

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION

STEPHEN EZEKIEL JOSEPH, et al.,

Plaintiffs,

vs.

DAILY BREAD, LLC,

Defendant.

Case No. 2021-  
026520-CA-01

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**RECEIVER'S MOTION FOR ENTRY OF AN ORDER BARRING, RESTRAINING,  
AND ENJOINING CLAIMS AGAINST TIMOTHY KIRKWOOD**

Scott M. Dimond, as Receiver of Daily Bread, LLC (“Daily Bread”), appointed pursuant to this Court’s Order of December 14, 2021, hereby moves the Court for an order, in the form attached as Exhibit A (the “Bar Order”), barring, restraining, and enjoining any and all persons (excluding any federal or state governmental bodies or agencies) from commencing or continuing litigation or other pursuit of any and all claims against Timothy Kirkwood (“Mr. Kirkwood”) that relate in any manner to those events, transactions, and circumstances relating to Daily Bread or the Daily Bread Action (as defined below).

1. On December 14, 2021, the Court appointed the Receiver to, *inter alia*, manage the wind down and dissolution of Daily Bread, LLC (the “Receivership”) in that case styled *Stephen Ezekiel Joseph, et. al., v. Daily Bread, LLC*, Miami-Dade Circuit Court Case No. 21-026520 CA 44 (the “Daily Bread Action”).

2. On December 31, 2021, John Stanbridge (“Mr. Stanbridge”) died in Miami-Dade County, Florida.

3. Mr. Stanbridge and Mr. Kirkwood were Class A members of Daily Bread.

4. The Receiver takes the position that Mr. Kirkwood received proceeds from or related to Daily Bread that Mr. Kirkwood should not have received because Daily Bread was being illicitly operated by Mr. Stanbridge as a Ponzi scheme.

5. Mr. Kirkwood has represented to the Receiver that he was not aware until the end of October 2021 that Mr. Stanbridge had illicitly operated Daily Bread as a Ponzi scheme.

6. Mr. Kirkwood has further represented to the Receiver that prior to learning of Mr. Stanbridge's scheme, Mr. Kirkwood had made a series of external investments with funds from Mr. Kirkwood's Daily Bread account, including but not limited to investments placed in the name of Mr. Kirkwood personally with Pink Chit, LLC ("Pink Chit") (collectively, the "External Investments").

7. In addition, Mr. Kirkwood and Mr. Stanbridge were 80%/20% members of Turnerfield Holdings, LLC ("Turnerfield"), which, as represented by Mr. Kirkwood to the Receiver, is an entity created to hold the accumulated carried interest generated by certain business activities performed by Mr. Kirkwood unrelated to Daily Bread or Pink Chit.

8. Mr. Kirkwood and the Receivership are each 50% members of Pink Chit, and Mr. Kirkwood and the Receivership are, respectively, 80%/20% members of Turnerfield. Mr. Kirkwood is currently the Manager of Pink Chit and Turnerfield.

9. The Receiver takes the position that all proceeds that Mr. Kirkwood received from or related to Daily Bread, including monies that flowed into the External Investments (collectively, the "Target Assets"), are subject to being seized by the Receiver or could be the subject of claims that the Receiver could file against Mr. Kirkwood. Mr. Kirkwood has denied that assertion in discussions with the Receiver, but the parties nonetheless began settlement talks in an attempt to resolve the Receiver's potential claims.

10. In connection with those settlement discussions between the Receiver and Mr. Kirkwood, the Receiver's counsel took an in-depth financial deposition of Mr. Kirkwood, which included disclosure from Kirkwood not only as to disbursements he received from Daily Bread but also as to his assets and liabilities.

11. Thereafter, the Parties attended a mediation conference on September 19, 2022 (the "Mediation") with mediator Judge Martin Zilber, ret. (the "Mediator") that resulted in the Parties agreeing to the material terms of a proposed settlement to fully and finally resolve any disputes regarding the Target Assets and all claims between the Parties.

12. Following Mediation, the Parties negotiated over a period of several months, which included the exchange and review of supplemental documents and many telephone conferences, after which they finalized the terms of a Settlement Agreement, attached hereto as Exhibit B (the "Settlement Agreement").

13. The Settlement Agreement provides substantial benefits to the receivership estate in that it entails Mr. Kirkwood turning over the bulk of his assets that are potentially subject to collection. Thus the Bar Order is an essential provision of the settlement as it was a material inducement to Mr. Kirkwood's willingness to enter into the Settlement Agreement. Simply put, Mr. Kirkwood would not agree to turn over the bulk of his collectable assets if he were thereafter still required to defend and be exposed to claims in this matter.

14. As such, the settlement is expressly conditioned upon the entry of the Bar Order. The attached form of the Bar Order has been approved by Mr. Kirkwood as fulfilling the obligation for entry of the Bar Order as required by the Settlement Agreement.

