**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

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| B.E. CAPITAL MANAGEMENT FUND LP, | ) | |
| Petitioner, | ) | |
| - against - | ) | C.A. No. 12843-VCL |
| FUND.COM INC., | ) | |
| Respondent. | ) | |

**NOTICE OF EX PARTE SUBMISSION**

PLEASE TAKE NOTICE, that the Court received the attached submission by Federal Express on December 21, 2021.

The Honorable J. Travis Laster

Judge J. Travis Laster
102 Warwick Drive
Wilmington, Delaware 19803-2621

From: Lyn I. Goldberg
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Savannah, Georgia 31411
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Dear Judge Laster, I recognize that writing to you at home would never be appropriate except under the most exceptional circumstances. This is one of those most exceptional times. It is not in the form of a formal Motion, rather, in the form of a more informal letter because time is of the essence and I do not want to delay to the prejudice of the shareholders. Today I am given the choice of either not writing to you at home or allowing the Receiver in this case to embezzle three million dollars from the shareholders. For the sake of the shareholders I had to err on their side and thus write to you at home. Had the Receiver not violated most of the Rules of the Chancery Court, I would have been very reluctant to send this letter to you like this, but the Receiver violated most of those Rules in his scheme to take the shareholders' money and invest it for his own purposes in distressed assets and bankruptcy trade claims, the type of investment that he made in his private businesses before becoming Receiver, and which he did not disclose to the Court in his Petition to become Receiver, knowing that if he made such a such disclosure, it would preclude him from becoming Receiver. The reason the receivership was fraudulently terminated by the Receiver was because he required in his own Motion to Discontinue the liquidation that a shareholders' meeting be held within 180 days of that termination, but such shareholders' meeting has never been held even though the termination occurred more then three year ago, with the shareholders thereby being precluded from having any say whatsoever in what the Receiver did in selling the assets or in violating the Rules of the Chancery Court.

Since my credibility is involved, it would seem important, if not mandatory, for me to first tell you my background. I am a graduate of Princeton University (AB 1963), the Univ of Chicago Law School (JD 1966), law clerk to the former Chief Judge of the US District Court in Chicago (1966-67), former federal prosecutor in San Diego (1967-70), and the only prosecutor to receive a personal commendation from the Director of the FBI. I handled the prosecution of public officials for bribery, RICO violations, prosecution of large drug cartels, bank robberies, aircraft hijackings, and thereafter was a trial lawyer for 35 yr, including serving as co-chair of the Shareholders' Committee in a recent multi-billion dollar recovery in the International Court for the Settlement of Investment Disputes (ICSID) against the country of Venezuela.

Please excuse the informality of this letter, the reasons for which will become apparent. The subject is most serious as it involves what appears to be the embezzlement of so much money and also the termination of the receivership when the legal basis for that termination did not exist. I am writing because I learned that the case, which is the subject of this letter, namely, B.E. Capital against Fund.com, No. 12843-VCL, in which you were the presiding Vice Chancellor and I was a shareholder, was dismissed in May 2020 when there was no legal basis for that termination. Thus, the receivership in that matter should

still be open because the prerequisites for its termination were never met inasmuch as it was fraudulently terminated by the Receiver. I believe that this letter directly to you is proper because the case has technically been dismissed and is thus not part of any court proceeding, and it will not only reveal the Receiver's conduct, but is the only way to prevent the money that belongs to the shareholders from being taken from them and used by the Receiver personally as he sees fit and without any notice to the shareholders. It is also the inherent power of every court, whether a court of law or a court of equity, to reopen a case where its termination was based upon fraud. It is sent to your residence, the address which was available on TigerNet to all Princeton Alumni, because I was advised that if I sent it directly to your office, it would not reach you.

