

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

BRANDON LEIDEL, individually,
and on behalf of All others Similarly Situated,

CASE NO. 9:16-cv-80060-KAM

Plaintiffs,

v.

PROJECT INVESTORS, INC. d/b/a
CRYPTSY, a Florida corporation, and
PAUL VERNON, an individual,

Defendants.

**PLAINTIFF’S AND RECEIVER’S UNOPPOSED MOTION TO
DISTRIBUTE ADDITIONAL FUNDS TO CLASS MEMBERS**

Plaintiff Brandon Leidel, as the Class Representative of the Certified Class, through Court Appointed Class Counsel Wites Law Firm and Silver Miller (“Plaintiff”), and James D. Sallah, Esq., not individually, but solely in his capacity as the Court-appointed Receiver for Project Investors, Inc. d/b/a Cryptsy, through Court Appointed Special Counsel for Receiver Wites Law Firm and Silver Miller (hereinafter “Receiver”), hereby move this Court for authorization to distribute additional funds to Class Members and state as follows:

BACKGROUND

The Cryptsy Class Action

1. This lawsuit is a certified class action filed by cryptocurrency customers who had accounts at PROJECT INVESTORS, INC. d/b/a CRYPTSY (“CRYPTSY”).

2. This Court appointed the Receiver in the April 4, 2016 Order Granting Plaintiffs’ Renewed Motion for Appointment of James D. Sallah, Esq. as Receiver/Corporate Monitor over Defendant Project Investors, Inc. d/b/a Cryptsy (the “Receivership Order”). [Docket Entry No. (“DE”) 33].

3. Plaintiff and the Class of CRYPTSY customers have demonstrated herein that, among other things: (1) CRYPTSY founder and Chief Executive Officer Paul Vernon (“VERNON”), as CRYPTSY’s then-controlling principal, abruptly shut down CRYPTSY’s operations and fled to China in late-2015 to live with his girlfriend, Xiuxia Liu; (2) VERNON stole more than \$8,000,000.00 of customer funds and cryptocurrencies (now valued at over \$600,000,000.00), which have been missing and unaccounted for many years; and (3) CRYPTSY customers were unable to access and use their CRYPTSY accounts.

4. Ultimately, Plaintiff and the Receiver obtained a settlement that secured and liquidated various assets in the total gross amount of more than \$1,500,000.00 for purposes of making a first distribution to the class victims through a Court-approved class settlement and distribution process. The Court gave final approval to the CRYPTSY Class Action Settlement on June 13, 2017. [DE 118]. <http://www.cryptsysettlement.com/>

The Coinbase Class Action

5. Class Counsel subsequently pursued on behalf of the CRYPTSY Class a class action lawsuit against another cryptocurrency exchange known as Coinbase and recovered additional monies for the CRYPTSY Class through such class action, in which this Court approved the settlement. *Brandon Leidel v. Coinbase, Inc.*, U.S. Dist. Ct. - S.D. Fla. -- Case No. 9:16-cv-81992-MARRA at DE 153. <https://coinbasesettlement.com/>.

6. In both the CRYPTSY and Coinbase Class Action Settlements, the CRYPTSY Class received notice via email and publication, which this Court approved.

7. In the CRYPTSY Settlement, each Class Member submitting a valid claim was allocated a *pro rata* share of the Net Settlement Fund based on his, her or its claim compared to the total number of valid claims. Each Class Member’s claim was based on the valuation of their

respective cryptocurrency as of November 1, 2015, which was the date CRYPTSY shut down. *See* CRYPTSY Settlement Agreement at Pgs. 16-19 [DE 73-1].

8. In the Coinbase Settlement, the same plan of valuation and allocation was used. Notably, Class Members who submitted valid claims in the CRYPTSY Settlement were not required to submit claims in the Coinbase Settlement to receive a distribution, and Class Members whose claims were denied in the CRYPTSY Settlement were afforded the opportunity to re-submit their claim and provide additional supporting material. Coinbase Settlement Agreement at Pgs. 14-17 [DE 143-1].

9. No Class Member has received an amount equal to 100% of his/her/its losses when accounting for his/her/its combined respective distributions from the CRYPTSY and Coinbase Settlements. Additionally, while Plaintiff and Receiver are pleased to distribute additional funds to the Class, such distributions, whether standing alone (i.e., for Class Members who make a claim for the first time), or in conjunction with prior distributions, very likely will not make any class member whole.

THE LIU CLAW-BACK ACTION

10. Most recently, Class Counsel and the Receiver brought a claw-back action against VERNON's girlfriend, Xiuxia Liu, that successfully recovered additional assets for the class of CRYPTSY victims. *James D. Sallah, Esq., not individually, but solely in his capacity as the Court-appointed Receiver for Project Investors, Inc., d/b/a Cryptsy. v. Xiuxia Liu*, U.S. Dist. Ct. - S.D. Fla. -- Case No. 9:20-cv-81041-MARRA (the "Liu Action") at DE 38, 49, 50. In the Liu Action, \$874,391.24 was recovered, inclusive of the \$100,000 settlement with intervenor Bittrex that this Court recently approved. *See* March 31, 2021 Order Granting Motion to Approve Settlement Agreement with Intervening Party Bittrex, Inc. [Liu Action at DE 50].