15. This Court, as a court of equity, has jurisdiction to consider this motion and request for entry of the requested Bar Order.

16. The Court has jurisdiction over the subject matter, including, without limitation, jurisdiction to consider the Motion and the Bar Order, and authority to grant the Motion and enter the Bar Order. *See* Fla. Const. Art. V, § 5(b); Fla. Stat. § 26.012(2)(c) (2022); *In re U.S. Oil & Gas Litig.*, 967 F.2d 489 (11th Cir. 1992) (affirming the approval of a settlement bar order in a class action); *Matter of Munford, Inc.*, 97 F.3d 449 (11th Cir. 1996) (affirming authority of the bankruptcy court to enter bar orders to facilitate a settlement); *Brophy v. Salkin*, 550 B.R. 595, 602 (S.D. Fla. 2015) (granting motion for bar order based upon propriety of settlement); *see also Sec. & Exch. Comm'n v. Kaleta*, 530 F. App'x. 360 (5th Cir. 2013) (affirming approval of settlement and bar order in a civil enforcement action).

17. The Receiver believes that the settlement with Mr. Kirkwood and the attendant entry of the Bar Order are fair and equitable and plainly are in the best interest of the receivership and the defrauded investors who will be the beneficiaries of the settlement proceeds.

18. Critically, if: (i) the Court were to deny the Receiver's motion for entry of the Bar Order, or (ii) any party were to successfully appeal from the order, then within ten (10) days of such occurrence, the Settlement Agreement provides that Mr. Kirkwood shall have the option of declaring that the Settlement Agreement is null and void, at which point the Parties would return to the status quo prior to the Mediation.

19. The Receiver submits that having the Settlement Agreement nullified would not be in the best interests of the receivership or the defrauded investors and would instead cause an avoidable drain on the resources of the receivership to go forward with any claims against Mr. Kirkwood.

20. Accordingly, the Receiver respectfully requests that the Court enter the Bar Order in the form attached.

WHEREFORE the Receiver respectfully requests that this Court grant this motion, enter the Bar Order in the form attached as Exhibit A, and grant the Receiver such other and further relief as the Court deems just and proper.

Respectfully submitted,

By: s/ Lorenz Michel Prüss

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*Counsel for the Receiver*

**CERTIFICATE OF SERVICE**

**WE HEREBY CERTIFY** that on January 3, 2023, a true and correct copy of the foregoing document titled: RECEIVER’S MOTION FOR ENTRY OF AN ORDER BARRING, RESTRAINING, AND ENJOINING CLAIMS AGAINST TIMOTHY KIRKWOOD was filed with the Clerk of Court and served via e-mail upon counsel of record.

By: /s Lorenz Michel Prüss

Lorenz Michel Prüss

# EXHIBIT A

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION

STEPHEN EZEKIEL JOSEPH, et al.,

Plaintiffs,

vs.

DAILY BREAD, LLC,

Defendant.

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Case No. 2021-  
026520-CA-01

**ORDER BARRING, RESTRAINING, AND ENJOINING CLAIMS  
AGAINST TIMOTHY KIRKWOOD**

THIS MATTER came before the Court on the Motion for Approval of Order Barring, Restraining and Enjoining Claims Against Timothy Kirkwood [D.E. \_\_\_] (the “Motion”) filed by Scott M. Diamond (“Receiver”), as Receiver of Daily Bread, LLC. (“Daily Bread”), appointed pursuant to this Court’s Order of December 14, 2021, in the above-captioned case (the “Daily Bread Action”).

The Court held a hearing on [\_\_\_\_\_] to consider the Motion and hear objections, if any.

By way of the Motion, the Receiver requests entry of a bar order (the “Bar Order”) enjoining any and all persons (excluding any federal or state governmental bodies or agencies) from commencing or continuing litigation or other pursuit of any and all claims against Timothy Kirkwood (“Mr. Kirkwood”) that relate in any manner to those events, transactions and circumstances arising out of the facts related to Daily Bread or the Daily Bread Action.

The Motion and related documents were served by email on all identifiable interested parties and posted on the receivership website at <http://dailybreadllcreceivership.com>.

This Court is fully advised of the issues in the above-captioned case, as it has previously heard argument concerning the events, circumstances, and transactions of Daily Bread, which resulted in the appointment of the Receiver.

In addition, the Court has read and considered the Motion, the Settlement Agreement, other relevant filings of record, and the arguments and evidence presented at the hearing; therefore, the Court FINDS AND DETERMINES as follows:

A. The Court has jurisdiction over the subject matter, including, without limitation, jurisdiction to consider the Motion and the Bar Order, and authority to grant the Motion and enter the Bar Order. *See* Fla. Const. Art. V, § 5(b); Fla. Stat. § 26.012(2)(c) (2022); *In re U.S. Oil & Gas Litig.*, 967 F.2d 489 (11th Cir. 1992) (affirming the approval of a settlement bar order in a class action); *Matter of Munford, Inc.*, 97 F.3d 449 (11th Cir. 1996) (affirming authority of the bankruptcy court to enter bar orders to facilitate a settlement); *Brophy v. Salkin*, 550 B.R. 595, 602 (S.D. Fla. 2015) (granting motion for bar order based upon propriety of settlement); *see also Sec. & Exch. Comm'n v. Kaleta*, 530 F. App'x. 360 (5th Cir. 2013) (affirming approval of settlement and bar order in a civil enforcement action)..