To the best of my knowledge, the money from the company that was monetized by the Receiver, to wit, Fund (FNDM in the market) has not yet been spent and thus can be withheld from distribution by the Court and distributed to the shareholders and handled as the Court deems proper. The Receiver is thus withholding the monetized assets from distribution to the shareholders and just sitting in some account for years without being distributed to the shareholders. Of note, I was made aware some time ago that the money had been withheld from the shareholders, but was advised by another shareholder that the Receiver told him he was in the process of distributing the assets to the shareholders and I was thus willing to give the Receiver an opportunity to make the distribution, which he never did. I could not learn the details of what happened to the money because the Receiver was not willing to answer my questions about its whereabouts and did not post the information on the website that he created for that purpose, namely, www.fndmreceivership.com. However, the Receiver did tell me at one time that he was waiting to spend the shareholders' money when he could find an investment group that was interested in investing in the same type of assets that he (the Receiver) had invested in throughout his career and specifically the type of investments he had invested in in his last two businesses, namely distressed assets and bankruptcy trade claims, which I will discuss below

The problem with the termination of the receivership by the Receiver and the reason it was invalid is that the Receiver had no authority to dismiss the case because the criteria for the dismissal, which were set by the Receiver himself, were never met. Those criteria required that before the case could be dismissed, the Receiver had to call a shareholders' meeting, which I was told was normal in receiverships. However, such meeting was never called and has never taken place. Even the out of-state attorney calling himself "Of Counsel," discussed below, admitted to me that the shareholders' meeting was required and that he (the Of Counsel) needed to "get on the case" of the Receiver to set up that meeting.

As will be discussed, the reason the Receiver did not call a shareholders' meeting or follow the rules he established in writing in his Motion to Discontinue the Liquidation filed Oct. 16, 2018 was to prevent the shareholders from using the company's assets as he (the Receiver) desired which would never have been approved by the Court because his

investments were highly speculative (distressed assets and bankruptcy trade claims) and could have subjected the shareholders to great losses inasmuch as they were so

speculative. So why, one would ask, would the Receiver invest in highly speculative assets that would subject the shareholders to great losses? The answer is that the Receiver's normal and desired investment strategy, which he explained to me many times and to other shareholders, was to invest in distressed assets and bankruptcy trade claims. Why would he take such a risk with the shareholders' money? The answer is that his personal business before he became Receiver, and which he withheld from the Court in his Petition to establish the receivership, was to invest in these types of risky assets. Thus, his current business, 507 Capital, and his company before that, BE Capital, both invested, as their business strategy, in those very risky investments. Had he been a Trustee in federal bankruptcy court, he would have been held in contempt of court and sanctioned, if not also prosecuted for embezzlement. Moreover, he never gave any notice to the shareholders and could not have advised the Court of the criteria for the dismissal that he established in his Motion to Discontinue cited above or the Court would have seen that the criteria for the dismissal had not been met and that his investment scheme was dangerous. Thus, in dismissing the case, especially without notice to the shareholders and without explaining to the Court the dangers of his investment scheme, the Receiver moved to dismiss it in violation of the terms necessary for the dismissal, terms that he created, which allowed the Receiver to keep for himself the assets that he monetized rather than first holding a shareholders' meeting, as required by the terms for the dismissal. Had he given notice to the shareholders or advised the Court of the criteria for the dismissal, it would have been obvious to them that he was trying to keep them in the dark and use the monetized assets for his own purposes, which is something he repeatedly advised me of before and during the receivership proceeding that he was going to do, as unrealistic as that may sound.

Please allow me to put this a different way. The dismissal of the receivership allegedly occurred in May 2020 and now, 19 months later, the Receiver is doing with the money as he pleases without any notice to the Court or the shareholders that a shareholders' meeting was required before the receivership could be terminated. Why would he keep the money without letting anyone know even where the money is being held? To the best of my knowledge it is not even deposited in a bank in the State of Delaware, as required by Rule 152, with a written statement from the depository showing compliance with the Rule. Also, to the best of my knowledge the Receiver has not submitted to the Court a full report of the Receiver's proceedings and of the state of the affairs of the company, at the expiration of each year during the pendency of the receivership, as required by the Rules of the Chancery Court, and to the best of my knowledge the Receiver has not filed with the Register within 30 days of his appointment a full inventory of all the property of the company and an appraisal of the property under Rule 151 or file a list within that time frame of the shareholders of the company under that same rule. I am not aware that he did any of these things. As to the list of shareholders, the Receiver asked to be exempted from this requirement because the company did not have adequate assets at that time to

pay for the list but when he received millions for some of the assets, he even then never made any attempt to pay for the list, the cost of which was not substantial and could even have been obtained for free with an order from this Court and thereby not prevented the

shareholders from having each other's names and addresses and communicated with one another about the failure of the Receiver to comply with Rules of Court, especially about the assets owned and the amount received for the sale of those assets.

