APPROVED**, and is final and binding upon the Parties, their successors and assigns, as provided in the Settlement Agreement.
3. The Parties to the Settlement Agreement are authorized to perform their obligations under the Settlement Agreement.
4. Without limitation of the foregoing, upon the payment of the Settlement Amount as provided in Section II.C. of the Settlement Agreement, the general releases set forth in Section II.D of the Settlement Agreement are **APPROVED**, and are final and binding on the Parties and their successors and assigns, as provided in the Settlement Agreement.
5. Nothing in this Order or the Settlement Agreement, and no aspect of the Parties' settlement or negotiations thereof, is or shall be construed to be an admission or concession of any violation of any statute or law, of any fault, liability or wrongdoing.
6. The Parties' settlement and the Settlement Agreement reflect the Parties settlement of disputed claims that were contested between the Parties, and settled, in good faith.
7. In accordance with the Settlement Agreement, upon the payment of the Settlement Amount as provided in Section II.C. of the Settlement Agreement, the Receiver is directed and authorized to dismiss with prejudice the Ancillary Case against the Shah Family.



8. The Receiver's Motion for Imposition of Constructive Trust on Funds, Assets, and Real Property Traceable to Zilmil, Inc. (Doc. 268) is hereby **DENIED AS MOOT** as to Eric Shah.

9. Any objections to entry of the Bar Order are overruled to the extent not otherwise withdrawn or resolved.

10. The Bar Order as set forth in paragraph 11 of this Order is **APPROVED** as a necessary and appropriate component of the settlement.

11. **BAR ORDER AND INJUNCTION: THE "BARRED PERSONS" ARE PERMANENTLY BARRED, ENJOINED, AND RESTRAINED FROM ENGAGING IN THE "BARRED CONDUCT" AGAINST ERIC SHAH, MANOJ SHAN AND SUJATA SHAH AND THEIR "RELATED PARTIES", WITH RESPECT TO THE "BARRED CLAIMS", as those terms are defined below:**

a. The "Barred Persons": The Barred Persons shall mean only the following: (i) Jason B. Scharf, individually and d/b/a Citrades.com and AutoBinaryTrading.com, (ii) CIT Investments, LLC, (iii) Brevspand EOOD, (iv) CIT Investments, Ltd., (v) A&J Media Partners, Inc., (vi) Michael Shah, (vii) Zilmil, Inc., (viii) the Commodities Futures Trading Commission, and by extension, the United States of America, and (ix) the other persons who have received actual notice of the Main Case, including any who received a claims notice or filed a claim pursuant to the Receiver's Motion to (A) Approve Noticing of Claims Process and (B) Plan of Distribution filed in the Main Case [ECF No. 229]; (x) any person or entity claiming by or through such persons or entities named in (i) – (ix) above, and/or the Receivership Estate, whether jointly or individually, directly, indirectly, or through a third party, and whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever.

b. The "Barred Conduct": The Barred Conduct shall mean instituting or otherwise prosecuting, pursuing or litigating in any case or manner, whether pre-judgment or post-

judgment, or enforcing, levying, employing legal process, attaching, garnishing, sequestering, bringing proceedings supplementary to execution, collecting or otherwise recovering, by any means or in any manner, based upon any liability or responsibility that directly or indirectly relates in any way to the Barred Claims.

c. **The “Barred Claims”**: The Barred Claims shall mean any and all claims, actions, lawsuits, causes of action, or proceedings of any nature, including, but not limited to, litigation, arbitration, or other proceeding, in any federal, state, or other court, arbitration forum, administrative agency, or other forum in the United States or elsewhere, whether arising under local, state, federal or foreign law, that in any way relate to or are connected with the Shah Family’s participation in the activities of Zilmil or receipt of any transfers from the Zilmil Defendants;

d. **The “Related Parties”**: The Related Parties include the respective administrators, heirs, beneficiaries, transferees, agents, attorneys, and assigns of Eric Shah, Manoj Shah or Sujata Shah.

12. Other than by direct appeal of this Order, or motion for reconsideration or rehearing thereof, made in accordance with the Federal Rules of Civil Procedure, no appeal, challenge, decision or other matter concerning any subject set forth in this paragraph shall operate to terminate or cancel the Settlement Agreement, or to impair, modify or otherwise affect in any manner the Bar Order.

13. Without impairing or affecting the finality of this Order, the Court retains continuing and exclusive jurisdiction to construe, interpret and enforce this Order, including, without limitation, the general release in the Settlement Agreement and the Bar Order. This retention of jurisdiction is not a bar to any person, including the Settling Parties, from raising the Bar Order to obtain its benefits in establishing reductions to damage awards or seeking to dismiss a claim.

**DONE AND ORDERED** in Chambers at Jacksonville, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2020.

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HONORABLE TIMOTHY J. CORRIGAN  
United States District Judge, United States District  
Court for the Middle District of Florida

Copies to: All Parties of Record in the instant case and the Ancillary Case