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

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. CHRISTOPHER A. FAULKNER, et al , Defendants,	§ § § § § § § § § § § §	Civil Action No. 3:16-cv-1735-D

NON-PARTY ROTHSTEIN KASS'S JOINDER IN SUPPORT OF RECEIVER'S MOTION TO ENTER PROPOSED FINAL BAR ORDER

E. LEON CARTER
State Bar No. 03914300
lcarter@carterarnett.com
LINDA R. STAHL
State Bar No. 00798525
lstahl@carterarnett.com
COURTNEY BARKSDALE PEREZ
State Bar No. 24061135
cperez@carterarnett.com
CARTER ARNETT PLLC
8150 N. Central Expy., Suite 500
Dallas, Texas 75206-1860
(214) 550-8188 (main)
(214) 550-8185 (facsimile)

NICOLAS MORGAN (admitted pro hac vice)
Cal. State Bar No. 166441
nicolasmorgan@paulhastings.com
THOMAS ZACCARO (admitted pro hac vice)
Cal. State Bar No. 183241
thomaszaccaro@paulhastings.com
PAUL HASTINGS LLP
515 South Flower Street, Twenty-Fifth Floor
Los Angeles, CA 90071
(213) 683-6000 (main)
(213) 627-0705 (facsimile)

Attorneys for Non-Parties

ROTHSTEIN KASS P.A. d/b/a ROTHSTEIN KASS & CO. P.C. AND ROTHSTEIN, KASS & COMPANY, PLLC[1]

[1] These entities are referred to collectively as "Rothstein Kass." Rothstein Kass previously appeared in this action through non-party Rothstein Kass & Company, PLLC ("Rothstein Kass PLLC"), the entity that was sued in the *Jinsun* Action. Rothstein Kass now includes Rothstein Kass P.A. d/b/a Rothstein Kass & Co. P.C. ("Rothstein Kass P.C.").

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I. INTRODUCTION

Seven years after the end of its audits of the Breitling Audit Entities[2] (the "Audits"), and following years of expensive investigation and litigation, Rothstein Kass has settled with the Receiver, acting on behalf of the Receivership Entities[3] and claimants in the Receivership, for claims he has or could have asserted have asserted against Rothstein Kass (the "Settlement"). As a condition of this Settlement, which will bring $7 million into the Receivership Estate to be distributed to qualified claimants, the Receiver has asked the Court to bar all claims currently proceeding, or that could have proceeded, against Rothstein Kass and the Rothstein Kass Released Parties[4] related to the Audits (the "Bar Order").

The Court should enter the Bar Order. The only outstanding claims against Rothstein Kass, those brought by the officers, directors, and shareholders of BECC's predecessor entity, Bering, are derivative of the Receiver's own claims ("*Jinsun*").[5] Each of the *Jinsun* Plaintiffs' remaining claims based on fraud, negligent misrepresentation, and violations of the Texas Securities Act are

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[2] The "Breitling Audit Entities" are Breitling Oil and Gas Corporation ("BOG"), Breitling Royalties Corporation ("BRC"), and Breitling Energy Corporation ("BECC").

[3] The "Receivership Entities" are BOG, BECC, BRC, Crude Energy, Patriot Energy, Breitling Ventures Corporation, Breitling Holdings Corporation, Breitling Operating Corporation, Breitling Energy Companies, Inc., Breitling Royalty Funds, LLC, Crude Royalties, Inwood Investments, Inc., and Grand Mesa Investments, Inc. (and their predecessor companies, including BECC's predecessor Bering Exploration, Inc. ("Bering")).

[4] The "Rothstein Kass Released Parties" includes Rothstein Kass and their officers, directors, shareholders, partners, attorneys, associates, employees, (including, without limitation, Brian Matlock ("Matlock")), contractors, servants, agents, and representatives, and their predecessor or successor companies, predecessors or successors in business and interest, and their insurers, including, without limitation, Mendes & Mount, and their attorneys, including, without limitation, Paul Hastings LLP, Thomas A. Zaccaro, Nicolas Morgan, Carter Arnett PLLC, E. Leon Carter, Linda R. Stahl, and Courtney Barksdale Perez.