As previously discussed, the reason why the Receiver could not legally dismiss this matter, which he in fact did, was because the terms of the dismissal, set by the Receiver himself in his "Motion ... to Discontinue Liquidation" required that there be a shareholders' meeting within 180 days of the dismissal. In the words of the Receiver:

> The Receiver proposes that this Court discontinue this receivership proceeding upon the following terms: (a)The Company shall call a meeting of stockholders, within one hundred and eighty (180) days following entry of an order granting the relief sought herein .... [Emphasis added]

Such language was presumably included to allow the shareholders to discuss how the money the Receiver collected would be divided among themselves. However, there never was nor has there ever been such a shareholders' meeting within 180 days of the May 2020 dismissal or at any time up to and including the present and that without that meeting the Dismissal was invalid, and it is certain that the Receiver knew this as he was the one who prepared the Motion.

Not only was there never a shareholders' meeting, but the Receiver, to the best of my knowledge, kept for himself the money that belonged to the shareholders and never even filed in the Office of the Register any written statement showing compliance under Rule 152 that he had the money or that it was deposited in a Delaware bank. Thus, the Receiver has kept for himself following the dismissal of the receivership the assets that he monetized for the shareholders in violation of the terms that he created in his "Motion ... to Discontinue Liquidation." Moreover, he never disclosed the location to the shareholders or put the shareholders on notice that there would be a dismissal. The dismissal by the Receiver in May 2020 was therefore improper because it violated the terms set by him and the reason was not simply procedural, rather, several million dollars belonging to the shareholders were kept by him following his dismissal of the receivership in a location that he never disclosed to them or to the Court. This illegal keeping of the monetized assets, especially without notice to the shareholders or their consent, if accurate, would appear to be embezzlement.

The Receiver even acknowledged the requirement that there be a shareholders' meeting before the case could be terminated in his Order Granting the Motion of Receiver to Discontinue Liquidation as well as in his Motion to discontinue it:

> The Company shall call a meeting of stockholders within one hundred and eighty (180) days following entry of this Order.

The Receiver communicated with me on many occasions, both before and after he petitioned the Court to become Receiver, that he planned to use the money to buy distressed assets and bankruptcy trade claims, the same type of assets that he bought and sold as part of his own personal business dealings before and during his becoming Receiver.

The company that he owned when he petitioned the court to become receiver was known as BE Capital. Using the Wayback Machine to discover how he formerly did business inasmuch as he wiped his old website off the internet, it is revealed that he discussed his business as follows:

> BE Capital specialize[s] in purchasing bankruptcy trade claims and offering liquidity to creditors

Millions of dollars that were monetized by this Receiver as part of his duties are missing or have been withheld by him for more than twenty (20) months. That money could, and should have, been distributed to the shareholders. Moreover, the Receiver has violated multiple Rules of the Chancery Court, failed to be in touch with the shareholders for more than twenty (20) months in violation of his promise to post the status of his work and obligations on the website that he created for this purpose, and has engaged in fraudulent conduct from the time of his appointment to the present by withholding critical information from the Court in order to gain and to keep his appointment.

Of note, as a result of the extreme cost to the shareholders of requesting copies of the court file, which would have been thousands of dollars for each one, it was not practical for the shareholders to pay for copies of the court file and the Receiver never offered to give them copies or post them on his website or even summarize their contents. As a result, except for a few insignificant filings, which the Receiver posted on his website, the shareholders were kept uninformed and in the dark about the significant facts of the case. He even never told them how much he collected as the result of monetizing the three assets of the company, as Rule 158 required be done 15 days prior to their sale.