B. The service of the Motion, the proposed Bar Order, and the corresponding Notice of Hearing, as well as their posting on the receivership website, constitutes good and sufficient notice, and is reasonably calculated under the circumstances to notify all affected persons of the Motion and the proposed Bar Order, and of their opportunity to object thereto, of the deadline for objections, 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 and the Bar Order and all matters related

thereto and to be heard at the hearing; therefore, the foregoing service of complied with all requirements of applicable law.

C. The Court has allowed any investors, creditors, objectors, and parties to the Daily Bread Action to be heard if they desired to participate. Each of these persons or entities has standing to be heard on these issues.

Anyone with an interest in the Daily Bread Action should have become aware of the Motion and Bar Order and have been provided sufficient information to put them on notice how to obtain more information and/or object, if they wished to do so.

The Bar Order is tailored to matters relating to the Barred Claims and is appropriate to assist in maximizing the value of the Receivership estate and insuring for a more-prompt distribution of proceeds for the benefit of the investors and other creditors.

The interests of persons affected by the Bar Order were well represented by the Receiver, acting in the best interests of the Receivership estate in his fiduciary capacity.

Accordingly, the Parties have shown good reason for the approval of the Bar Order to proceed expeditiously.

Therefore, there is no just reason for delay of the finality of this Order.

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

1. The Motion is GRANTED in its entirety. Any objections to the Motion or the entry of this Order are overruled to the extent not otherwise withdrawn or resolved.

2. The Bar Order as set forth in paragraph e of this Order is APPROVED.

3. BAR ORDER AND INJUNCTION: THE BARRED PERSONS ARE PERMANENTLY BARRED, ENJOINED, AND RESTRAINED FROM ENGAGING IN THE

BARRED CONDUCT AGAINST TIMOTHY KIRKWOOD WITH RESPECT TO THE BARRED CLAIMS, as those terms are herein defined.

- a. The “**Barred Persons**”: Any non-governmental person or entity, including, without limitation, (i) owners, officer and directors, limited and general partners, investors, and creditors of Daily Bread or the Receivership; or (ii) any person or entity claiming by or through such persons or entities, all and individually, directly, indirectly, or through a third party, whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever;
- b. The “**Barred Conduct**”: instituting, reinstating, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, otherwise prosecuting, or otherwise 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, or asserted or potential liability or responsibility, directly or indirectly, relating in any way to the Barred Claims;
- c. The “**Barred Claims**”: any and all claims, actions, lawsuits, causes of action, investigation, demand, complaint, cross-claims, counterclaims, or third-party claims or proceeding of any nature, including, but not limited to, litigation, arbitration, or other proceeding, in any federal or state court, or in any other court, arbitration forum, administrative agency, or other forum in the United States, whether arising under local, state, federal or foreign law; that in any way relate to,

are based upon, arise from, or are connected with the released claims or interests of any kind as set forth in the Settlement Agreement, with the Receivership including but not limited to those events, transactions and circumstances alleged in the Daily Bread Action;

- d. The Bar Order shall not apply (i) to the United States of America, its agencies or departments, or to any state or local government and its agencies or departments; or (ii) to the Parties' respective obligations under the Settlement Agreement.
  - e. Nothing in this Order, nor the performance of the Parties' obligations thereunder, shall in any way impair, limit, modify or otherwise affect the rights of the Receiver or any Barred Persons against any party other than Timothy Kirkwood.
4. This Order is a final order for all purposes, including, without limitation, for purposes of the time to appeal or to seek rehearing or reconsideration.
  5. This Order shall be served by counsel for the Receiver via email, first class mail or international delivery service, on any person or entity afforded notice, as well as be posted on the receivership website.
  6. 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 injunction, Bar Order and releases herein.

DONE AND ORDERED in Chambers at Miami, Florida, this day of [     ] ]

# **EXHIBIT B**

**SETTLEMENT AGREEMENT**

This Settlement Agreement (the “Agreement”) is entered into between, on the one side, Scott M. Dimond, as Receiver for Daily Bread, LLC, appointed pursuant to the Court’s December 14, 2021 Order Granting Plaintiffs’ Emergency Motion for Appointment of Receiver (the “Receiver”), and, on the other side, Timothy Kirkwood (“Mr. Kirkwood”). Collectively, the Receiver and Mr. Kirkwood are referred to as the “Parties,” and each may be individually referred to as a “Party.”