[5] *Jinsun, LLC. v. Rothstein Kass & Co.*, No. CC-17-06249-C (Cty. Ct. at Law No. 3, Dall. Cty., Tex. filed Nov. 28, 2017).

based on injuries to *Bering*, a Receivership Entity, rather than to the *Jinsun* Plaintiffs themselves. Indeed, Plaintiffs have confirmed as much in their recently filed Third Motion to Lift Stay, Request for Judicial Notice of Receiver's Settlement with Rothstein Kass, and Brief in Support, [ECF No. 587] ("Stay Motion"), filed April 7, 2021, in which they now claim they are seeking damages for lost value in their shares of Bering and for control over Bering.[6] After ignoring and attempting to evade the Court's September 25, 2017 stay order (the "Stay Order")[7] [ECF No. 142] by repeatedly and unsuccessfully revising and recharacterizing their claims, the *Jinsun* Plaintiffs should not be allowed to prevent a valuable settlement for the Receivership on the basis of their derivative claims. Accordingly, the Court should find that the *Jinsun* Plaintiffs' claims are derivative of the Receiver's own claims, and that the Proposed Bar Order bars their claims.

II. BACKGROUND

The Court previously appointed Thomas L. Taylor III as temporary Receiver over the Receivership Entities.[8] [ECF No. 496], ¶ 2. In this capacity, the Receiver oversees "Receivership Assets," which includes "all assets—in any form or of any kind whatsoever— owned, controlled, managed, or possessed by…, directly or indirectly," by Faulkner and the Receivership Entities. *Id*., p. 1. On September 25, 2017, the Court entered the Stay Order, which enjoined the continuation or commencement of all "Ancillary Proceedings" involving, among other things,

[6] Rothstein Kass incorporates by reference the arguments raised in its Opposition to the Stay Motion [ECF No. 598].

[7] The "Stay Order" refers to the provisions of [ECF No. 108], ¶¶20-22; and [ECF Nos. 142, 320, 418, and 496], ¶¶32-34.

[8] The procedural history of this case has been discussed at length in the Receiver's Unopposed Motion to Approve Proposed Settlement with Rothstein Kass and Expedited Request for Entry of Scheduling Order and Brief in Support, ("Settlement Motion") [ECF No. 591], the Receiver's Motion to Enter the Proposed Final Bar Order [ECF No. 594], and in Rothstein Kass's Opposition to the Stay Motion [ECF No. 598], and so Rothstein Kass will address it only briefly.

Receivership Assets or current or former officers, directors, and agents of the Receivership Entities. [ECF No. 142].

Despite the Stay Order's clear terms, on November 28, 2017, Bering's former officers, directors, and shareholders sued Rothstein Kass & Co., PLLC in Texas state court for various claims related to the Audits. Bering was a public corporation that merged with BOG and BRC through a reverse merger on December 9, 2013 and was subsequently renamed BECC (the "Reverse Merger"). Because BECC and Bering are the same company operating under different names, Bering is a Receivership Entity. *See SEC v. Faulkner,* 3:16-CV-1735-D, 2020 WL 584614, Slip Op. at *6 (N.D. Tex. Feb. 6, 2020) ("Bering, however, became the receivership defendant BECC. The Receiver is entitled to pursue, and has, in fact, pursued, claims for damages both to Bering (pre-merger) and to BECC (post-merger).") (alterations in original)

The *Jinsun* Plaintiffs were not parties to the agreement that effectuated the Reverse Merger (the "Asset Purchase Agreement"), but have sought to recover for alleged damage to Bering from the Reverse Merger. *See* App. at 11, Ex. A. In essence, the *Jinsun* Plaintiffs blame Rothstein Kass's audits for Bering's entry into the Reverse Merger, despite the fact that (a) Rothstein Kass never audited Bering, (b) Rothstein Kass never communicated with Bering or the *Jinsun* Plaintiffs, and (c) Bering closed on the Reverse Merger over two months *before* Rothstein Kass issued its first audit opinion.