**REQUEST TO DISTRIBUTE LIU RECOVERY TO CLASS MEMBERS
AND FOR ATTORNEY'S FEES AND COSTS**

11. Plaintiff and Receiver seek this Court's approval to distribute to the Class as part of the CRYPTSY Class Action Settlement that this Court has already approved, and for which final judgment has already been entered, the funds recovered in the Liu Action. [DE 118].

12. Plaintiff and Receiver will give notice to the CRYPTSY Class via email, which will include all Class Members who received notice in the Cryptsy and Coinbase Settlements.

13. As in the Coinbase Class Action, Class Members who submitted valid claims in the CRYPTSY and/or Coinbase Settlements will not be required to submit another claim to receive a settlement distribution. If any Class Members who have not previously submitted a claim, or whose claim was previously denied, submit a valid claim here, such Class Members will receive a distribution from the funds recovered in the Liu Action so that all Class Members will have receive the same *pro rata* distribution. All remaining funds will be distributed to the Class Members *pro rata*.

14. In the CRYPTSY Settlement, which included assets obtained by both Plaintiff and Receiver, the Court approved an attorney's fee award for Class Counsel of 33.33% of the Settlement Fund. *See* Final Order Approving Settlement at p. 16 [DE 118].

15. Relatedly, on November 7, 2016, this Court granted Receiver's Motion to Approve Application to Engage Silver Law Group and Wites & Kapetan, P.A. as Receiver's Special Litigation Counsel.¹ D.E. 81. In granting such Motion, the Court approved attorney's fees of

¹ David Silver of Silver Law Group continued his work as special counsel for Receiver through the law firm Silver Miller. Likewise, Marc Wites continued his work as special counsel for Receiver through the Wites Law Firm after this Court granted Mr. Wites' motion to substitute Wites Law Firm for Wites & Kapetan. *See* Order On Substitution of Counsel at D.E. 136

33.33% for Receiver's Counsel for any monies recovered pre-trial. *See* Motion to Approve at ¶8. [DE 72 at p. 3].

16. Thus, the undersigned, as Class Counsel and Special Counsel for Receiver, request approval of: (a) an attorney's fee award of 33.33% of the Liu Settlement Funds,² (b) litigation costs of \$46,085.65, (c) costs of \$30,238.00 to be paid to Angeion Group³ to provide notice to Class, administer the Liu settlement, and distribute the settlement monies, and (d) a reserve of \$10,000.00 for trailing Receivership related fees and expenses from the requested reserve without further order of this Court, including but not necessarily limited to the preparation and filing by the Receiver's tax professionals necessary receivership tax returns.

17. The result will provide approximately \$500,000 for distribution to the CRYPTSY Class. For the reasons set forth herein, and those presented to the Court in Plaintiff's motions for preliminary and final approval of the CRYPTSY and Coinbase Class Actions, Class Counsel and Receiver believe that this additional recovery is an excellent result for the Class.

Dated: May 24, 2021

² In the CRYPTSY Settlement, the attorney's fee awarded to Class Counsel represented 69% of their lodestar. Class Counsel's Motion for Attorney's Fees, Expenses and Service Awards, and Incorporated Memorandum of Law, at p. 4. [DE 111]. Through this filing, the Receiver and his other counsel in this matter have a total of more than \$200,000 in unpaid attorney's fees. Here, the undersigned, as Class Counsel, have agreed to share equally with Receiver the attorney's fee award, which will total \$288,420. Thus, even with the attorney's fee award requested herein, neither Class Counsel nor Receiver and his other counsel will have received 100% of their respective lodestar in this matter.

³ Angeion Group (<https://www.angeiongroup.com/>) is the third-party administrator who, in both the CRYPTSY and Coinbase Class Actions who was approved by this Court and provided notice to the Class, administered the respective settlements and distributed the settlement funds. Angeion's Estimate for the costs of notice, claims administration and distribution is attached hereto as Exhibit A.

Respectfully submitted,

By: /s/ Marc A. Wites

WITES LAW FIRM

MARC A. WITES

Florida Bar No. 24783

E-mail: mwites@witeslaw.com

4400 N. Federal Highway

Lighthouse Point, Florida 33064

Telephone: (954) 933-4400

SILVER MILLER

DAVID C. SILVER

Florida Bar No. 572764

E-mail: DSilver@SilverMillerLaw.com

JASON S. MILLER

Florida Bar No. 072206

E-mail: JMiller@SilverMillerLaw.com

11780 W. Sample Road

Coral Springs, Florida 33065

Telephone: (954) 516-6000

*Special Litigation Counsel for the Receiver
and Class Counsel*

CERTIFICATE OF SERVICE

Pursuant to Rule 5(d)(1)(B), the foregoing will be served on all counsel of record through the Court's electronic filing system, and via email PAUL VERNON (PAULEVERNON@YAHOO.COM) and XIUXIA LIU (DANIELCHEN777@ZOHO.COM).

/s/ Marc A. Wites

MARC A. WITES