**RECITALS**

**Whereas**, on December 14, 2021, the Court appointed the Receiver to, *inter alia*, manage the wind down and dissolution of Daily Bread, LLC (the “Receivership”) in that case styled *Stephen Ezekiel Joseph, et. al., v. Daily Bread, LLC*, Miami-Dade Circuit Court Case No. 21-026520 CA 44 (the “Action”);

**Whereas**, on December 31, 2021, John Stanbridge (“Mr. Stanbridge”) died in Miami-Dade County, Florida;

**Whereas**, Mr. Stanbridge and Mr. Kirkwood were Class A members of Daily Bread, LLC (“Daily Bread”);

**Whereas**, the Receiver takes the position that Mr. Kirkwood received proceeds from or related to Daily Bread that Mr. Kirkwood should not have received because Daily Bread was being illicitly operated by Mr. Stanbridge as a Ponzi scheme;

**Whereas**, Mr. Kirkwood represents that he was not aware until the end of October 2021 that Mr. Stanbridge had illicitly operated Daily Bread as a Ponzi scheme;

**Whereas**, Mr. Kirkwood represents that prior to learning of Mr. Stanbridge’s scheme, Mr. Kirkwood had made a series of external investments with funds from Mr. Kirkwood’s Daily Bread account, including but not limited to investments placed in the name of Mr. Kirkwood personally with Pink Chit, LLC (“Pink Chit”) (collectively, the “External Investments”);

**Whereas**, Mr. Kirkwood and Mr. Stanbridge were 80%/20% members of Turnerfield Holdings, LLC (“Turnerfield”), respectively, which, as represented by Mr. Kirkwood, is an entity created to hold the accumulated carried interest generated by certain business activities performed by Mr. Kirkwood unrelated to Daily Bread or Pink Chit;

**Whereas**, Mr. Kirkwood and the Receivership are each 50% members of Pink Chit;

**Whereas**, Mr. Kirkwood and the Receivership are, respectively, 80%/20% members of Turnerfield;

**Whereas**, Mr. Kirkwood is currently the Manager of Pink Chit and Turnerfield;

**Whereas**, the Receiver takes the position that all proceeds that Mr. Kirkwood received from or related to Daily Bread, including monies that flowed into the External Investments (collectively, the “Target Assets”), are subject to being seized by the Receiver or could be the subject of claims that the Receiver could file against Mr. Kirkwood;

**Whereas**, the Parties attended a mediation conference on September 19, 2022 (the “Mediation”) with mediator Martin Zilber (the “Mediator”) that resulted in the Parties agreeing to the material terms of a proposed settlement to fully and finally resolve any disputes regarding the Target Assets and all claims between the Parties, the terms of which are reflected in this Agreement; and

**Whereas**, the entry of the Bar Order described in Section 3 of this Agreement is an essential provision of the settlement and is a material inducement to Mr. Kirkwood’s willingness to enter into this Agreement;

**Now, therefore**, without any admission, assumption, or finding of liability by or against any of the Parties, and in consideration of the promises and the benefits to be derived from the observance of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which all of the Parties hereby acknowledge, the Parties agree as follows.

1. **Recitals.** The above recitals are hereby acknowledged, accepted, and fully restated and incorporated herein as substantive provisions and not as mere recitals, and the Parties acknowledge the recitals as being true and correct.

2. **Mr. Kirkwood’s Payments to the Receiver.** Mr. Kirkwood agrees to pay the Receivership an amount up to but not to exceed Three Million Eight Hundred and Sixty Thousand Dollars (\$3,860,000) (the “Settlement Amount”), which Mr. Kirkwood shall pay and/or cause to be paid as follows:

a. Within five (5) business days of the Effective Date (defined below), Mr. Kirkwood shall pay \$115,000 to the Receivership as follows:

i. Mr. Kirkwood shall consent to and/or direct a cash payment via wire transfer of \$107,500 from the Pink Chit Wells Fargo account to the Receivership pursuant to wire transfer instructions that the Receiver will provide; and

ii. the Receiver shall retain Mr. Kirkwood's share of the liquidation of the "Foxy Capital" investment made by Pink Chit in the amount of \$7,500, which monies the Receivership has already collected;

b. The \$3,745,000 balance of the Settlement Amount shall be payable out of Mr. Kirkwood's equity interest in proceeds generated by Pink Chit and Turnerfield (and, for the avoidance of doubt, the Receiver shall have no claim against any current or future assets of Mr. Kirkwood except as specifically set forth in this Agreement) as those proceeds are distributed or liquidated as follows:

i. **Pink Chit Proceeds.** Upon receipt of assets or other proceeds to Pink Chit, Mr. Kirkwood shall cause any distributions or liquidations that are hereafter to be paid to Mr. Kirkwood as a result of Mr. Kirkwood's 50% equity interest in Pink Chit to be paid directly to the Receiver as follows until Mr. Kirkwood has paid the entire Settlement Amount to the Receiver under this Agreement:

(1) 80% of all such Pink Chit distributions or liquidations shall be paid directly to the Receiver; and

(2) 20% of all such Pink Chit distributions or liquidations shall be paid to Mr. Kirkwood, as follows:

(a) 50% of these future proceeds distributed by Pink Chit to Mr. Kirkwood (*i.e.*, 10% of the total amount of such Pink Chit distributions) shall be paid first to the Receiver to be held in escrow by the Receiver pending the total Settlement Amount being received by the Receiver. Those escrowed payments shall be retained by the Receiver until the Receiver is paid the entire Settlement Amount, after which time the Receiver shall pay to Kirkwood any remaining escrowed amounts; and

(b) 50% of these future proceeds distributed by Pink Chit (*i.e.*, 10% of the total amount of such Pink Chit distributions) shall be paid out to Mr. Kirkwood directly as such funds are distributed.

ii. **Turnerfield Proceeds.** Upon receipt of assets or other proceeds to Turnerfield, Mr. Kirkwood shall cause any distributions or liquidations that are hereafter to be paid to Mr. Kirkwood as a result of Mr. Kirkwood's 80% equity interest in Turnerfield to be paid to the Receiver as follows until Mr. Kirkwood has paid the aggregate amount of \$3,745,000 to the Receiver under this Agreement:

(1) 80% of all such Turnerfield distributions or liquidations shall be paid directly to the Receiver; and

(2) 20% of all such Turnerfield distributions or liquidations shall be paid to Mr. Kirkwood, as follows:

(a) 50% of these future proceeds distributed by Turnerfield to Mr. Kirkwood (*i.e.*, 10% of the total amount of such Turnerfield distributions) shall be paid first to the Receiver to be held in escrow by the Receiver pending the total Settlement Amount being received by the Receiver. Those escrowed payments shall be retained by the Receiver until the Receiver is paid the entire Settlement Amount, after which time the Receiver shall pay to Kirkwood any remaining escrowed amounts; and

(b) 50% these future proceeds distributed by Turnerfield (*i.e.*, 10% of the total amount of such Turnerfield distributions) shall be paid out to Mr. Kirkwood directly as such funds are distributed.

iii. **Liens, Satisfaction of Settlement Obligations.** It is the intention of the Parties that the Receiver shall maintain a lien, which the Receiver may choose to record in such locations as the Receiver deems appropriate, on Mr. Kirkwood's interests in Pink Chit and Turnerfield in an amount equal to \$3,745,000 minus any amounts paid toward that figure under ¶¶ 2(b)(1) and (2) of this Agreement (the "Lien"), which Lien shall persist until the first to occur of the following: (i) the Receivership shall have received the entire Settlement Amount; or (ii) the remaining value of the Pink Chit and Turnerfield assets shall have been fully exhausted (each, a "Satisfaction Event). Upon the occurrence of a Satisfaction Event, the Lien shall automatically terminate, and Mr. Kirkwood shall have no further payment obligations to the Receiver under this Agreement or otherwise.

iv. **Pink Chit and Turnerfield Management.** Mr. Kirkwood shall continue to act as the Manager of Pink Chit and Turnerfield, and in order to ensure and effectuate the distribution protocol set forth in ¶¶2(b)(1) and (2) of this Agreement, as part of his role as Manager of Pink Chit and Turnerfield, and using his best, good-faith efforts, Mr. Kirkwood:

(1) shall diligently manage the assets of Pink Chit and Turnerfield for the benefit of the Receivership and his compliance with his obligations under this Agreement;

(2) shall provide detailed quarterly reports, beginning on January 15, 2023, certified to the best of his knowledge, to the Receiver on the financial performance of Pink Chit and Turnerfield, including but not limited to the status and value, and (short- and long-term) monetizability of each asset owned or held by or for the benefit of Pink Chit or Turnerfield. As part of this obligation, Mr. Kirkwood further agrees to provide prompt notice of any significant developments concerning either entity and to promptly respond to all reasonable inquiries by the Receiver and produce all documents reasonably requested in writing by the Receiver concerning Pink Chit or Turnerfield or their respective investments;

(3) agrees that he will not take any “material action” on behalf of Pink Chit or Turnerfield without the express, written, and fully informed consent of the Receiver;<sup>1</sup>

(4) agrees to meet any and all capital calls and make any and all capital contributions necessary to maintain his individual interest in the assets held by Pink Chit and Turnerfield, unless he receives the express, written, and fully informed consent of the Receiver to refrain from making any such capital contributions; and

(5) acknowledges and agrees that this provision is a material inducement for the Receiver to enter into this Agreement.