The *Jinsun* Plaintiffs have repeatedly shifted the theories underlying their claims to try to overcome the fundamental weaknesses in those claims and to evade the Court's Stay Order. As of their Ninth Amended Petition, they sought damages for (a) loss of share price in BECC and (b) the alleged loss of North Edna, an oil and gas field owned by Bering ("North Edna"). *See* App. at 64, Ex. B. ("Accordingly, Plaintiffs have been damaged (i) by the failure to realize the full potential

of Bering's combined proved and probable oil and gas assets and (ii) the loss of the BECC shares received through the Transaction resulting from their reliance on Breitling/BECC's fraudulent financial statements."). But in their Stay Motion, likely realizing that these damages, to the extent they exist at all, belong to the Receiver and not to them, the *Jinsun* Plaintiffs now claim they are seeking damages for their shares in *Bering* and for control over Bering. Motion to Lift Stay at 8.

As discussed more fully in the Receiver's Motion to Enter Proposed Final Bar Order [ECF No. 594] (the "Motion") and Rothstein Kass's Opposition to the Stay Motion, the Court has found that the *Jinsun* Action implicated Receivership Assets, including Receivership claims, and therefore stayed the action on four separate occasions.

The Receiver commenced the Rothstein Kass Action on July 1, 2019. *Taylor v. Rothstein Kass et al.,* No. 3:19-cv-01594-D, [ECF No. 1]. Following briefing on Rothstein Kass's and Brian Matlock's Motion to Dismiss, the Court granted in part and denied in part Rothstein Kass's and Matlock's motion, denying the motion with respect to the Receiver's participation in breach of fiduciary duty and negligence claims, but granting it with respect to the Receiver's other claims. The Receiver then filed his Amended Complaint against Rothstein Kass and Matlock on April 24, 2020. *Id.*, [ECF No. 45]. The Amended Complaint asserted claims against Rothstein Kass and Matlock for negligence and participation in breaches of fiduciary duties.

As detailed in the Settlement Motion, following two mediation sessions, the parties agreed to terms ultimately incorporated into the Rothstein Kass Settlement, including the entry of the Bar Order by the Court.

A. The Bar Order

The Receiver and Rothstein Kass negotiated the proposed Bar Order as a part of the Settlement. The proposed Bar Order would bar the Receiver, the Receivership Estate, the *Jinsun* Plaintiffs, and all other persons or entities, collectively or individually, from asserting or pursuing

any claims against Rothstein Kass or any of the Rothstein Kass Released Parties relating to (i) the Rothstein Kass audits of BOG, BRC, and BECC; (ii) the Receivership Entities; (iii) any investment of any type with any one or more of the Receivership Entities; (iv) any one or more of Rothstein Kass's relationships with any one or more of the Receivership Entities; (v) the *Jinsun* action; (vi) Rothstein Kass's provision of services to or for the benefit or on behalf of the Receivership Entities; or (vii) all matters that were or could have been asserted in the SEC Action, the Rothstein Kass Action, the *Jinsun* Action, or any proceeding concerning the Receivership Entities pending or commenced in any forum. *See* App. in Support of Receiver's Motion to Enter Proposed Final Bar Order [ECF No. 595-1] at 125.

As discussed in the Receiver's Motion, the Bar Order is fair and reasonable, and entry of the Bar Order is in the best interests of the Receivership Estate and its approved claimants. Moreover, it appropriately bars claims that are derivative of the Receiver's own claims, like the *Jinsun* Plaintiffs' claims.

III. REQUEST FOR APPROVAL OF THE BAR ORDER

The Court may enter bar orders to prevent lawsuits from dissipating or interfering in the collection of receivership assets. *SEC v. Stanford Int'l Bank, Ltd.,* 927 F.3d 830, 840 (5th Cir. 2019) ("*Lloyds*"). As the Fifth Circuit has noted, "[t]he receivership's role is undermined if investor-claimants jump the queue, circumventing the receivership in an attempt to recover beyond their pro rata share." *See Zacarias v. Stanford Int'l Bank, Ltd.,* 945 F.3d 883, 896 (5th Cir. 2019).

The Court may only bar claims that the Receiver would have standing to bring and settle himself. *See Rotstain v. Mendez*, 986 F.3d 931, 939-40 (5th Cir. 2021). The Receiver has standing to do so for claims that are derivative and non-independent of the Receiver's own claims, including when the claims depend on injuries to receivership entities and compete with receivership assets. *See Zacarias*, 945 F.3d at 900-01; *Rotstain*, 986 F.3d at 940-41.