I do not take pleasure in writing this letter, but have been left with no alternative after the Receiver refused my attempt to resolve the issues involved. In fact, when I wrote to him long ago about responding to my questions concerning the status of the case and what had been going on and which would help the shareholders understand what he had been doing, his sole response was to accuse me of trying to gain an advantage over the other shareholders. In fact, his accusation and refusal to answer my questions were merely an attempt to obfuscate the truth in order to cover up his conduct. How could the Receiver

and his attorneys fail to execute the obligations of the most basic Chancery Court rules unless that deception was intentional, one designed to prevent any unfair sales or fraud when they had to know the obligations imposed upon them and their importance? Even at the outset, when the Receiver petitioned the Court to become Receiver, he was obligated to tell the Court what he did for a living since his livelihood conflicted with his

obligations as Receiver, but had he told the Court what he did for a living, namely, buying and selling distressed assets and bankruptcy trade claims, the Court would never have approved his petition to become Receiver because it conflicted with his proposed duties as Receiver.

Needless to say, there never has been a shareholders' meeting called, but the Receiver still dismissed the case and kept the money, and by such dismissal, foreclosed the shareholders from challenging his actions. In other words, if the shareholders moved to reopen the case in order to distribute the monetized assets among them, he would claim that the case had been dismissed and that the court therefore had no jurisdiction over the motion. One of his attorneys Jeffrey Chubak, told me this very thing in writing. This is grievous criminal conduct normally viewed as embezzlement. Moreover, the Receiver has not communicated with the shareholders at all via the website that he created for that purpose (www.fndmreceivership.com) since March 2020. Of note, Mr Chubak stated on his New York firm's website that the Receiver recovered 2.5 million dollars plus the firm's domain name ("successfully recovered $2.5 million and the Fund.com domain name for stakeholders")., which originally was purchased for almost ten million dollars and must have sold for at least one million, probably more, meaning that the Receiver must be holding at least 3.5 million dollars of the shareholders' money.

Time is of the essence as the Receiver has seemingly taken the millions of dollars that he collected for the shareholders and not distributed them to the shareholders, ostensibly making personal use of them, which was his intention from the beginning. Why else would he not explain his background to the Court, which involved his ownership of a business that exclusively sold distressed assets and bankruptcy trade claims with an intent to sell those same very risky assets if he was elected by the shareholders to become President of Fund after the receivership was dismissed? Why else would he violate the rules that he himself created for the dismissal of the case and also violated, as discussed below, most of the Rules of the Chancery Court, thereby subjecting him to civil contempt as well as criminal misconduct? And why else would he allow his personal attorney from New York, Jeffrey Chubak, to serve as "Of Counsel" in this case and allow his attorney of record, Julia Klein, to engage in such conduct even though the position of "Of Counsel" does not exist in a trial proceeding and which is in violation of Rule 170, which requires that he be admitted pro hac vice to this court as a prerequisite to representing him?

Had the Receiver not kept promising, beginning long ago, to distribute the monetized assets of the company much sooner, I would never have gone along with his consistent stalling of the distribution with the justification that he had to continue "cleaning up" the

books and records of the company, which seemed plausible especially after the brokerage where I hold my shares told me that it would not allow trading in that stock because the company's records with the SEC were incomplete, but that other brokerages were allowing the stock to be traded. I thus gave the Receiver the benefit of the doubt because of his promises to other shareholders that distribution was near and because his own substantial ownership of the stock was on the line, even excusing his failure to call a shareholders' meeting, but as time dragged on without any results, things did not seem right. Moreover, as I subsequently learned, if the Receiver was going to distribute the monetized assets he could have distributed them without dealing with the SEC and that involvement with the SEC was only necessary if he was going to use the monetized assets in a new company that he created to buy and sell distressed assets and bankruptcy trade claims, which is what the Receiver said he was going to do with the monetized assets.

Although this case was technically dismissed in May 2020 and although I had been told that it had been dismissed, I did not realize until recently that it had in fact been dismissed in violation of the terms imposed by the Receiver upon himself and despite the fact that the Receiver had agreed that there would be no dismissal until after a shareholders' meeting had been called.