v. **Pink Chit and Turnerfield Operating Expenses and Taxes.** Mr. Kirkwood shall pay his pro rata share of any and all Pink Chit and Turnerfield operating expenses and taxes incurred prior to the release of the Lien in accordance with the ratios set forth above. For the avoidance of doubt, this means that Mr. Kirkwood shall pay 20% of any and all Pink Chit and Turnerfield operating expenses and taxes incurred prior to the release of the Lien. Subject to his fiduciary obligations, the Receiver may elect to pay his pro rata share of any and all Pink Chit and Turnerfield operating expenses and taxes incurred prior to the release of the Lien in accordance with the ratios set forth above. For the avoidance of doubt, this means that the Receiver may pay 80% of any and all Pink Chit and Turnerfield operating expenses and taxes incurred prior to the release of the Lien. Thereafter, upon the release of the Lien, the responsibility for payment of Pink Chit and Turnerfield operating expenses and tax obligations shall be governed by the

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<sup>1</sup>With respect to ¶2(b)(iv)(3), “material action” shall refer to any decision that may have an impact or \$1,000 or more on the assets, cash flow, operating margins, or financials of Pink Chit or Turnerfield.

operative documents each of Pink Chit and Turnerfield, i.e., thereafter, the responsibility for payment of Pink Chit and Turnerfield operating expenses and tax obligations shall revert to the original ownership ratios.

3. **Bar Order.** The Receiver agrees that within twenty (20) day of the Effective Date he shall file a motion in the Action requesting that the Court enter a “Bar Order” precluding claims against Mr. Kirkwood by any Daily Bread investor or claims by other third parties against Mr. Kirkwood related to Daily Bread based upon the Receiver and Mr. Kirkwood having entered into this Agreement. Mr. Kirkwood’s agreement to the settlement reflected in this Agreement is contingent upon the Court’s entry of such a Bar Order. As such, if the Court were to: (i) deny the Receiver’s motion for entry of a Bar Order, or (ii) any party were to successfully appeal from the order, then within ten (10) days of such occurrence, Mr. Kirkwood shall have the option of declaring that this Agreement is null and void, which he may do only via providing the Receiver with written notice in accordance with paragraph 21 of this Agreement, upon which timely notice the Agreement would be deemed null and void and the Parties would return to the status quo prior to the Mediation.

4. **Representations, and Warranties.**

Mr. Kirkwood represents and warrants, to the best of his knowledge, as follows:

a. The Net Asset Value (“NAV”) of Pink Chit was \$3,591,292 as of June 30, 2022 and that he has not learned that such NAV has dropped since that time;

b. The NAV of Turnerfield was \$7,996,800 as of June 30, 2022 and that he has not learned that such NAV has dropped since that time;

c. The total monies that flowed out of Daily Bread to Mr. Kirkwood (including by flowing directly to Mr. Kirkwood, his son Christopher Kirkwood, or flowing into any entity of which Mr. Kirkwood is an owner other than Pink Chit) is approximately \$3.1 million;

d. The net monies that flowed out of Daily Bread to Pink Chit is approximately \$2 million;

e. He personally invested approximately \$2.38 million into Daily Bread;

f. Mr. Kirkwood and the Receivership are each 50% members of Pink Chit, and there are no other members;

g. Mr. Kirkwood and the Receivership are, respectively, 80%/20% members of Turnerfield, and there are no other members;

h. He has no affiliation, agreement, or personal or professional relationship with Barry Fehler, as set forth in the email attached hereto as Exhibit A; and

i. As of the Effective Date of this Agreement, he has and has received no cash, bank accounts, investments or investment accounts, real estate, jewelry, art, commodities, or other assets (or any beneficial interest in any other assets) valued in excess of \$2,000 except as were disclosed, identified, and/or discussed during Mr. Kirkwood's deposition taken on July 21, 2022 or in written communications with the Receiver.

The foregoing representations and warranties are a material inducement for the Receiver to enter into this Agreement.

**5. Mr. Kirkwood's Future Cooperation with the Receiver.** Mr. Kirkwood shall fully cooperate with the Receiver to effectuate the goals of this Agreement and to assist the Receiver in his efforts to wind up the affairs of Daily Bread and otherwise effectuate the purposes of the Receivership. Such cooperation shall include, but not be limited to, executing any documentation reasonably required by the Receiver and providing any testimony or other evidence when and as may be reasonably requested by the Receiver.