A. The Jinsun Plaintiffs' Claims Should be Barred Because They are Derivative of the Receiver's Claims

a. **The *Jinsun* Plaintiffs' Claims are Derivative of the Receiver's Claims Under *Rotstain* and *Zacarias***

Despite the Court's Stay Order and repeated orders clarifying that the *Jinsun* action is stayed, the *Jinsun* Plaintiffs continue to pursue claims against Rothstein Kass. But because the *Jinsun* Plaintiffs' claims are derivative of the Receiver's own claims under *Rotstain* and *Zacarias*, the Court should end this pursuit by entering the Bar Order.

The similarities between the *Jinsun* Plaintiffs and the investors in *Zacarias* are undeniable. Like the investors in *Zacarias*, the *Jinsun* Plaintiffs are investors in a receivership entity who seeking recovery in Texas state court for their alleged losses stemming from the fraudulent scheme that injured the receivership entity through Texas Securities Act, negligence, and fraud claims. *Compare Zacarias*, 945 F.3d at 893-94 *with* App. at 100, Ex. C. Further, as the investors in *Zacarias* attempted to do, the *Jinsun* Plaintiffs are pursuing claims against a third party, Rothstein Kass, for its alleged furthering of the underlying fraudulent scheme that supposedly harmed them. *Zacarias*, 945 F.3d at 900-02; *see also Rotstain*, 986 F.3d at 941 ("As in *Zacarias*, the Defendants here are alleged to be participants in the Ponzi scheme, even if unknowing ones, and the investors' claims are based on conduct in furtherance of that scheme."); Stay Motion at 7-8 ("Rothstein Kass knew there was widespread fraud within Breitling; however, it failed to disclose it. Had Rothstein Kass blown the whistle…State Court Plaintiffs would not have allowed Bering to go forward with the transaction. . . .") The Court has authority to bar such claims. *Zacarias*, 945 F.3d at 901-902 (characterizing defendants as "co-conspirators" in the underlying fraud and bar order objectors as "defrauded investors" before finding that both *Lloyds* and *Zacarias* "affirm the receivership court's power to bar investors' claims for injuries they suffered as a direct result of the Ponzi scheme.").

Further, the *Jinsun* Plaintiffs' claims are derivative because they depend on injuries to Bering, a Receivership entity, and therefore depend on the Receiver's own claims, which seek to recover for damages incurred by the Receivership Entities. *Rotstain*, 986 F.3d at 940 (Noting that investors' claims in *Zacarias* were derivative because "the [Plaintiffs'] claims depended on [the injury to the Receivership]; had the [Receivership Entities] not been injured, neither would the individuals who invested in them.") (alterations added). Indeed, the Receiver pursues these claims on behalf of investors in the Receivership Entities, which explicitly includes the *Jinsun* Plaintiffs. *See* App. at 131, Ex. D.

Finally, the *Jinsun* Plaintiffs' claims are derivative of the Receiver's claims in that they compete for Receivership assets, "because every dollar the [*Jinsun* Plaintiffs] recover from [Rothstein Kass] is a dollar that the Receiver cannot . . . ." *Zacarias,* 945 F.3d at 900 (alterations added). On these bases alone, the Court should find that the *Jinsun* Plaintiffs' claims are derivative of the Receiver's own claims and enter the Bar Order. *Rotstain*, 986 F.3d at 941 ("Because the [investors'] claims were derivative and dependent, the receiver was authorized to bring them and to settle them.") The *Jinsun* Plaintiffs' may continue to engage in "word play" and shift their claims or damages theories, but they cannot alter the fundamental nature of their case, which derives from injuries to Bering and/or BECC. *See Zacarias*, 945 F.3d at 900 (objecting investors' claims stemmed from injuries to receivership from underlying fraudulent scheme, and investors' attempts to claim otherwise were "word play"); *Rotstain*, 986 F.3d at 940.