In summary, the Receiver violated the very rules that he imposed upon the dismissal and never called a shareholders' meeting and thereby nullified any termination of the Receivership proceeding. The Receiver was obviously concerned that if a shareholders' meeting was held, the shareholders would learn the truth about what the Receiver had been doing since the inception of the Receivership, especially those things that required the shareholders to be informed of the status of the case and the money recovered on their behalves.

Without reviewing all of the Rules that he violated, let me cite just some of the most relevant:
1) Rule158 provides that "Unless otherwise ordered by the Court, notice of all sales to be made by the receiver shall be sent by the receiver by mail at least 15 days prior to the day of sale to all creditors who have filed claims, and to all stockholders. The Receiver never did this, thereby keeping from the shareholders the assets that he recovered for the shareholders,

2) Rule 161 provides that the Receiver shall ... make [a] report at the expiration of each year during the pendency of the receivership. The Receiver never did this either to the best of my knowledge, except filing his initial report, thereby keeping the shareholders in the dark all along,

3) Rule 162 provides that [these] [a]ccounts rendered by the Receiver shall ... show in detail ... all moneys received, when, from whom or from what source .... The Receiver

never did this either to the best of my knowledge, thereby again keeping the shareholders in the dark

4) Rule 170 provides that "Attorneys who are not members of the Delaware Bar may be admitted pro hac vice in the discretion of the Court and such admission shall be made only upon written motion by a member of the Delaware Bar who maintains an office in this State for the practice of law ("Delaware Counsel"), a rule and its subparts that the Of-Counsel, Jeffrey Chubak, and primary counsel, Julia Klein, did not follow.

These Rules were obviously designed to inform the shareholders what was happening to the company's assets, how much was recovered, from when and from whom, and allow them to object to any settlement and how the Receiver was disposing of these assets and the recoveries made. But the Receiver never did these things. He never informed the shareholders what assets he was selling, to whom, and for how much he was selling them, even though the Rules specifically required this and even though the assets that he sold were worth millions of dollars. Had a Trustee in bankruptcy done this, whose responsibilities and obligations were similar to a Receiver, he would have been removed from his position, and if he used the assets recovered for his own personal use, this matter would have been referred to the FBI and/or the US Attorney's Office for investigation and possible prosecution. That is what happened when I was a law clerk for the federal judge in Chicago

Even in Wikipedia, there is a discussion of Mr Braziel specifically where the author described the entire scenario that I have been discussing, where he stated "Since recovery of Fund.com Braziel and his team have begun to outfit the website as an investment media platform and as a sourcing site **for claims of distressed creditors**." But had he informed the Chancery Court of his own business of investing in distressed assets and his plan to invest the monetized assets in distressed assets and other risky investments if elected President, the Court would never have allowed him to be appointed Receiver. Thus, even if there had been a shareholders' meeting, the Receiver would most likely have been elected President of the company because in the mind of the shareholders he was the person who was responsible for monetizing the assets. It would therefore be inappropriate to send this case back to the shareholders now for a shareholders' meeting to elect a President unless Mr. Braziel was excluded from becoming President and removed from his position as Receiver with the Court appointing a new Receiver to distribute the monetized assets to the shareholders, the same thing that a federal judge would do if he learned that a trustee in bankruptcy was misbehaving or acting unethically.

Moreover, the Receiver's failure to advise the Court that his personal business was involved in the sale of distressed assets and bankruptcy trade claims constituted fraud, not merely an innocent misstatement. As stated in 27 Am. Jur. 2d, Sec. 20:

> A suppression or concealment of the truth may constitute a means of committing fraud as well as may a suggestion of falsehood, and therefore concealment of facts constitutes a ground of equitable jurisdiction no less than misrepresentation openly made. However, a suppression of the truth is not at all times such fraud as will be relieved against in equity. It is generally necessary to prove that the person had knowledge of the fact which he is said to have suppressed. Moreover, it must be a suppression of the facts which the party is under a legal or equitable obligation to communicate, and in respect of which he could not be innocently silent. Also see Allen v. Layton, 35 A.2d 261 (1967) (Del. Sup. Ct.)