**6. Mutual Releases.**

a. **Receiver's Release.** In consideration for this Agreement, and except for those obligations created by or arising out of this Agreement or as addressed herein, the Receiver, on behalf of himself in his capacity as Receiver, the Receivership, Daily Bread, and each and every one of their respective successors, representatives, and attorneys (collectively, the "Receiver Release Parties"), does hereby now and forever fully and finally release, remise, acquit, satisfy, and discharge Mr. Kirkwood and his son Christopher Kirkwood (collectively, the "Kirkwood Release Parties") from any and all claims, including but not limited to claims for fraudulent transfer (whether claims, counter-claims, cross-claims, third-party claims, or otherwise), contributions, indemnities, apportionments, duties, debts, sums, suits, omissions, covenants, contracts, warranties, repairs, controversies, agreements, promises, commitments, compensation, damages, expenses, fees, and costs whatsoever, in law or equity, whether arising under state, federal, common, or administrative law or otherwise, whether direct, derivative, representative, or in any other capacity, whether known or unknown, accrued or unaccrued, contingent or absolute, asserted or unasserted, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, matured or unmatured, that the Receiver Release Parties or any of them have or had against the Kirkwood Release Parties or any of them, including but not limited to those that concern or in any way relate to or arise out of the subject matter addressed in the Action, or any other matter, cause, or thing with regard to events occurring from the

beginning of time to the Effective Date.<sup>2</sup>

b. **Mr. Kirkwood's Release.** In consideration for this Agreement, and except for those obligations created by or arising out of this Agreement or as addressed herein, the Kirkwood Release Parties do hereby now and forever fully and finally release, remise, acquit, satisfy, and discharge the Receiver Release Parties, from any and all claims (whether claims, counter-claims, cross-claims, third-party claims, claims to Receivership investor distributions, or otherwise), contributions, indemnities, apportionments, duties, debts, sums, suits, omissions, covenants, contracts, warranties, repairs, controversies, agreements, promises, commitments, compensation, damages, expenses, fees, and costs whatsoever, in law or equity, whether arising under state, federal, common, or administrative law or otherwise, whether direct, derivative, representative, or in any other capacity, whether known or unknown, accrued or unaccrued, contingent or absolute, asserted or unasserted, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, matured or unmatured, that the Kirkwood Release Parties or any of them have or had against the Receiver Release Parties or any of them, including but not limited to those that concern or in any way relate to or arise out of the subject matter addressed in the Action, or any other matter, cause, or thing with regard to events occurring from the beginning of time to the Effective Date. This release shall expressly release, but not be limited to, any right or claimed right to recover from the Receivership Release Parties as a claimant of the Receivership.

7. **Cost of Mediation.** The Parties agree to share the cost of the Mediation equally and the Parties otherwise agree to bear their own respective legal expense relating to mediation and settlement.

8. **Prevailing-Party Attorneys' Fees and Costs.** In any action, motion, application, or other proceeding brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provision of this Agreement, any prevailing Party shall be entitled to recover reasonable attorneys' fees, court costs, and all expenses, including nontaxable court or litigation costs (including without limitation, all such fees, costs, and expenses incident to arbitration, appellate, bankruptcy, and all post-judgment proceedings), incurred in that action, motion, application, or proceedings or any appeal, including not only all fees and costs expended in the course of establishing prevailing-party status and entitlement to attorneys' fees and costs but also all fees and costs expended in conjunction with efforts to establish the proper amount of such fees and costs, in addition to any other relief to which such Party may be entitled.

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<sup>2</sup>With the sole exception of his son Christopher Kirkwood, this release expressly excludes each and every other of Mr. Kirkwood's spouse, family members, executors, personal representatives, and beneficiaries.

9. **Binding Effect.** The provisions of this Agreement shall be binding upon each of the Parties hereto and upon their respective predecessors, successors, owners, employees, agents, attorneys, and assigns.

10. **No Construction Against Drafter.** The Parties acknowledge that this is a negotiated agreement, and that in no event shall the terms of this Agreement be construed against any Party on the basis that such Party, or its counsel, drafted this Agreement.

11. **Entire Agreement.** This Agreement represents the entire agreement between the Parties. There are no extrinsic agreements between the Parties other than what is set forth in the four corners of this written Agreement. No person or entity on behalf of any party to this agreement has been granted authority to vary the written terms of this Agreement.

12. **No Oral Modifications/Waiver.** All modifications to this Agreement must be in writing. No amendment, addendum, waiver, or modification of any of the terms and conditions set forth in this Agreement shall be effective unless in writing, signed by all parties. No breach of any provision of this Agreement shall be deemed waived unless it is waived by written agreement signed by all Parties hereto that references this Agreement and provides it is a waiver to it. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement.

13. **Non-Reliance.** No Party has made any statements, representations, or warranties other than what is set forth in this Agreement. Moreover, in entering into this Agreement, no Party has relied upon any statements, representations, or warranties that are not contained within the document itself.

14. **Consultation with Counsel.** Each of the Parties to this Agreement acknowledge that: (a) such Party has been given the opportunity to consult with counsel and other advisors of its choice, and after consulting with such counsel and advisors, knowingly, voluntarily and without duress, coercion, unlawful restraint, intimidation, or compulsion, enters into this Agreement, based upon such advice and counsel and in the exercise of its business judgment; (b) this Agreement has been entered into in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged; and (c) the Parties have carefully and completely read all of the terms and provisions of this Agreement and are not relying on the opinions or advice of the other Party or its agents, attorneys, or representatives in entering into this Agreement.