Barring the *Jinsun* Plaintiffs' claims is also in the best interests of the Receivership and its claimants. The Settlement is conditioned on entry of the Bar Order. *See* App. to Settlement Motion, APP00006-7 [ECF No. 592]. Without the Bar Order, approved claimants in the Receivership will lose $7 million and further recovery will be subject to the risks and expenses of

continued litigation between Rothstein Kass and the Receiver. After repeatedly flouting the Court's orders in a misguided effort to inflate their own recovery beyond their pro-rata share as a claimant in the Receivership, the *Jinsun* Plaintiffs' final attempt to interfere with the Receivership claimants' recovery through the use of derivative claims must not be countenanced. *See Zacarias,* 945 F.3d at 900 (noting that objecting investors were injured by the fraudulent scheme and "rode the Receiver train until the end and then decided to hold up a settlement with a deep pocket.").

b. **The *Jinsun* Plaintiffs' Claims Belong to the Receiver Under *Sharp Capital***

As a whole, the *Jinsun* Plaintiffs' claims are derivative of the Receiver's claims and therefore should be barred. But even on an individual, claim-by-claim basis, the *Jinsun* Plaintiffs' claims belong to the Receiver. As discussed more substantively in Rothstein Kass's Opposition to the *Jinsun* Plaintiffs' Stay Motion, the *Jinsun* Plaintiffs' claims belong to the Receiver under *Sharp Capital*. Under *Sharp Capital*'s test, a claim belongs to the receivership estate if: "(1) the cause of action alleges only an indirect harm to the plaintiff—one that derives from harm to a receivership entity—and (2) a receivership entity could have itself raised the claim for its own direct injury, then the claim belongs to the receivership estate." *Faulkner,* 2020 WL 584614 at *3, citing *SEC v. Sharp Capital*, *Inc.,* 315 F.3d 541, 545 (5th Cir. 2003). The *Jinsun* Plaintiffs' claims belong to the Receiver because each of their damages theories seeks recovery for alleged damages to Bering, not the *Jinsun* Plaintiffs themselves:

- First, the *Jinsun* Plaintiffs' claims that they were injured by the lost value of their Bering/BECC[9] stock have already been addressed by this Court, when it held that "to

[9] Although the *Jinsun* Plaintiffs previously claimed they were seeking damages from their shares in *BECC*, they have since seemingly changed their claims and now state they are seeking damages for their shares in *Bering*. *Compare* App. at 64, Ex. B, *with* Stay Motion, p. 8. But Bering and BECC are the same company and a Receivership Entity under either name, and so the *Jinsun* Plaintiffs' damages are derivative of the Receiver's claims regardless.

the extent the *Jinsun* Plaintiffs seek to recover for the loss in value of their shares in Bering, an individual shareholder generally has 'no separate and independent right of action for injuries suffered by the corporation which merely result in the depreciation of the value of their stock.'" *Faulkner*, 2020 WL 584614, at *6 (quoting *Wingate v. Hajdik*, 795 S.W.2d 717, 719 (Tex. 1990), *superseded by statute on other grounds, Sneed v. Webre*, 465 S.W.3d 169 (Tex. 2015)).

- Second, although not expressly mentioned in their Stay Motion, the *Jinsun* Plaintiffs presumably continue to pursue damages for the alleged loss of North Edna, which the *Jinsun* Plaintiffs explicitly admitted belonged to Bering.[10] But any claim from an injury to Bering's property must belong to Bering itself, not the individual shareholders. *See Hajdik v. Wingate*, 753 S.W.2d 199, 201 (Tex. App.—Houston [1st Dist.]1988), *aff'd*, 795 S.W.2d 717 (Tex. 1990) ("The cause of action for injury to the property of a corporation, or the impairment or destruction of its business is vested in the corporation, as distinguished from its shareholders.") (citation omitted); *see also Faulkner*, 2020 WL 584614 at *6.

[10] *See, e.g.*, App. at 140, Ex. F ("Plaintiffs' former company, Bering . . ., owned the North Edna oil and gas lease rights on an uninterrupted basis until those ownership rights were conveyed to [Breitling] in the very reverse merger transaction that was procured by fraud, which created this litigation."), 145 ("The North Edna oil and gas lease remained an asset of Bering [] on an uninterrupted basis through the closing date in December of 2013 with Breitling."), 153 ("Bering Exploration never modified its ownership rights in the North Edna Oil and Gas Lease—*until Bering Exploration conveyed those rights to Breitling in the merger*."), 155-56 ("Bering Exploration owned the [North Edna] lease. . . Because Plaintiffs' former company, Bering Exploration, lost the North Edna Oil and Gas Lease in the merger transaction which was predicated on fraud that the Defendant was well-aware, it is a proper component of Plaintiffs' damages' [sic] claim").