By way of background, Fund's only assets consisted of three things:1) a substantial interest in the shares of a company called Advisor Shares, which owned conservative electronically traded funds (ETFs), 2) a cause of action against Advisor Shares for the sale of its electronically traded funds and 3) the URL called "Fund.com", which allegedly sold for ten million dollars in its inception (the highest ever paid for a URL).

As Fund invested in conservative assets, which managed electronically traded funds (ETFs) and earned on average 1/2% to 1% of the gross profits of the companies that it managed, the shareholders had no idea that Mr. Braziel's plan would be to use their money to invest in speculative, distressed assets. Rather, they believed that he would simply monetize Fund's assets and distribute the proceeds to them, a world of difference between that and using those funds to invest in some of the most speculative forms of investments.

A Receiver, like a trustee in bankruptcy, must be a neutral party and not have an interest in the outcome of the receivership proceedings. A Receiver, whether in Delaware or almost any other state, is defined as a neutral person who is selected by the court to take control of the assets and distribute them to the creditors and, if any money is remaining, to distribute it to the shareholders, most of whom because of the Covid virus may have lost money and could likely be in need of their investment. In this case there are no creditors, meaning that the assets of the company, when sold, would be distributed exclusively to, and divided among, the shareholders without subtraction of any amounts.

But Mr. Braziel's real plan, which he did not disclose to the shareholders or to the Court, was not to distribute the monetized assets to the shareholders but, rather, to use them to buy and sell distressed assets and bankruptcy trade claims, just as he had done for many years with his own former company, BE Capital, before he was appointed the Fund Receiver. It was his plan to use his own new company, 507 Capital, that he created in January 2019, to succeed his previous company BE Capital , or a similar company while the receivership was ongoing, to invest in highly speculative and unstable distressed assets.

Under the foregoing circumstances, it is hereby requested that the Court reopen the receivership for failure of the Receiver to abide by his own requirement that a shareholders' meeting be held before the case could be terminated, which never occurred. But also because he failed to abide by the Rules he himself created to advise the Court forthwith where the assets of the receivership were located, his failure to place any cash in a Delaware Bank as required by Rule 152, his failure to advise the Court in writing why he failed to abide by the Rules of the Chancery Court, with the attorney for the Receiver being required to advise the Court in writing why she did not require her client, the Receiver, to follow those Rules, her failure to require the so-called "of-counsel", Jeffrey Chubak, to explain in writing why he failed to follow the Rules, especially why he called himself "Of Counsel" when no such position exists in a trial court, to explain in writing to his employer in New York and to this court why he violated the Rules of the Chancery Court, to require all three to file those writings with the Clerk or Register of the Court, to hold all three parties in contempt of Court for their violations of the Rules, to appoint a new Receiver with directions to distribute the cash that has been collected, to require the new Receiver to sell whatever assets have not been sold and distribute the proceeds to the shareholders, to appoint a special Master or Examiner to determine how much interest the monetized assets would have earned from the time they were collected to the present and require the Receiver to reimburse the company for this amount, which would then be distributed to the shareholders, and to take whatever additional action is necessary to wind up the receivership.

If Mr. Braziel were to have his way, the shareholders, who had invested in Fund in conservative electronically traded Funds (ETFs) would be forced to hold their investment in very dangerous and speculative distressed assets and bankruptcy trade claims, assets they never in their wildest imaginations believed would be substituted for their investments and which could lose all of their value overnight. The Court should also recognize that the conduct of Ms. Klein and Mr. Chubak violated the Delaware Rules of Professional Conduct, wherein it states at Rule 3.1 that "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous ....", which was violated when they terminated the receivership despite the fact that a shareholders' meeting had not been held.

I apologize to the Court for the length of this writing, but have tried numerous times without success to reduce it in size, and I did not want to delay any longer in sending it when the interests of the shareholders could be further prejudiced if I took additional time in trying to do that.

I declare under penalty of perjury under the laws of the State of Georgia to the best of my knowledge, information, and belief that the foregoing is true and correct.

Dated: 12-20-21

Lyn Goldberg