15. **Captions.** The captions to this Agreement are inserted for convenience of reference only and in no way define, describe, or limit the scope or intent of this Agreement.

16. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original and such counterparts shall together

constitute one and the same agreement. Facsimile signature and electronic signature, such as by PDF, is sufficient.

17. **No Assignment.** The Parties warrant and represent that no assets, claims, causes of action, demands, or any part thereof that is governed by this Agreement has been assigned, granted, or transferred to any other person, firm, corporation, or entity. The Parties further warrant and agree that they will defend, indemnify, and hold any other Party harmless from any claim(s) made by any purported assignee in contradiction of the aforementioned representations and warranties.

18. **Number of Days.** In computing the number of days for purposes of this Agreement, unless otherwise indicated all days shall be counted, including Saturdays, Sundays, and holidays; provided, however, if the final day of any time period falls on a Saturday, Sunday, or holiday on which federal banks in the United States are or may elect to be closed, then the final day shall be deemed to be the next day which is not a Saturday, Sunday, or such holiday.

19. **Governing Law and Venue and Jury Trial Waiver.** This Agreement shall be construed and governed exclusively by the laws of the State of Florida, without giving effect to its conflict of laws provisions. Venue for any action arising from or relating to this Agreement shall lie solely and exclusively in the division in which the Action is pending, *i.e.*, the Complex Business Litigation Division for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. **THE PARTIES HEREBY VOLUNTARILY AND KNOWINGLY WAIVE ANY RIGHT THEY MAY OTHERWISE HAVE TO A TRIAL BY JURY IN ANY ACTION TO CONSTRUCT OR ENFORCE THIS AGREEMENT.**

20. **Authority.** The Parties, acting by and through the signatories to this Agreement, hereby represent and warrant to each other that they have full power and authority to execute this Agreement and any other agreement or instrument contemplated hereby, all of which have been duly authorized by all necessary corporate action, if applicable, and this Agreement has been duly executed and is legal, valid, and binding on and enforceable against them in accordance with its terms.

21. **Notices.** Any notice, request, or other document required or permitted to be given under this Agreement, including a Default Notice under paragraph 3, shall be in writing and shall be deemed delivered: (a) upon delivery, if delivered by hand; (b) when sent by email; or (c) on the next business day, if sent by prepaid overnight courier service, in each case, addressed as follows:

**To the Receiver:**

Dimond Kaplan & Rothstein, P.A.  
c/o Lorenz Michel Prüss, Esq.  
Offices at Grand Bay Plaza  
2665 South Bayshore Drive, Penthouse 2B

Miami, Florida 33133  
Email: [Lpruss@dkrpa.com](mailto:Lpruss@dkrpa.com) and  
[Sdimond@dkrpa.com](mailto:Sdimond@dkrpa.com)

**To Mr. Kirkwood:**

Dorsey & Whitney LLP  
c/o Erin Bryan, Esq.  
50 South Sixth Street, Suite 1500  
Minneapolis, MN 55402-1498  
Email: [bryan.erin@dorsey.com](mailto:bryan.erin@dorsey.com) and  
[Marti.john@dorsey.com](mailto:Marti.john@dorsey.com)

Any Party may change the address to which notice shall be sent by giving notice of such change of address to the other Parties in the manner provided above.

22. **Effective Date.** The “Effective Date” of this Agreement shall be the date on which the Agreement has been executed by both of the Parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

**IN WITNESS WHEREOF, the Parties, intending to be legally bound, have duly executed this Agreement on the dates set forth below.**

By: 

Dated: 12/14/22

Timothy Kirkwood

By: \_\_\_\_\_

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

*Scott M. Dimond, Esq., as Receiver  
for the Estate of Daily Bread, LLC,  
pursuant to the Court's December 14, 2021  
Order Granting Plaintiffs' Emergency Motion  
for Appointment of Receiver*

**[SIGNATURE PAGE]**

**IN WITNESS WHEREOF, the Parties, intending to be legally bound, have duly executed this Agreement on the dates set forth below.**

By: \_\_\_\_\_

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

Timothy Kirkwood

By:  \_\_\_\_\_

Dated: 12/14/22

*Scott M. Dimond, Esq., as Receiver  
for the Estate of Daily Bread, LLC,  
pursuant to the Court's December 14, 2021  
Order Granting Plaintiffs' Emergency Motion  
for Appointment of Receiver*

[SIGNATURE PAGE]

# EXHIBIT A

**From:** [Tim Kirkwood](#)  
**To:** [Lorenz Michel Pruss](#)  
**Cc:** [Erin Bryan](#)  
**Subject:** "Barry Fehler - Exhibit A"  
**Date:** Wednesday, December 14, 2022 5:36:03 PM

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Dear Mr. Pruss-

The Daily Bread receiver has asked me about payments to "Barry Fehler" for a total of approximately \$42k. I do not know who Barry Fehler is.

Regards,  
Timothy Kirkwood