- Finally, the *Jinsun* Plaintiffs have now expanded their damages theory, alleging that but for Rothstein Kass's alleged conduct, they would have (somehow) stopped the Reverse Merger and sold Bering elsewhere. *See* Stay Motion at 8. But the only individuals who could enter into agreements on behalf of and operate Bering were its officers and directors, and the Court has already stayed the *Jinsun* Plaintiffs' claims to the extent they were brought on behalf of Bering's officers and directors.[11] *Faulkner,* 2018 WL 5279321, at *4 (N.D. Tex. Oct. 24, 2018). Indeed, this new theory directly contradicts the *Jinsun* Plaintiffs' previous assurances to the Court that they are not pursuing claims as officers and directors of Bering.[12] Regardless, this new theory is nothing more than a new shine on their prior damages claim: the *Jinsun* Plaintiffs are *still* claiming damages from Bering's lost value. But, as this Court has already held, "to recover for wrongs done to the corporation, the shareholder must bring the suit derivatively in the name of the corporation so that each shareholder will be made whole . . ." *Faulkner,* 2020 WL 584614, at *6 (quoting *Webre*, 358 S.W.3d at 329-30); *see also Hajdik*, 753 S.W.2d at 201 ("The cause of action for injury to the property of a

[11] Further, under this theory, the Casey Entities (Jinsun, LLC, Silver Star Holdings Trust, Vertical Holdings LLC, and TPH Holdings, LLC) would have no claims against Rothstein Kass, because they were merely shareholders of Bering, not officers and directors, and therefore exerted no control over Bering.

[12] *See Jinsun* Plaintiffs' Motion to Vacate the Court's Memorandum Opinion and Order #332, and/or to Clarify that Order and Grant Relief from the Stay Order, and Brief in Support [ECF No. 358] at 1 ("[A] Sixth Amended Petition, if allowed to be filed, establishes that the claims of Leonard Ivins and Steven Plumb are brought solely in their capacities as former shareholders of Bering Exploration, Inc. and the prosecution of these claims have nothing to do with the fact that Ivins and Plumb were former officers and/or directors of Breitling. . .").

corporation, or the impairment or destruction of its business is vested in the corporation, as distinguished from its shareholders.") (citation omitted).

Further, each of the *Jinsun* Plaintiffs' individual claims are likewise derivative of the Receiver's own claims under *Sharp Capital*:

- The *Jinsun* Plaintiffs' fraud and negligent misrepresentation claims are based on injuries suffered by Bering or BECC.[13] The *Jinsun* Plaintiffs allege that but for Rothstein Kass's alleged failure to disclose certain information it learned, *Bering* would not have entered into the Asset Purchase Agreement, *Bering* would not have become a public company, and the Reverse Merger would not have closed, thus allowing the *Jinsun* Plaintiffs to keep their Bering stock and Bering to keep its assets.[14] All of these injuries belong to Bering, not the *Jinsun* Plaintiffs individually.
- Because Rothstein Kass had no confidential, contractual, or fiduciary relationship with the *Jinsun* Plaintiffs, and because it never communicated with the *Jinsun* Plaintiffs, Rothstein Kass had no duty to disclose information to the *Jinsun* Plaintiffs individually. *See Bombardier Aerospace Corp. v. SPEP Aircraft Holdings, LLC*, 572 S.W.3d 213,

[13] The *Jinsun* Plaintiffs have already admitted that they never communicated with Rothstein Kass, and there is therefore no actionable misrepresentation to the individuals. App. at 135, Ex. E. Vertical Holdings, LLC's responses to the First Set of RFAs in the *Jinsun* Action are included as an example. Every other *Jinsun* Plaintiff likewise admitted they did not communicate with Rothstein Kass.

[14] App. at 102, Ex. C. ¶ 4 ("If Rothstein Kass had not issued an unqualified audit opinion, the reverse merger transaction would have failed, Breitling would never have become a publicly traded company and Plaintiffs would have been able to keep their stock in Bering as well as all of its valuable assets[]"); *id.* at 110, ¶ 29 ("without an unqualified audit opinion—Bering would still be a publicly traded company and Plaintiffs would still own Bering's assets"); *id.* at 117, ¶ 53 ("Plaintiffs reasonably and justifiably relied on the representations (and/or non-disclosures) made by Breitling in the financial statements upon which Rothstein Kass provided an unqualified audit opinion in making the decisions to move forward with the reverse merger and their lockup agreements.").

219–20 (Tex. 2019); *White v. Zhou Pei*, 452 S.W.3d 527, 537-38 (Tex. App.—Houston [14th Dist.] 2014, no pet); App. at 135, Ex. E. Any fraud by non-disclosure claim, to the extent it exists, must therefore be derivative of Rothstein Kass's alleged fiduciary relationship with BOG, BRC, and BECC—and any such claim would belong to the Receiver.

- Finally, the *Jinsun* Plaintiffs lack standing to pursue a Texas Securities Act claim. The Texas Securities Act provides for liability when a person who offers or sells a security makes an untruth or omission to the party buying the security. Texas Securities Act, Art. 581-33(A)(2). In this case, the Asset Purchase Agreement between Bering on one side and BOG and BRC on the other side consummated the Reverse Merger. The *Jinsun* Plaintiffs did not buy any securities in the Reverse Merger; indeed, Bering itself did not buy any securities either, and instead *sold* its shares to BOG/BRC in exchange for BOG and BRC's assets. Because they did not buy any securities, the *Jinsun* Plaintiffs have no individual claims under the Texas Securities Act. *Ratner v. Sioux Nat'l. Gas Corp.*, 770 F.2d 512, 517 (5th Cir. 1985).

All of the *Jinsun* Plaintiffs' claims derive from injuries to Bering, a Receivership Entity, and could have been brought by the Receiver. Accordingly, under *Zacarias, Rotstain, and Sharp Capital*, the *Jinsun* Plaintiffs' claims must be barred by the Court because they are derivative of the Receiver's own claims.

IV. CONCLUSION & PRAYER

The Rothstein Kass Settlement is fair, presents substantial recovery for the Receivership, and puts an end to contested litigation originating from disputed facts over seven years ago. Entry of the Bar Order is necessary for this Settlement. The *Jinsun* Plaintiffs, who have repeatedly interfered with the Receivership process and done their utmost to transform their claims to avoid

being subject to the Receivership Court's authority, should not be allowed to hold up this settlement now in an effort to recover beyond their pro rata share. The *Jinsun* Plaintiffs claims are, and always have been, derivative of the Receiver's own claims, and the Receiver has standing to settle them. Accordingly, the Court has authority to bar the *Jinsun* Plaintiffs' claims.

Accordingly, Rothstein Kass respectfully requests this Court grant this Motion and the Receiver's Motion and Enter the Bar Order.

Dated May 12, 2021

Respectfully submitted,

/s/ Nicolas Morgan

NICOLAS MORGAN (*admitted pro hac vice*)
nicolasmorgan@paulhastings.com
THOMAS ZACCARO (*admitted pro hac vice*)
thomasaccaro@paulhastings.com
PAUL HASTINGS LLP
515 South Flower Street, 25th Floor
Los Angeles, CA 90071
213-683-6000 (main)
213-996-3181 (facsimile)

E. LEON CARTER
State Bar No. 03914300
lcarter@carterarnett.com
LINDA R. STAHL
Texas Bar No. 00798525
lstahl@carterarnett.com
COURTNEY BARKSDALE PEREZ
State Bar No. 24061135
cperez@carterarnett.com
CARTER ARNETT PLLC
8150 N. Central Expy., Suite 500
Dallas, Texas 75206-1860
214.550.8188 (main)
214.550.8185 (facsimile)

Attorneys for Non-Parties
ROTHSTEIN KASS P.A. d/b/a ROTHSTEIN KASS & CO. P.C. AND ROTHSTEIN, KASS & COMPANY, PLLC

CERTIFICATE OF SERVICE

On May 12, 2021 I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the Court. All parties who have appeared in this proceeding will be served via ECF. Investors and other interested parties will be served and given notice of the hearing on this Motion as approved by the Court.

/s/ Nicolas Morgan
Nicolas Morgan